



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 23, 2007

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

Dear Senator Reid:

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

As an initial matter, the Department agrees with the principle you set forth in your letter that "[o]nce appointed, U.S. Attorneys, perhaps more than any other public servants, must be above politics and beyond reproach; they must be seen to enforce the rule of law without fear or favor." That many U.S. Attorneys, appointed by Presidents of both parties, have had political experience prior to their appointment does not undermine that principle. Your letter, however, contains assumptions and assertions that are simply erroneous.

First, your letter truncates the actual quote of the Attorney General's testimony at the Judiciary Committee hearing on January 18, 2007, and consequently, mischaracterizes the statement. In full, the Attorney General stated: "I think I would never, ever make a change in a United States attorney for political reasons or *if it would in any way jeopardize an ongoing serious investigation. I just would not do it*" (emphasis added). The Department of Justice rejects any suggestion that U.S. Attorneys were asked or encouraged to resign for the inappropriate "political reason" of interfering with any public corruption case or retaliating against a U.S. Attorney who oversaw such a case.

Second, your letter mischaracterizes the testimony of the Deputy Attorney General given at the hearing held on February 6, 2007. The Deputy Attorney General simply stated the Department's view that asking U.S. Attorney Bud Cummins to resign so that Special Assistant U.S. Attorney Tim Griffin might have the opportunity to serve as U.S. Attorney is not an inappropriate "political reason." This is so, the Deputy Attorney General testified, because, *inter alia*, Mr. Griffin is very well-qualified to serve as U.S. Attorney, and Mr. Cummins "may have already been thinking about leaving at some point anyway."

OLA000000668

Indeed, at the time Mr. Griffin was appointed interim U.S. Attorney in December 2006 he had far more federal prosecution experience (in the Criminal Division and in the U.S. Attorney's office) than Mr. Cummins did at the time he was appointed U.S. Attorney in January 2002. Mr. Cummins himself credits Mr. Griffin with the establishment of that office's successful gun-crime prosecution initiative. And Mr. Griffin has substantial military prosecution experience that Mr. Cummins does not have. Those who know Mr. Griffin must concede that he brings a style of leadership and level of energy that could only enhance the success of a U.S. Attorney's office. Moreover, it was well-known, as early as December 2004, that Mr. Cummins intended to leave the office and seek employment in the private sector. See "The Insider Dec. 30," *Ark. Times* (Dec. 30, 2004) ("Cummins, 45, said that, with four children to put through college someday, he'll likely begin exploring career options. It wouldn't be 'shocking,' he said, for there to be a change in his office before the end of Bush's second term."). Finally, the Deputy Attorney General did not state or imply that Mr. Griffin would be appointed as the U.S. Attorney without Senate confirmation. Such a statement would be inconsistent with the Department's stated position that we are committed to having a Senate-confirmed U.S. Attorney in all 94 federal districts.

Third, the Department does not consider the replacement of one Republican U.S. Attorney by another Republican lawyer who is well-qualified and has extensive experience as a prosecutor and strong ties to the district to be a change made for "political reasons." Mr. Cummins was confirmed to serve a four-year term, which expired on January 9, 2006. He served his entire term, plus an additional year. United States Attorneys serve at the pleasure of the President; that has always been the rule, and U.S. Attorneys accept their appointment with that understanding.

In answer to your specific questions:

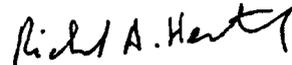
- Although the decision to have Mr. Griffin replace Mr. Cummins was first contemplated in the spring or summer of 2006, the final decision to appoint Mr. Griffin to be interim U.S. Attorney in the Eastern District of Arkansas was made on or about December 15, 2006, after the Attorney General had spoken with Senator Pryor.
- The Department of Justice is not aware of anyone lobbying for Mr. Griffin's appointment. Consistent with longstanding Administration practice, the decision regarding whether Mr. Griffin (who then was on active military duty) might be considered for appointment as U.S. Attorney upon his return from Iraq was discussed and made jointly by the Department of Justice and the White House.

The Honorable Harry Reid
Page Three

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

We appreciate the opportunity to respond to your inquiry.

Sincerely,



Richard A. Hertling
Acting Assistant Attorney General

cc: The Honorable Mitch McConnell
The Honorable Arlen Specter

OLA000000670

OIP

From: Scott-Finan, Nancy
Sent: Tuesday, February 27, 2007 6:29 PM
To: Hertling, Richard
Subject: RE: Durbin/Schumer/Reid/Murray letter

done

From: Hertling, Richard
Sent: Tuesday, February 27, 2007 6:22 PM
To: Scott-Finan, Nancy
Subject: FW: Durbin/Schumer/Reid/Murray letter

Make sure Will has a copy of this letter and is comfortable with the points made on the second page.

From: Cabral, Catalina
Sent: Friday, February 23, 2007 7:43 PM
To: Hertling, Richard
Subject: Durbin/Schumer/Reid/Murray letter

All four faxes went through, I'll call Monday morning to confirm

<< File: Durbin letter re cummins-griffin final.pdf >> << File: Schumer letter re cummins-griffin final.pdf >> << File: Reid letter re cummins-griffin final.pdf >> << File: Murray letter re cummins-griffin final.pdf >>

Catalina Cabral
U.S. DEPARTMENT OF JUSTICE
Office of Legislative Affairs
Catalina.Cabral@USDOJ.gov
(202) 514-4828

Tracking:	Recipient	Read
	Hertling, Richard	Read: 2/27/2007 6:31 PM

OIP

From: Scott-Finan, Nancy
Sent: Wednesday, February 28, 2007 11:56 AM
To: Hertling, Richard
Subject: FW: US Attorneys briefing
Attachments: RSVPList.wpd

Tracking: **Recipient** **Read**
Hertling, Richard Read: 2/28/2007 11:59 AM

Richard, the Chairman has 5 staffers on the list and the RRM has 4 staffers on the list. Did you agree to this? If not, I will object!

From: Tamarkin, Eric [mailto:Eric.Tamarkin@mail.house.gov]
Sent: Wednesday, February 28, 2007 11:47 AM
To: Scott-Finan, Nancy
Subject: FW: US Attorneys briefing

Here is the list as of last night. In advance of the briefing, please let me know the status of (1) the EARS reports and (2) the CRS request for a complete set of information on U.S. Attorney start dates, end dates, and reasons for departure from 1981- present.

Thanks,
Eric

From: Tamarkin, Eric
Sent: Tuesday, February 27, 2007 10:30 AM
To: 'Scott-Finan, Nancy'
Subject: RE: US Attorneys briefing

Thanks, Nancy.
Did you receive our official briefing request letter? Also, will you be bringing the EARS reports tomorrow? What are the restrictions, if any, with these reports?
Eric

From: Scott-Finan, Nancy [mailto:Nancy.Scott-Finan@usdoj.gov]
Sent: Monday, February 26, 2007 8:44 PM
To: Tamarkin, Eric
Subject: RE: US Attorneys briefing

William E. Moschella, Principal Associate Deputy Attorney General
Michael Elston, Chief of Staff to the Deputy Attorney General

From: Tamarkin, Eric [mailto:Eric.Tamarkin@mail.house.gov]
Sent: Monday, February 26, 2007 7:02 PM
To: Scott-Finan, Nancy
Subject: RE: US Attorneys briefing

Nancy,
Could you tell me again who will be present from DOJ on Wed. at the briefing and their respective titles? I want to

OLA00000672

3/18/2007

make sure we give members the correct info.

Thanks.

Eric

From: Scott-Finan, Nancy [mailto:Nancy.Scott-Finan@usdoj.gov]
Sent: Monday, February 26, 2007 11:08 AM
To: Tamarkin, Eric; Apelbaum, Perry
Cc: Minberg, Elliot
Subject: RE: US Attorneys briefing

Perry/Eric/Elliot

If you are going to ask for the EARS reports, you probably should have Chairman Conyers sign the letter.

Nancy

From: Scott-Finan, Nancy
Sent: Monday, February 26, 2007 10:43 AM
To: 'Tamarkin, Eric'
Cc: Minberg, Elliot
Subject: RE: US Attorneys briefing

As to the addressee, either is fine.

Body of the letter should read:

As you are aware, we are concerned about recent reports that several United States Attorneys have been asked to resign from their positions. On behalf of the [Committee if Conyers is signing or Subcommittee if Sanchez is signing], I request that you provide information and any documents that you believe would be helpful to respond to our oversight interests in this matter. Please contact [Committee or Subcommittee whichever is appropriate] staff to make arrangements to provide such information and any such documents.

From: Tamarkin, Eric [mailto:Eric.Tamarkin@mail.house.gov]
Sent: Monday, February 26, 2007 10:34 AM
To: Scott-Finan, Nancy
Cc: Minberg, Elliot
Subject: RE: US Attorneys briefing

Nancy,

Should the letter be addressed to Richard Hertling, Attorney General Gonzales, or someone else? Please let us know what must be included in the letter so that the request is complete. Also, please send us your fax number so we can get you the letter in advance of the Wednesday briefing.

Thanks,

Eric

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Sent: Monday, February 26, 2007 9:23 AM
To: Minberg, Elliot; Tamarkin, Eric
Cc: Seidel, Rebecca; Hertling, Richard
Subject: RE: US Attorneys briefing

Elliot and Eric,

We need a Chairman's written request in his capacity of doing DOJ oversight for the briefing on Wednesday.

Thanks.

Nancy

From: Mincberg, Elliot [mailto:Elliot.Mincberg@mail.house.gov]
Sent: Monday, February 26, 2007 8:57 AM
To: Scott-Finan, Nancy; Hertling, Richard
Cc: Seidel, Rebecca; Johnson, Michone; Tamarkin, Eric
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Very helpful Thanks

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Elliot:

Please let me clarify that even if a House Judiciary Committee Member does not attend the briefing, that Member can have a staffer present. That is the arrangement that we worked out with the Senate Judiciary Committee and we would like to be consistent with that practice in the House Judiciary briefing as well.

Nancy

Attendance for February 28th Briefing by DOJ on US Attorneys

Judiciary Committee, Majority - Rep. Conyers, Perry Appelbaum, Ted Kalo, Elliot Minberg, Robert Reed, and Eric Tamarkin

Office of Rep. Linda Sánchez - Rep. Sánchez and Michone Johnson

Office of Rep. Adam Schiff - Rep. Schiff and Philip M. Tahtakran

Office of Rep. Bobby Scott - Rep. Scott +1

Office of Rep. Howard Berman - Rep. Berman and Julia Massimino

Office of Rep. Steve Cohen - James J. Park

Office of Rep. Jackson-Lee - Rep. Jackson-Lee and Gregory Berry

Office of Rep. Wasserman-Schultz - Jonathan Pyatt

Office of Rep. Maxine Waters - Rep. Waters and Dana Thompson

Office of Rep. Zoe Lofgren - Eric Stallman

Office of Rep. Brad Sherman - David Prestwood

Office of Rep. Tammy Baldwin - Shawn Chang

Judiciary Committee, Minority - Stewart Jeffries, Daniel Flores, Michael Volkov, and Carolyn Lynch

Office of Rep. James Sensenbrenner - Michael Lenn

Office of Rep. Steve King - Rep. King and Luke Charles Holst

Office of Rep. Chris Cannon - Rep. Cannon and Matt Iandoli

Office of Rep. Elton Gallegly - Cecilia Daly

Office of Rep. Howard Coble - John Mautz

Office of Rep. Steve Chabot - Kim Betz

Office of Rep. Lamar Smith - Crystal Jezierski,

Office of Rep. Tom Feeney - Jeff Murray

Office of Rep. Mike Pence - Josh Pitcock

OIP

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To: 'Tamarkin, Eric'; 'Minberg, Elliot'
Cc: Hertling, Richard
Subject: RE: US Attorneys briefing

Eric and Elliot

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Very helpful Thanks

OIP

From: Scott-Finan, Nancy
Sent: Wednesday, February 28, 2007 12:05 PM
To: Hertling, Richard; Burton, Faith
Subject: RE: Urgent

I am trying to recall. There was contact with one of the Western States USAs about either an environmental or Indian case. I receive reports about Members reaching out to the USAs about cases all too frequently and have to return calls with the "neither confirm nor deny" or provide the public record pleadings.

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

From: Hertling, Richard
Sent: Wednesday, February 28, 2007 11:59 AM
To: Scott-Finan, Nancy; Burton, Faith
Subject: Urgent

Was either of you ever contacted by NM US Attorney Iglesias last year alerting you to contacts he received from 2 MCs on a specific case?

Tracking:	Recipient	Read
	Hertling, Richard	Read: 2/28/2007 12:07 PM
	Burton, Faith	Read: 2/28/2007 12:09 PM

OIP

From: Hertling, Richard
Sent: Wednesday, February 28, 2007 12:07 PM
To: Scott-Finan, Nancy; Burton, Faith
Subject: Re: Urgent

Was that an Oklahoma case?

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From: Scott-Finan, Nancy
To: Hertling, Richard; Burton, Faith
Sent: Wed Feb 28 12:05:14 2007
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OIP

From: Scott-Finan, Nancy
Sent: Wednesday, February 28, 2007 12:18 PM
To: Hertling, Richard; Burton, Faith
Subject: RE: Urgent

My notes from that time frame are about the direct contact between staff for Congressman Rogers and Thapur in Kentucky about HIDTA and trying to get Nelson Cohen in Alaska to minimize his contacts with Senator Stevens.

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From: Hertling, Richard
Sent: Wednesday, February 28, 2007 12:11 PM
To: Burton, Faith; Scott-Finan, Nancy
Subject: Re: Urgent

October 06

-----Original Message-----
From: Burton, Faith
To: Hertling, Richard; Scott-Finan, Nancy
Sent: Wed Feb 28 12:10:17 2007
Subject: RE: Urgent

I do not recall any contact by USA Iglesias; I can check my notes if we have a time frame.

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	Burton, Faith	Read: 2/28/2007 12:19 PM

OIP

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To: Jezierski, Crystal; Flores, Daniel; 'Jeffries, Stewart'
Subject: FW: US Attorneys briefing

fyi

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OIP

From: Flores, Daniel [Daniel.Flores@mail.house.gov]
Sent: Wednesday, February 28, 2007 12:53 PM
To: Scott-Finan, Nancy; Jezierski, Crystal; Jeffries, Stewart
Cc: Volkov, Michael; Lynch, Caroline
Subject: RE: US Attorneys briefing

Nancy, fyi, here's the list of attendees for our side, which I sent earlier to the majority. There may, of course, be other Members who unexpectedly will be able to come. I'll try to give you a heads up beforehand if I learn of anything on that front.

Daniel

Rep. Lamar Smith

Rep. Chris Cannon

Rep. King

Rep. Lungren (if possible)

Rep. Gohmert (if possible)

Rep. Issa

Matthew Iandoli (with Mr. Cannon)

John Mautz (for Mr. Coble)

Jacki Pick (for Mr. Franks)

Jeff Murray (for Mr. Feeney)

Kevin Holsclaw (for or with Mr. Lungren)

Cecilia Daly (for Mr. Gallegly)

Ashley Callen (with or for Mr. Gohmert)

Jared Dilley (for Mr. Jordan)

Paige Anderson (with Mr. Issa)

Kim Betz (for Mr. Chabot)

Crystal Jezierski (with Mr. Smith)

Daniel Flores (for Mr. Goodlatte)

Stewart Jeffries (for Mr. Pence)

Michael Volkov (for Mr. Forbes)

Caroline Lynch (for Mr. Sensenbrenner)

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As to the addressee, either is fine.

Body of the letter should read:

As you are aware, we are concerned about recent reports that several United States Attorneys have been asked to resign from their positions. On behalf of the [Committee if Conyers is signing or Subcommittee if Sanchez is signing], I request that you provide information and any documents that you believe would be helpful to respond to our oversight interests in this matter. Please contact [Committee or Subcommittee whichever is appropriate] staff to make arrangements to provide such information and any such documents.

From: Tamarkin, Eric [mailto:Eric.Tamarkin@mail.house.gov]
Sent: Monday, February 26, 2007 10:34 AM
To: Scott-Finan, Nancy
Cc: Mincberg, Elliot
Subject: RE: US Attorneys briefing

Nancy,
Should the letter be addressed to Richard Hertling, Attorney General Gonzales, or someone else? Please let us know what must be included in the letter so that the request is complete. Also, please send us your fax number so we can get you the letter in advance of the Wednesday briefing.
Thanks,
Eric

From: Scott-Finan, Nancy [mailto:Nancy.Scott-Finan@usdoj.gov]
Sent: Monday, February 26, 2007 9:23 AM
To: Mincberg, Elliot; Tamarkin, Eric
Cc: Seidel, Rebecca; Hertling, Richard
Subject: RE: US Attorneys briefing

Elliot and Eric,

We need a Chairman's written request in his capacity of doing DOJ oversight for the briefing on Wednesday. Thanks.

Nancy

From: Mincberg, Elliot [mailto:Elliot.Mincberg@mail.house.gov]
Sent: Monday, February 26, 2007 8:57 AM
To: Scott-Finan, Nancy; Hertling, Richard
Cc: Seidel, Rebecca; Johnson, Michone; Tamarkin, Eric
Subject: RE: US Attorneys briefing

Very helpful Thanks

From: Scott-Finan, Nancy [mailto:Nancy.Scott-Finan@usdoj.gov]
Sent: Friday, February 23, 2007 6:21 PM
To: Hertling, Richard; Mincberg, Elliot
Cc: Seidel, Rebecca
Subject: RE: US Attorneys briefing

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Please let me clarify that even if a House Judiciary Committee Member does not attend the briefing, that Member can have a staffer present. That is the arrangement that we worked out with the Senate Judiciary Committee and we would like to be consistent with that practice in the House Judiciary briefing as well.

Nancy

OIP

From: Scott-Finan, Nancy
Sent: Wednesday, February 28, 2007 1:08 PM
To: Hertling, Richard
Subject: RE: US Attorneys briefing

Eric confirmed that they are working it out and I verbally advised that we were not bringing the EARS reports.

From: Hertling, Richard
Sent: Wednesday, February 28, 2007 1:05 PM
To: Scott-Finan, Nancy
Subject: RE: US Attorneys briefing

I just spoke to Perry Apelbaum. He will make sure there is just 1 D staff per Member.

From: Scott-Finan, Nancy
Sent: Wednesday, February 28, 2007 1:03 PM
To: Moschella, William; Hertling, Richard
Cc: Henderson, Charles V
Subject: FW: US Attorneys briefing

Below is the list of Republican members and staff attending:

Rep. Lamar Smith

Rep. Chris Cannon

Rep. King

Rep. Lungren (if possible)

Rep. Gohmert (if possible)

Rep. Issa

Matthew Iandoli (with Mr. Cannon)

John Mautz (for Mr. Coble)

Jacki Pick (for Mr. Franks)

Jeff Murray (for Mr. Feeney)

Kevin Holsclaw (for or with Mr. Lungren)

Cecilia Daly (for Mr. Gallegly)

Ashley Callen (with or for Mr. Gohmert)

Jared Dilley (for Mr. Jordan)

Paige Anderson (with Mr. Issa)

Kim Betz (for Mr. Chabot)

Crystal Jeziarski (with Mr. Smith)

Daniel Flores (for Mr. Goodlatte)

Stewart Jeffries (for Mr. Pence)

Michael Volkov (for Mr. Forbes)

Caroline Lynch (for Mr. Sensenbrenner)

Tracking:

Recipient

Hertling, Richard

Read

Read: 2/28/2007 1:09 PM

OIP

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Sent: Wednesday, February 28, 2007 1:03 PM
To: Moschella, William; Hertling, Richard
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Tracking:

Recipient

Moschella, William

Hertling, Richard

Henderson, Charles V

Read

Read: 3/1/2007 6:24 AM

Read: 2/28/2007 1:05 PM

Read: 2/28/2007 1:05 PM

OIP

From: Scott-Finan, Nancy
Sent: Wednesday, February 28, 2007 1:30 PM
To: 'Flores, Daniel'; Jezierski, Crystal; Jeffries, Stewart
Cc: Volkov, Michael; Lynch, Caroline
Subject: RE: US Attorneys briefing

Thank you

From: Flores, Daniel [mailto:Daniel.Flores@mail.house.gov]
Sent: Wednesday, February 28, 2007 12:53 PM
To: Scott-Finan, Nancy; Jezierski, Crystal; Jeffries, Stewart
Cc: Volkov, Michael; Lynch, Caroline
Subject: RE: US Attorneys briefing

Nancy, fyi, here's the list of attendees for our side, which I sent earlier to the majority. There may, of course, be other Members who unexpectedly will be able to come. I'll try to give you a heads up beforehand if I learn of anything on that front.

Daniel

Rep. Lamar Smith

Rep. Chris Cannon

Rep. King

Rep. Lungren (if possible)

Rep. Gohmert (if possible)

Rep. Issa

Matthew Iandoli (with Mr. Cannon)

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Michael Volkov (for Mr. Forbes)

Caroline Lynch (for Mr. Sensenbrenner)

From: Scott-Finan, Nancy [mailto:Nancy.Scott-Finan@usdoj.gov]

Sent: Wednesday, February 28, 2007 12:31 PM

To: Jezierski, Crystal; Flores, Daniel; Jeffries, Stewart

Subject: FW: US Attorneys briefing

fyi

From: Scott-Finan, Nancy

Sent: Wednesday, February 28, 2007 12:11 PM

To: 'Tamarkin, Eric'; 'Minberg, Elliot'

Cc: Hertling, Richard

Subject: RE: US Attorneys briefing

Eric and Elliot

I note from the list that you have 5 staffers listed for the Chairman and 4 staffers listed for the Ranking Minority Member. That is not the agreement. The agreement for the briefing is one staffer per member to include the Chairman and the Ranking Minority Member. You all need to determine who attends and who does not.

Nancy

From: Tamarkin, Eric [mailto:Eric.Tamarkin@mail.house.gov]
Sent: Wednesday, February 28, 2007 11:47 AM
To: Scott-Finan, Nancy
Subject: FW: US Attorneys briefing

Here is the list as of last night. In advance of the briefing, please let me know the status of (1) the EARS reports and (2) the CRS request for a complete set of information on U.S. Attorney start dates, end dates, and reasons for departure from 1981- present.

Thanks,
Eric

From: Tamarkin, Eric
Sent: Tuesday, February 27, 2007 10:30 AM
To: 'Scott-Finan, Nancy'
Subject: RE: US Attorneys briefing

Thanks, Nancy.
Did you receive our official briefing request letter? Also, will you be bringing the EARS reports tomorrow? What are the restrictions, if any, with these reports?
Eric

From: Scott-Finan, Nancy [mailto:Nancy.Scott-Finan@usdoj.gov]
Sent: Monday, February 26, 2007 8:44 PM
To: Tamarkin, Eric
Subject: RE: US Attorneys briefing

William E. Moschella, Principal Associate Deputy Attorney General

Michael Elston, Chief of Staff to the Deputy Attorney General

From: Tamarkin, Eric [mailto:Eric.Tamarkin@mail.house.gov]
Sent: Monday, February 26, 2007 7:02 PM
To: Scott-Finan, Nancy

Subject: RE: US Attorneys briefing

Nancy,

Could you tell me again who will be present from DOJ on Wed. at the briefing and their respective titles? I want to make sure we give members the correct info.

Thanks.

Eric

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Sent: Monday, February 26, 2007 11:08 AM
To: Tamarkin, Eric; Apelbaum, Perry
Cc: Mincberg, Elliot
Subject: RE: US Attorneys briefing

Perry/Eric/Elliot

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Cc: Mincberg, Elliot
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Nancy

OIP

From: Hertling, Richard
Sent: Wednesday, February 28, 2007 5:28 PM
To: Scott-Finan, Nancy
Subject: FW: house subpoena

From: Nowacki, John (USAEO) [mailto:John.Nowacki@usdoj.gov]
Sent: Wednesday, February 28, 2007 5:27 PM
To: Sampson, Kyle; Goodling, Monica; Moschella, William; Elston, Michael (ODAG); Hertling, Richard
Subject: FW: house subpoena

FYI -- From Bud Cummins.

From: Battle, Michael (USAEO)
Sent: Wednesday, February 28, 2007 5:04 PM
To: Nowacki, John (USAEO)
Subject: FW: house subpoena

FYI.

From: Bud Cummins [mailto:bud.cummins@aael.net]
Sent: Wednesday, February 28, 2007 4:50 PM
To: Battle, Michael (USAEO)
Subject: house subpoena

Mike,

FYI, house committee called today saying they intend to subpoena me and others (I didn't ask who) for next Tuesday, March 6. If I have any legal obligations to run this somehow through DOJ please let me know. If someone at DOJ wants to talk before the testimony, I am available to do that also.

Best regards,

Bud

Bud Cummins
Consultant

Fueling Our Future

1818 North Taylor #301,
Little Rock AR 72207
United States

p +1 501 831 6125
f -
m -

3/18/2007

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Disclaimer This message (including any attachments) may contain confidential information. The information is intended only for the use of the individual or entity to whom it is addressed. If you are not the addressee or the employee or agent responsible to deliver this email to its intended recipient, you are hereby notified that any review, use, dissemination, distribution, disclosure, copying or taking of any action in reliance on the contents of this information is strictly prohibited.

OIP

From: Scott-Finan, Nancy
Sent: Wednesday, February 28, 2007 5:30 PM
To: Hertling, Richard; Moschella, William
Subject: RE: HJC Republicans

Yes.
Dan sent three "call me" emails while we were in Vitter's office.

From: Hertling, Richard
Sent: Wednesday, February 28, 2007 5:28 PM
To: Moschella, William; Scott-Finan, Nancy
Subject: HJC Republicans

Crystal and Dan Flores just called me. They are all geared up and ready to go after the former USA witnesses coming next week. They are anxious to chat with us about the facts underlying the three we did not discuss today, as well as other strategic issues. Finally, they are quite interested in receiving questions and underlying supportive materials on each of the witnesses as soon as possible. They want to chat tomorrow morning at the latest. They also have some thoughts on the tone of Will's testimony they want to share. Can we find time tomorrow morning to get together to discuss, along with Monica, Nowacki, Roehrkasse, and others you want involved, so we can get the process of preparing questions started and then give the House staffers a call? Will, I suspect you have the worst schedule. Nancy, we may need you here rather than up at SJC for the Exec.

Tracking:	Recipient	Read
	Hertling, Richard	Read: 2/28/2007 5:36 PM
	Moschella, William	

OIP

From: Nowacki, John (USAEO) [John.Nowacki@usdoj.gov]
Sent: Wednesday, February 28, 2007 5:39 PM
To: Scott-Finan, Nancy
Subject: RE: Draft HJC testimony

Has it gone to OMB yet?

From: Scott-Finan, Nancy
Sent: Tuesday, February 27, 2007 11:05 PM
To: Moschella, William; Elston, Michael (ODAG); Sampson, Kyle; Goodling, Monica
Cc: Hertling, Richard; Silas, Adrien; Nowacki, John (USAEO)
Subject: FW: Draft HJC testimony

I am sending the revised testimony for your review and final comments before we send it to OMB.

Nancy

OIP

From: Scott-Finan, Nancy
Sent: Monday, March 05, 2007 8:16 AM
To: Henderson, Charles V
Subject: FW: Updated USA documents - PUBLIC

Attachments: TPS - US Attorney vacancy-appointment points.pdf; FACT SHEET - USA appointments.pdf; Griffin Talkers.doc

Charles,
Could you please replace the three sets of talkers in Will's briefing book for tomorrow's hearing with the attached. Thanks.



TPS - US Attorney vacancy-appe...
FACT SHEET - USA appointments....
Griffin Talkers.doc (33 KB)

Tracking:

Recipient
Henderson, Charles V

Read
Read: 3/5/2007 8:17 AM

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

Overview:

- In every single case, it is a goal of the Bush Administration to have a U.S. Attorney that is confirmed by the Senate. Use of the AG's appointment authority is in no way an attempt to circumvent the confirmation process. To the contrary, when a United States Attorney submits his or her resignation, the Administration has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's office during the period when there is not a presidentially-nominated, senate-confirmed (PAS) U.S. Attorney. Whenever a U.S. Attorney vacancy arises, we consult with the home-state Senators about candidates for nomination.
- Our record since the AG-appointment authority was amended demonstrates we are committed to working with the Senate to nominate candidates for U.S. Attorney positions. Every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or the Administration is working, in consultation with home-State Senators, to select candidates for nomination.
 - ✓ Specifically, since March 9, 2006 (when the AG's appointment authority was amended), the Administration has nominated 16 individuals to serve as U.S. Attorney (12 have been confirmed to date).

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

- United States Attorneys are at the forefront of the Department of Justice's efforts. They are leading the charge to protect America from acts of terrorism; reduce violent crime, including gun crime and gang crime; enforce immigration laws; fight illegal drugs, especially methamphetamine; combat crimes that endanger children and families like child pornography, obscenity, and human trafficking; and ensure the integrity of the marketplace and of government by prosecuting corporate fraud and public corruption.
- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the United States Attorneys and ensuring that United States Attorneys are leading their offices effectively.
- United States Attorneys serve at the pleasure of the President. Thus, like other high-ranking Executive Branch officials, they may be removed for any reason or no reason. That on occasion in an organization as large as the Justice Department some United States Attorneys are removed, or are asked or encouraged to resign, should come as no surprise. United States Attorneys never are removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or

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

- Whenever a vacancy occurs, we act to fill it in compliance with our obligations under the Constitution, the laws of the United States, and in consultation with the home-state Senators. The Senators have raised concerns based on a misunderstanding of the facts surrounding the resignations of a handful of U.S. Attorneys, each of whom have been in office for their full four year term or more.
- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the U.S. Attorneys and ensuring that they are leading their offices effectively. However, U.S. Attorneys are never removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or inappropriately influence a particular investigation, criminal prosecution or civil case.

The Administration Must Ensure an Effective Transition When Vacancies Occur:

- When a United States Attorney has submitted his or her resignation, the Administration has -- in every single case -- consulted with home-state Senators regarding candidates for the Presidential nomination and Senate confirmation. The Administration is committed to nominating a candidate for Senate consideration everywhere a vacancy arises, as evidenced by the fact that there have been 124 confirmations of new U.S. Attorneys since January 20, 2001.
- With 93 U.S. Attorney positions across the country, the Department often averages between 8-15 vacancies at any given time. Because of the important work conducted by these offices, and the need to ensure that the office is being managed effectively and appropriately, the Department uses a range of options to ensure continuity of operations.
- In some cases, the First Assistant U.S. Attorney is an appropriate choice. However, in other cases, the First Assistant may not be an appropriate option for reasons including that he or she: resigns or retires at the same time as the outgoing U.S. Attorney; indicates that he/she does not want to serve as Acting U.S. Attorney; has ongoing or completed OPR or IG matters in their file, which may make his/her elevation to the Acting role inappropriate; or is subject of an unfavorable recommendation by the outgoing U.S. Attorney or otherwise does not enjoy the confidence of those responsible for ensuring ongoing operations and an appropriate transition until such time as a new U.S. Attorney is nominated and confirmed by the Senate. In those cases, the Attorney General has appointed another individual to lead the office during the transition, often another senior manager from that office or an experienced attorney from within the Department.

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

- Since March 9, 2006, when the appointment authority was amended, the Administration has nominated 16 individuals for Senate consideration (12 have been confirmed to date).
- Since March 9, 2006, when the appointment authority was amended, 18 vacancies have been created. Of those 18 vacancies, the Administration nominated candidates to fill 6 of these positions (3 were confirmed to date), has interviewed candidates for 8 positions, and is waiting to receive names to set up interviews for the remaining positions – all in consultation with home-state Senators.

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

- In 7 cases, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period.
- In 1 case, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). However, the First Assistant took federal retirement a month later and the Department had to select another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate.
- In 10 cases, the Department selected another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate. In 1 of those 10 cases, the First Assistant had resigned at the same time as the U.S. Attorney, creating a need for an interim until such time as a nomination is submitted to the Senate.

Amending the Statute Was Necessary:

- Last year's amendment to the Attorney General's appointment authority was necessary and appropriate.
- We are aware of no other federal agency where federal judges, members of a separate branch of government and not the head of the agency, appoint interim staff on behalf of the agency.
- Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in numerous, recurring problems.

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

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

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

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

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

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

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

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

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

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

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

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

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

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

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

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
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ATTORNEY GENERAL APPOINTMENTS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

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

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

- **District of Puerto Rico** – Rosa Rodriguez-Velez (Rodriguez-Velez has been nominated); and
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In 1 case, the FAUSA had been serving as acting United States Attorney under the VRA, but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

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

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

- The Attorney General appointed Tim Griffin as the interim U.S. Attorney following the resignation of Bud Cummins, who resigned on Dec. 20, 2006. Since early in 2006, Mr. Cummins had been talking about leaving the Department to go into private practice for family reasons.
- Timothy Griffin is highly qualified to serve as the U.S. Attorney for the Eastern District of Arkansas.
- Mr. Griffin has significant experience as a federal prosecutor at both the Department of Justice and as a military prosecutor. At the time of his appointment, he was serving as a federal prosecutor in the Eastern District of Arkansas. Also, from 2001 to 2002, Mr. Griffin served at the Department of Justice as Special Assistant to the Assistant Attorney General for the Criminal Division and as a Special Assistant U.S. Attorney in the Eastern District of Arkansas in Little Rock. In this capacity, Mr. Griffin prosecuted a variety of federal cases with an emphasis on firearm and drug cases and organized the Eastern District's Project Safe Neighborhoods (PSN) initiative, the Bush Administration's effort to reduce firearm-related violence by promoting close cooperation between State and federal law enforcement, and served as the PSN coordinator.
- Prior to rejoining the Department in the fall of 2006, Mr. Griffin completed a year of active duty in the U.S. Army, and is in his tenth year as an officer in the U.S. Army Reserve, Judge Advocate General's Corps (JAG), holding the rank of Major. In September 2005, Mr. Griffin was mobilized to active duty to serve as an Army prosecutor at Fort Campbell, Ky. At Fort Campbell, he prosecuted 40 criminal cases, including *U.S. v. Mikel*, which drew national interest after Pvt. Mikel attempted to murder his platoon sergeant and fired upon his unit's early morning formation. Pvt. Mikel pleaded guilty to attempted murder and was sentenced to 25 years in prison.
- In May 2006, Tim was assigned to the 501st Special Troops Battalion, 101st Airborne Division and sent to serve in Iraq. From May through August 2006, he served as an Army JAG with the 101st Airborne Division in Mosul, Iraq, as a member of the 172d Stryker Brigade Combat Team Brigade Operational Law Team, for which he was awarded the Combat Action Badge and the Army Commendation Medal.
- Like many political appointees, Mr. Griffin has political experience as well. Prior to being called to active duty, Mr. Griffin served as Special Assistant to the President and Deputy Director of the Office of Political Affairs at the White House, following a stint at the Republican National Committee. Mr. Griffin has also served as Senior Counsel to the House Government Reform Committee, as an Associate Independent Counsel for *In Re: Housing and Urban Development Secretary Henry Cisneros*, and as an associate attorney with a New Orleans law firm.
- Mr. Griffin has very strong academic credentials. He graduated *cum laude* from Hendrix College in Conway, Ark., and received his law degree, *cum laude*, from Tulane Law School. He also attended graduate school at Pembroke College at Oxford University. Mr. Griffin was raised in Magnolia, Ark., and resides in Little Rock with his wife, Elizabeth.
- The Attorney General assured Senator Pryor that we are not circumventing the process by making an interim appointment and that the Administration intended to nominate Mr. Griffin. However, Senator Pryor refused to support Mr. Griffin if he was nominated. As a result of the lack of support shown by his home-state Senators, Mr. Griffin has withdrawn his name from consideration.

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

OIP

From: Scott-Finan, Nancy
Sent: Monday, March 05, 2007 8:17 AM
To: Cabral, Catalina
Subject: FW: Updated USA documents - PUBLIC

Attachments: TPS - US Attorney vacancy-appointment points.pdf; FACT SHEET - USA appointments.pdf; Griffin Talkers.doc

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TPS - US Attorney vacancy-appe... FACT SHEET - USA appointments.... Griffin Talkers.doc
vacancy-appe... appointments.... (33 KB)

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

Overview:

- In every single case, it is a goal of the Bush Administration to have a U.S. Attorney that is confirmed by the Senate. Use of the AG's appointment authority is in no way an attempt to circumvent the confirmation process. To the contrary, when a United States Attorney submits his or her resignation, the Administration has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's office during the period when there is not a presidentially-nominated, senate-confirmed (PAS) U.S. Attorney. Whenever a U.S. Attorney vacancy arises, we consult with the home-state Senators about candidates for nomination.
- Our record since the AG-appointment authority was amended demonstrates we are committed to working with the Senate to nominate candidates for U.S. Attorney positions. Every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or the Administration is working, in consultation with home-State Senators, to select candidates for nomination.
 - ✓ Specifically, since March 9, 2006 (when the AG's appointment authority was amended), the Administration has nominated 16 individuals to serve as U.S. Attorney (12 have been confirmed to date).

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

- United States Attorneys are at the forefront of the Department of Justice's efforts. They are leading the charge to protect America from acts of terrorism; reduce violent crime, including gun crime and gang crime; enforce immigration laws; fight illegal drugs, especially methamphetamine; combat crimes that endanger children and families like child pornography, obscenity, and human trafficking; and ensure the integrity of the marketplace and of government by prosecuting corporate fraud and public corruption.
- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the United States Attorneys and ensuring that United States Attorneys are leading their offices effectively.
- United States Attorneys serve at the pleasure of the President. Thus, like other high-ranking Executive Branch officials, they may be removed for any reason or no reason. That on occasion in an organization as large as the Justice Department some United States Attorneys are removed, or are asked or encouraged to resign, should come as no surprise. United States Attorneys never are removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or

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

- Whenever a vacancy occurs, we act to fill it in compliance with our obligations under the Constitution, the laws of the United States, and in consultation with the home-state Senators. The Senators have raised concerns based on a misunderstanding of the facts surrounding the resignations of a handful of U.S. Attorneys, each of whom have been in office for their full four year term or more.
- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the U.S. Attorneys and ensuring that they are leading their offices effectively. However, U.S. Attorneys are never removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or inappropriately influence a particular investigation, criminal prosecution or civil case.

The Administration Must Ensure an Effective Transition When Vacancies Occur:

- When a United States Attorney has submitted his or her resignation, the Administration has -- in every single case -- consulted with home-state Senators regarding candidates for the Presidential nomination and Senate confirmation. The Administration is committed to nominating a candidate for Senate consideration everywhere a vacancy arises, as evidenced by the fact that there have been 124 confirmations of new U.S. Attorneys since January 20, 2001.
- With 93 U.S. Attorney positions across the country, the Department often averages between 8-15 vacancies at any given time. Because of the important work conducted by these offices, and the need to ensure that the office is being managed effectively and appropriately, the Department uses a range of options to ensure continuity of operations.
- In some cases, the First Assistant U.S. Attorney is an appropriate choice. However, in other cases, the First Assistant may not be an appropriate option for reasons including that he or she: resigns or retires at the same time as the outgoing U.S. Attorney; indicates that he/she does not want to serve as Acting U.S. Attorney; has ongoing or completed OPR or IG matters in their file, which may make his/her elevation to the Acting role inappropriate; or is subject of an unfavorable recommendation by the outgoing U.S. Attorney or otherwise does not enjoy the confidence of those responsible for ensuring ongoing operations and an appropriate transition until such time as a new U.S. Attorney is nominated and confirmed by the Senate. In those cases, the Attorney General has appointed another individual to lead the office during the transition, often another senior manager from that office or an experienced attorney from within the Department.

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

- Since March 9, 2006, when the appointment authority was amended, the Administration has nominated 16 individuals for Senate consideration (12 have been confirmed to date).
- Since March 9, 2006, when the appointment authority was amended, 18 vacancies have been created. Of those 18 vacancies, the Administration nominated candidates to fill 6 of these positions (3 were confirmed to date), has interviewed candidates for 8 positions, and is waiting to receive names to set up interviews for the remaining positions – all in consultation with home-state Senators.

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

- In 7 cases, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period.
- In 1 case, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). However, the First Assistant took federal retirement a month later and the Department had to select another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate.
- In 10 cases, the Department selected another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate. In 1 of those 10 cases, the First Assistant had resigned at the same time as the U.S. Attorney, creating a need for an interim until such time as a nomination is submitted to the Senate.

Amending the Statute Was Necessary:

- Last year's amendment to the Attorney General's appointment authority was necessary and appropriate.
- We are aware of no other federal agency where federal judges, members of a separate branch of government and not the head of the agency, appoint interim staff on behalf of the agency.
- Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in numerous, recurring problems.

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

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

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

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

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

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

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Sent: Monday, March 05, 2007 8:17 AM
To: Reid, Mary
Subject: FW: Updated USA documents - PUBLIC

Attachments: TPS - US Attorney vacancy-appointment points.pdf; FACT SHEET - USA appointments.pdf; Griffin Talkers.doc

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Tracking:

Recipient

Reid, Mary

Read

Read: 3/5/2007 6:36 PM

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- United States Attorneys are at the forefront of the Department of Justice's efforts. They are leading the charge to protect America from acts of terrorism; reduce violent crime, including gun crime and gang crime; enforce immigration laws; fight illegal drugs, especially methamphetamine; combat crimes that endanger children and families like child pornography, obscenity, and human trafficking; and ensure the integrity of the marketplace and of government by prosecuting corporate fraud and public corruption.
- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the United States Attorneys and ensuring that United States Attorneys are leading their offices effectively.
- United States Attorneys serve at the pleasure of the President. Thus, like other high-ranking Executive Branch officials, they may be removed for any reason or no reason. That on occasion in an organization as large as the Justice Department some United States Attorneys are removed, or are asked or encouraged to resign, should come as no surprise. United States Attorneys never are removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or

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

- Whenever a vacancy occurs, we act to fill it in compliance with our obligations under the Constitution, the laws of the United States, and in consultation with the home-state Senators. The Senators have raised concerns based on a misunderstanding of the facts surrounding the resignations of a handful of U.S. Attorneys, each of whom have been in office for their full four year term or more.
- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the U.S. Attorneys and ensuring that they are leading their offices effectively. However, U.S. Attorneys are never removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or inappropriately influence a particular investigation, criminal prosecution or civil case.

The Administration Must Ensure an Effective Transition When Vacancies Occur:

- When a United States Attorney has submitted his or her resignation, the Administration has -- in every single case -- consulted with home-state Senators regarding candidates for the Presidential nomination and Senate confirmation. The Administration is committed to nominating a candidate for Senate consideration everywhere a vacancy arises, as evidenced by the fact that there have been 124 confirmations of new U.S. Attorneys since January 20, 2001.
- With 93 U.S. Attorney positions across the country, the Department often averages between 8-15 vacancies at any given time. Because of the important work conducted by these offices, and the need to ensure that the office is being managed effectively and appropriately, the Department uses a range of options to ensure continuity of operations.
- In some cases, the First Assistant U.S. Attorney is an appropriate choice. However, in other cases, the First Assistant may not be an appropriate option for reasons including that he or she: resigns or retires at the same time as the outgoing U.S. Attorney; indicates that he/she does not want to serve as Acting U.S. Attorney; has ongoing or completed OPR or IG matters in their file, which may make his/her elevation to the Acting role inappropriate; or is subject of an unfavorable recommendation by the outgoing U.S. Attorney or otherwise does not enjoy the confidence of those responsible for ensuring ongoing operations and an appropriate transition until such time as a new U.S. Attorney is nominated and confirmed by the Senate. In those cases, the Attorney General has appointed another individual to lead the office during the transition, often another senior manager from that office or an experienced attorney from within the Department.

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

- Since March 9, 2006, when the appointment authority was amended, the Administration has nominated 16 individuals for Senate consideration (12 have been confirmed to date).
- Since March 9, 2006, when the appointment authority was amended, 18 vacancies have been created. Of those 18 vacancies, the Administration nominated candidates to fill 6 of these positions (3 were confirmed to date), has interviewed candidates for 8 positions, and is waiting to receive names to set up interviews for the remaining positions – all in consultation with home-state Senators.

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

- In 7 cases, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period.
- In 1 case, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). However, the First Assistant took federal retirement a month later and the Department had to select another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate.
- In 10 cases, the Department selected another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate. In 1 of those 10 cases, the First Assistant had resigned at the same time as the U.S. Attorney, creating a need for an interim until such time as a nomination is submitted to the Senate.

Amending the Statute Was Necessary:

- Last year's amendment to the Attorney General's appointment authority was necessary and appropriate.
- We are aware of no other federal agency where federal judges, members of a separate branch of government and not the head of the agency, appoint interim staff on behalf of the agency.
- Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in numerous, recurring problems.

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

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

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

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

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

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

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

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- **District of Alaska** – Nelson Cohen

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

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

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

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

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

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

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

- The Attorney General appointed Tim Griffin as the interim U.S. Attorney following the resignation of Bud Cummins, who resigned on Dec. 20, 2006. Since early in 2006, Mr. Cummins had been talking about leaving the Department to go into private practice for family reasons.
- Timothy Griffin is highly qualified to serve as the U.S. Attorney for the Eastern District of Arkansas.
- Mr. Griffin has significant experience as a federal prosecutor at both the Department of Justice and as a military prosecutor. At the time of his appointment, he was serving as a federal prosecutor in the Eastern District of Arkansas. Also, from 2001 to 2002, Mr. Griffin served at the Department of Justice as Special Assistant to the Assistant Attorney General for the Criminal Division and as a Special Assistant U.S. Attorney in the Eastern District of Arkansas in Little Rock. In this capacity, Mr. Griffin prosecuted a variety of federal cases with an emphasis on firearm and drug cases and organized the Eastern District's Project Safe Neighborhoods (PSN) initiative, the Bush Administration's effort to reduce firearm-related violence by promoting close cooperation between State and federal law enforcement, and served as the PSN coordinator.
- Prior to rejoining the Department in the fall of 2006, Mr. Griffin completed a year of active duty in the U.S. Army, and is in his tenth year as an officer in the U.S. Army Reserve, Judge Advocate General's Corps (JAG), holding the rank of Major. In September 2005, Mr. Griffin was mobilized to active duty to serve as an Army prosecutor at Fort Campbell, Ky. At Fort Campbell, he prosecuted 40 criminal cases, including *U.S. v. Mikel*, which drew national interest after Pvt. Mikel attempted to murder his platoon sergeant and fired upon his unit's early morning formation. Pvt. Mikel pleaded guilty to attempted murder and was sentenced to 25 years in prison.
- In May 2006, Tim was assigned to the 501st Special Troops Battalion, 101st Airborne Division and sent to serve in Iraq. From May through August 2006, he served as an Army JAG with the 101st Airborne Division in Mosul, Iraq, as a member of the 172d Stryker Brigade Combat Team Brigade Operational Law Team, for which he was awarded the Combat Action Badge and the Army Commendation Medal.
- Like many political appointees, Mr. Griffin has political experience as well. Prior to being called to active duty, Mr. Griffin served as Special Assistant to the President and Deputy Director of the Office of Political Affairs at the White House, following a stint at the Republican National Committee. Mr. Griffin has also served as Senior Counsel to the House Government Reform Committee, as an Associate Independent Counsel for *In Re: Housing and Urban Development Secretary Henry Cisneros*, and as an associate attorney with a New Orleans law firm.
- Mr. Griffin has very strong academic credentials. He graduated *cum laude* from Hendrix College in Conway, Ark., and received his law degree, *cum laude*, from Tulane Law School. He also attended graduate school at Pembroke College at Oxford University. Mr. Griffin was raised in Magnolia, Ark., and resides in Little Rock with his wife, Elizabeth.
- The Attorney General assured Senator Pryor that we are not circumventing the process by making an interim appointment and that the Administration intended to nominate Mr. Griffin. However, Senator Pryor refused to support Mr. Griffin if he was nominated. As a result of the lack of support shown by his home-state Senators, Mr. Griffin has withdrawn his name from consideration.

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

Scott-Finan, Nancy

Subject: Updated: House Judiciary Committee Hearing Prep
Location: ODAG Conference Room 4135

Start: Mon 3/5/2007 11:00 AM
End: Mon 3/5/2007 12:30 PM

Recurrence: (none)

Meeting Status: Accepted

Required Attendees: Mercer, William W; Sampson, Kyle; Elston, Michael (ODAG); Goodling, Monica; Hertling, Richard; Scott-Finan, Nancy; Nowacki, John (USAEO); Scolinos, Tasia; Roehrkasse, Brian

Please Note: Changing the time of this meeting to 11:00.

- William Moschella
- William Mercer
- Kyle Sampson
- Michael Elston
- Monica Goodling
- Richard Hertling
- Nancy Scott-Finan
- John Nowacki
- Tasia Scolinos
- Brian Roehrkasse

Scott-Finan, Nancy

Subject: Updated: House Judiciary Committee Hearing Prep (continuation)
Location: ODAG Conference Room 4135

Start: Mon 3/5/2007 3:00 PM
End: Mon 3/5/2007 4:30 PM

Recurrence: (none)

Meeting Status: Accepted

Required Attendees: Mercer, William W; Sampson, Kyle; Elston, Michael (ODAG); Goodling, Monica; Hertling, Richard; Scott-Finan, Nancy; Nowacki, John (USAEO); Scolinos, Tasia; Roehrkasse, Brian

- William Moschella
- William Mercer
- Kyle Sampson
- Michael Elston
- Monica Goodling
- Richard Hertling
- Nancy Scott-Finan
- John Nowacki
- Tasia Scolinos
- Brian Roehrkasse

March 05, 2007

Monday

March 2007

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April 2007

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11 ⁰⁰	Updated: House Judiciary Committee Hearing Prep (ODAG Conference Room 4135)
12 ^{pm}	
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3 ⁰⁰	Updated: House Judiciary Committee Hearing Prep (continuation) (ODAG Conference Room 4135)
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6 ⁰⁰	

TaskPad

TaskPad

Notes

OIP

From: Cabral, Catalina
Sent: Monday, March 05, 2007 6:45 PM
To: Scott-Finan, Nancy
Subject: FW: Letter For Tomorrow's Hearing from HJC

Attachments: LettertoWEMfromHJCreUSA3.5.07.pdf

From: Cabral, Catalina
Sent: Monday, March 05, 2007 6:26 PM
To: Moschella, William; Elston, Michael (ODAG); Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO); Roehrkasse, Brian; Scolinos, Tasia; Hertling, Richard; Burton, Faith; Battle, Michael (USAEO); Margolis, David
Subject: Letter For Tomorrow's Hearing from HJC



LettertoWEMfromH
JCreUSA3.5.07....

Catalina Cabral
U.S. DEPARTMENT OF JUSTICE
Office of Legislative Affairs
Catalina.Cabral@USDOJ.gov
(202) 514-4828

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515-6216
One Hundred Tenth Congress

FAX COVER SHEET

DATE: 3/5/07

TO: Mr. William Moschella c/o OLA

FAX NO.: 514-4482

FROM: _____ Fax No.: (202) 225-4423

NUMBER OF PAGES IN THIS TRANSMISSION: 3 (including cover)

COMMENTS: _____

PLEASE CALL IF THERE ARE ANY PROBLEMS WITH THIS TRANSMISSION
(202) 225-3951

U.S. House of Representatives

Committee on the Judiciary

Washington, DC 20515-6216

One Hundred Tenth Congress

March 5, 2007

Mr. William Moschella
Principal Associate Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Moschella:

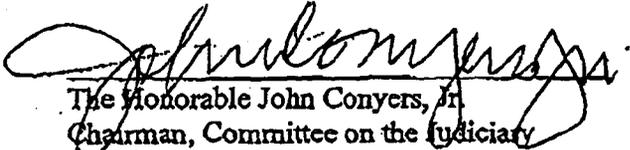
In anticipation of tomorrow's hearing regarding the forced resignations of the eight United States Attorneys, we are submitting requests in advance so that you will be able to provide us with the necessary information at the hearing. We hope that the advance notice will help you as you prepare for the hearing. The requests are as follows:

- 1) We have today learned that Michael Battle, head of the Executive Office of United States Attorneys, submitted his resignation some time ago. Please provide a copy of the resignation letter or communication and a record of all communications pertaining thereto.
- 2) Please detail the nature and extent of any communications the Department received on or behalf of Members of Congress concerning any of the terminated US Attorneys in advance of their terminations.
- 3) Please let us know which Members of Congress were given advance notification of the termination of the U.S Attorneys, the dates of such notification of the terminations, and the substance and nature of the notifications.
- 4) Please identify all individuals at the White House and Department of Justice who were involved in the creation of the lists of US Attorneys to terminate. Provide any supporting materials concerning these matters.
- 5) Please detail any communications the Department may have had with the terminated US Attorneys or any other US Attorneys concerning their specific failures to comply with particular Administration law enforcement priorities. Please provide any record or memorandum concerning these matters.

Mr. William Moschella
Page Two
March 5, 2007

We appreciate your cooperation in this matter, and we look forward to receiving answers to these and other questions tomorrow.

Sincerely,


The Honorable John Conyers, Jr.
Chairman, Committee on the Judiciary


The Honorable Linda T. Sanchez
Chairwoman, Subcommittee on
Commercial and Administrative Law

cc: The Honorable Lamar S. Smith
The Honorable Christopher B. Cannon

OIP

From: Moschella, William
Sent: Monday, March 05, 2007 9:24 PM
To: Scott-Finan, Nancy
Subject: FW: Carol Lam - other letters
Attachments: 2.2.04 AmparoLopez.doc; Letter about alien smugglers to AG 7.30.04.pdf; 9.26.05 CoyoteLetterPresident.pdf; criminal alien lam letter - final.pdf; criminal alien - AG letter (final).pdf; 5.24.06 LamLetter.pdf

Can we get this info to the Hill?

From: Goodling, Monica
Sent: Monday, March 05, 2007 9:19 PM
To: Moschella, William
Subject: Carol Lam - other letters

I don't know all the water under the bridge here, but you may want to also add something about the border patrol.

What San Diego Border Patrol Chief Darryl Griffen said about Lam's policies at a House Hearing on 7/5/06:

"Prosecutions create the consequences to deter illicit activity. Here in the San Diego Sector within the southern jurisdictional district of which has oversight for the San Diego Sector, El Centro Sector, a small segment of Yuma Sector, the guidelines changed in December 2004 that adversely impacted our operations here in San Diego focused on foot guides. Foot guides are the foot soldiers for the criminal cartels that traffic cargo, narcotics, and contraband across our border. With this change in guidelines, within that the preceding year, we have prosecuted 367 foot guides. When the guidelines changed in December, I believe it was December 7, 2004, that left 10 months of the next fiscal year, fiscal year '05, we prosecuted 5. We went from 367 to 5.

What would happen then, we would apprehend people that were guiding people across the country, many times at risk. And without meeting prosecution guidelines, they were simply voluntarily returning back to Mexico where they could continue to conduct illicit activity. There is no level of consequences."

-- Darryl Griffen

San Diego Sector Border Patrol Chief

7/5/06

http://commdocs.house.gov/committees/intlrel/hfa28499.000/hfa28499_of.htm

February 2, 2004

Ms. Carol C. Lam
United States Attorney
880 Front Street, Room 6293
San Diego, California 92101

Dear Ms. Lam:

I write to request information concerning an incident that reportedly occurred on November 20, 2003. According to news reports, Antonio Amparo-Lopez was arrested on suspicion of alien smuggling and held at the Temecula, California, interior checkpoint while border patrol agents contacted your office for guidance.

According to recent reports, Mr. Amparo-Lopez (Alien #A76266395), a known alien smuggler with a long criminal record, was released after your office declined to prosecute.

I respectfully request that your office provide me with information about the facts surrounding the alleged incident of November 20, 2003, and, if applicable, the rationale behind any decision made by your office to decline or delay prosecution of Mr. Amparo-Lopez or any other action that may have contributed to his release.

I look forward to your response. If you have any questions, please feel free to contact me or my Legislative Assistant Josh Brown at (202)-225-3906. Thank you for your attention to this important matter.

Sincerely,

Darrell Issa
Member of Congress

OLA000000750

Congress of the United States

Washington, DC 20515

July 30, 2004

The Honorable John Ashcroft
Attorney General
United States Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Attorney General Ashcroft:

We write to express our concern with the Department of Justice's current policy of not prosecuting certain alien smugglers. At this time, we ask that you adopt a zero-tolerance policy for alien smuggling. We believe that all cases of alleged immigrant smuggling referred to the Department of Justice by the Department of Homeland Security should be fully pursued and, if the case could reasonably result in a conviction or plea agreement, prosecuted.

It is our understanding that on numerous occasions when the Department of Homeland Security has apprehended alien smugglers and have requested guidance from the U.S. Attorney's office, they have been told to release these criminals. It is unfortunate and unacceptable that anyone in the Department of Justice would deem alien smuggling, on any level or by any person, too low of a priority to warrant prosecution in a timely fashion. In our view, a lack available resources for prosecution is not a valid reason for a decision not to prosecute and, in fact, would signify a mismanagement of your Department's priorities.

Alien smugglers place the safety and well-being of border region communities, Border Patrol officers, local authorities, and illegal immigrants in jeopardy. Smugglers stand at the root of our nation's immigration problem and any failure to prosecute these offenders represents a failure in our nation's current border security strategy.

The House Judiciary Committee is currently requesting information on a known alien smuggler Antonio Amparo-Lopez, who was last arrested on suspicion of alien smuggling and held at the Temecula, California, interior checkpoint. In this particular case, Border Patrol agents contacted the Office of the U.S. Attorney for the Southern District of California for guidance on how to proceed with alien Amparo-Lopez (Alien #A76266395), who has a long documented record that includes multiple deportation proceedings and numerous arrests. He was released after your office declined to prosecute.

Alien smugglers, including Amparo-Lopez, should not be given a second, third, or unlimited number of chances before the Department of Justice decides to pursue

The Honorable John Ashcroft
July 30, 2004
Page 2

charges. Alien smuggling is indefensible and when continued unchecked will ultimately lead to far greater taxpayer expenditures than the costs of prosecution and incarceration.

We strongly urge you to consider our request for a zero tolerance alien smuggling policy. If you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

Dan Malachuk Radley Balko
Dan Rahn Ken Calvert
Elton Sallaby Howard O. "Buck" McLean
John T. Dink Anna H. H. H.
George P. ... Mary ...
David ... Chris Cox
Ed Royce Jerry Lewis

Congress of the United States

Washington, DC 20515

September 23, 2005

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

There is a crisis along the Southwest border that needs your immediate attention. We are writing to encourage the dedication of resources toward the increased prosecution of human smugglers known as "coyotes." The Justice Department has stated that they lack the necessary resources to prosecute a number of "coyotes," a situation that must change.

Illegal immigration poses one of the greatest dangers to our national security. Many immigrants who enter illegally are dangerous criminals. Smugglers, who assist the entry of such criminals into the country, deserve the same prosecution as the criminals they transport. Additionally, "coyotes" often endanger the lives of those they transport both during and after transit through harsh travel conditions and lack of food, water or other basic necessities. Human smugglers also hold many individuals captive after their arrival to the United States to extract greater fees from relatives abroad. It is unfathomable that these smugglers who risk the lives of others for profit be allowed to go free.

The U.S. Attorney's Office is responsible for the prosecution of smugglers, but they have had insufficient funds to prosecute these criminals to the fullest extent in the past. For example, the Border Patrol was instructed to release known coyote, Antonio Amparo-Lopez, an individual with 21 aliases and 20 prior arrests. Border Patrol agents have stated on numerous occasions that they find such occurrences demoralizing. Why should they put their lives at risk to apprehend "coyotes" when the system has turned into a catch-and-release fiasco?

Further illustrating the problem, the U.S. Attorney's Office in San Diego stated that it is forced to limit prosecution to only the worst "coyote" offenders, leaving countless bad actors to go free. Again, this means they are free to smuggle more criminals into the United States.

There are many demands for prosecutorial funding today. However, eliminating the multi-layered threat posed by "coyotes" is a priority for the Southwest region. We ask that you dedicate additional resources and direct U.S. Attorneys in the Southwest region to make the prosecution of human smugglers a priority.

Sincerely,

<u>Lamar Smith</u>	<u>Paul [unclear]</u>
<u>Dana Rohrabacher</u>	<u>Dale Campbell</u>
<u>Clarence Hunt</u>	<u>Amiel E. Jager</u>
<u>[unclear]</u>	<u>Buck [unclear]</u>
<u>May Bono</u>	<u>David [unclear]</u>
<u>Keri Calvert</u>	<u>Jonny Lewis</u>
<u>Wally Herger</u>	<u>Devin Nunes</u>

Cling Brown-White

Steve King

Pete Sessions

Helma Drake

Michael T. McCand

DARRELL E. ISSA
49TH DISTRICT, CALIFORNIA

WASHINGTON OFFICE:
211 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3906
FAX: (202) 225-3303

DISTRICT OFFICE:
1800 THIBODO ROAD, SUITE 310
VISTA, CA 92081
(760) 599-6000
FAX: (760) 599-1178
SOUTHWEST RIVERSIDE COUNTY
(951) 893-2447
www.issa.house.gov



Congress of the United States
House of Representatives
Washington, DC 20515-0549

COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEES:
ENERGY AND RESOURCES—CHAIRMAN
FEDERAL WORKFORCE & AGENCY ORGANIZATION

COMMITTEE ON
INTERNATIONAL RELATIONS
SUBCOMMITTEES:
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EUROPE & EMERGING THREATS
MIDDLE EAST & CENTRAL ASIA

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEES:
COURTS, THE INTERNET & INTELLECTUAL PROPERTY
IMMIGRATION, BORDER SECURITY & CLAIMS

HOUSE POLICY COMMITTEE

October 13, 2005

Ms. Carol C. Lam
United States Attorney
880 Front Street, Room 6293
San Diego, California 92101

Dear Ms. Lam:

I write concerning yet another apparent instance of discretionary non-prosecution of criminal illegal aliens by your office. ~~This recurring situation absolutely must change.~~

I urge you to reconsider your decision not to prosecute Alfredo Gonzales Garcia, a.k.a. Isidro Gonzales Alas, FBI # 180566JA5, a criminal alien who was apprehended by the Border Patrol and remains in their custody. Mr. Garcia has been convicted on narcotics charges on at least two previous occasions and has an outstanding warrant out for his arrest. Nonetheless, I am told that the U.S. Attorney's Office has opted not to prosecute Mr. Garcia. Criminal alien repeat offenders pose a significant danger to our citizens, and must be dealt with more severely than a 24-hour detention and release.

Your office has established an appalling record of refusal to prosecute even the worst criminal alien offenders. Your handling of Mr. Garcia is hardly different than the treatment of Antonio Amparo-Lopez, another criminal illegal alien who your office failed to prosecute. Every time one of these criminals is released, our communities become more dangerous.

I implore you to prosecute criminal illegal aliens such as these to every extent possible. If there is some barrier to the prosecution of these criminals that I am unaware of, please communicate it so we can make sure you have the resources and policies in place needed to allow you to bring these criminal aliens and repeat offenders to justice.

Sincerely,

Darrell Issa
Member of Congress

Congress of the United States

Washington, DC 20515

October 20, 2005

The Honorable Alberto Gonzales
Attorney General
United States Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Dear Attorney General Gonzales:

We write to request a meeting with you to discuss our frustration with the current policies within the Administration related to the prosecution of criminal aliens. To date, many illegal aliens, who deserve jail time, fall instead into the current practice of "catch and release." The recidivism rate among criminal aliens is high, and your Department's lack of action aggravates rather than remedies this problem.

The Border Patrol recently arrested illegal alien, Alfredo Gonzales Garcia, near the border in San Diego. Even though Mr. Garcia had at least two prior arrests for selling drugs and was incarcerated on two separate occasions for these offenses, the U.S. Attorney's Office in San Diego declined to prosecute him. Prior to that event, the U.S. Attorney's Office chose not to prosecute Antonio Amparo-Lopez, a human smuggler and illegal alien with multiple prior convictions. In each instance, under the Immigration and Nationality Act, they were both eligible, upon conviction, for a two-year prison sentence, at minimum.

The U.S. Attorney in San Diego has stated that the office will not prosecute a criminal alien unless they have previously been convicted of two felonies in the district. This lax prosecutorial standard virtually guarantees that both of these individuals will be arrested on U.S. soil in the future for committing further serious crimes.

There is one simple reason why "catch and release" cannot continue: it endangers our citizens. It is the responsibility of the Department of Justice to punish dangerous criminals who violate federal laws, and this includes criminal aliens. When we meet, at the very least we encourage you to be prepared to discuss the current policies used by the U.S. Attorneys to determine when to prosecute criminal aliens, including providing us with a copy of the prosecution guidelines that are applied to such cases in the Southern District of California.

Again, we would like to meet to discuss the disparity between crimes committed and prosecutions conducted at your earliest convenience. Please contact us at 202-225-3906 to schedule this meeting.

Sincerely,



PRINTED ON RECYCLED PAPER

OLA00000757

Ken Collier
Tom Little
By M.D.
Etc. Tracy
Dana Roberts
Lynn Nunez
Tom Jung
Richard Rombo
Bill Thomas

Ray Kadenbach
Buck McElon
Wayne
Wally Harger
Tom
Randy "Mike" Cunningham

DARRELL E. ISSA
49TH DISTRICT, CALIFORNIA

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COMMITTEE ON THE JUDICIARY
SUBCOMMITTEES:
COURTS, THE INTERNET & INTELLECTUAL PROPERTY
IMMIGRATION, BORDER SECURITY & CLAIMS

HOUSE POLICY COMMITTEE

May 24, 2006

Ms. Carol C. Lam
United States Attorney
880 Front Street, Room 6293
San Diego, California 92101

Dear Ms. Lam:

In response to your comments on the Border Patrol internal memo my office obtained and released, your statement misses the mark and exhibits a willful disregard to the documented 251 incidents in fiscal year 2004 where the Border Patrol at the El Cajon station apprehended smugglers but led to smuggling charges for roughly 6% of the cases. The memo I released contains a specific enforcement number for each of the 251 incidents that you or the Department of Homeland Security can confirm by simply typing the number into a computer database.

Your failure to address the substantive issues raised in the memo is consistent with previous news reports and comments that I have repeatedly heard from Border Patrol agents who work closely with your office. You have previously disregarded my requests for information that can help me understand the extent of the problems associated with prosecuting alien smuggling cases and the resources you would need to adopt a zero tolerance policy for trafficking in human beings.

In the case of the memo I released, the fact that you have chosen to focus on unspecified alterations to what you freely admit is an "old Border Patrol document" and your assertion that this document was not seen or approved by Border Patrol management does not dismiss the verifiable facts and details in the memo. I can readily understand that the internal memo, written by a Border Patrol employee, is an embarrassment to your office as the memo speaks with such candor about barriers to prosecution that it could not be embraced and released publicly as a report representing the views of Border Patrol management.

On Monday, my office requested your assistance in obtaining a copy of the report you referenced in your statement but your office has not returned that phone call. I find your statement that "all dialogue and debate should be based on well-informed and accurate data" incredibly disingenuous considering your record in response to my past requests for information on criminal aliens and alien smuggling.

The last correspondence I sent to you was October 13, 2005, concerning an alien by the name of Alfredo Gonzales Garcia, a.k.a. Isidro Gonzales Alas, FBI # 180566JA5. In this letter I asked that if there is some barrier to the prosecution of criminal aliens, including smugglers, that I am unaware of, to please communicate it so we can make sure you have the resources and policies in place needed to allow you to bring these criminal aliens and repeat offenders to justice.

Finally, as the representative of a Congressional district that is greatly impacted by border crimes and as a Member of Congress who sits on the Judiciary Committee, the Intelligence Committee, and the Government Reform Committee that collectively have oversight responsibilities for the Department of Justice and the Department of Homeland Security, your lack of cooperation is hindering the ability of Congress to provide proper oversight over your office and to make informed policy decisions. I am asked to craft and vote on legislative policies that determine your legal authority and the resources you receive and having full and correct information on an issue like the challenges of stopping alien smugglers is essential.

I request a joint meeting with you and the Chief Patrol Agent of the San Diego Border Sector to discuss the prosecution of alien smugglers and what resources are needed to establish a zero tolerance policy for prosecuting individuals who traffic in human beings. My office will contact your office to try and arrange a meeting time.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Darrell Issa', written in a cursive style.

Darrell Issa
Member of Congress

OIP

From: Scott-Finan, Nancy
Sent: Monday, March 05, 2007 11:09 PM
To: 'matt_miner@judiciary-rep.senate.gov'; 'bradley_hayes@judiciary-rep.senate.gov'; O'Connor, Reed (Judiciary-Rep); 'stephen_higgins@judiciary-rep.senate.gov'; 'joe_matal@judiciary-rep.senate.gov'; 'jesse_baker@judiciary-rep.senate.gov'
Subject: FW: Carol Lam - other letters
Attachments: 2.2.04 AmparoLopez.doc; Letter about alien smugglers to AG 7.30.04.pdf; 9.26.05 CoyoteLetterPresident.pdf; criminal alien lam letter - final.pdf; criminal alien - AG letter (final).pdf; 5.24.06 LamLetter.pdf

The attached may be useful at the Tuesday hearing.

What San Diego Border Patrol Chief Darryl Griffen said about Lam's policies at a House Hearing on 7/5/06:

"Prosecutions create the consequences to deter illicit activity. Here in the San Diego Sector within the southern jurisdictional district of which has oversight for the San Diego Sector, El Centro Sector, a small segment of Yuma Sector, the guidelines changed in December 2004 that adversely impacted our operations here in San Diego focused on foot guides. Foot guides are the foot soldiers for the criminal cartels that traffic cargo, narcotics, and contraband across our border. With this change in guidelines, within that the preceding year, we have prosecuted 367 foot guides. When the guidelines changed in December, I believe it was December 7, 2004, that left 10 months of the next fiscal year, fiscal year '05, we prosecuted 5. We went from 367 to 5.

What would happen then, we would apprehend people that were guiding people across the country, many times at risk. And without meeting prosecution guidelines, they were simply voluntarily returning back to Mexico where they could continue to conduct illicit activity. There is no level of consequences."

-- Darryl Griffen

San Diego Sector Border Patrol Chief

7/5/06

http://commdocs.house.gov/committees/intlrel/hfa28499.000/hfa28499_of.htm

OLA000000761

3/18/2007

February 2, 2004

Ms. Carol C. Lam
United States Attorney
880 Front Street, Room 6293
San Diego, California 92101

Dear Ms. Lam:

I write to request information concerning an incident that reportedly occurred on November 20, 2003. According to news reports, Antonio Amparo-Lopez was arrested on suspicion of alien smuggling and held at the Temecula, California, interior checkpoint while border patrol agents contacted your office for guidance.

According to recent reports, Mr. Amparo-Lopez (Alien #A76266395), a known alien smuggler with a long criminal record, was released after your office declined to prosecute.

I respectfully request that your office provide me with information about the facts surrounding the alleged incident of November 20, 2003, and, if applicable, the rationale behind any decision made by your office to decline or delay prosecution of Mr. Amparo-Lopez or any other action that may have contributed to his release.

I look forward to your response. If you have any questions, please feel free to contact me or my Legislative Assistant Josh Brown at (202)-225-3906. Thank you for your attention to this important matter.

Sincerely,

Darrell Issa
Member of Congress

OLA000000762

Congress of the United States

Washington, DC 20515

July 30, 2004

The Honorable John Ashcroft
Attorney General
United States Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Attorney General Ashcroft:

We write to express our concern with the Department of Justice's current policy of not prosecuting certain alien smugglers. At this time, we ask that you adopt a zero-tolerance policy for alien smuggling. We believe that all cases of alleged immigrant smuggling referred to the Department of Justice by the Department of Homeland Security should be fully pursued and, if the case could reasonably result in a conviction or plea agreement, prosecuted.

It is our understanding that on numerous occasions when the Department of Homeland Security has apprehended alien smugglers and have requested guidance from the U.S. Attorney's office, they have been told to release these criminals. It is unfortunate and unacceptable that anyone in the Department of Justice would deem alien smuggling, on any level or by any person, too low of a priority to warrant prosecution in a timely fashion. In our view, a lack available resources for prosecution is not a valid reason for a decision not to prosecute and, in fact, would signify a mismanagement of your Department's priorities.

Alien smugglers place the safety and well-being of border region communities, Border Patrol officers, local authorities, and illegal immigrants in jeopardy. Smugglers stand at the root of our nation's immigration problem and any failure to prosecute these offenders represents a failure in our nation's current border security strategy.

The House Judiciary Committee is currently requesting information on a known alien smuggler Antonio Amparo-Lopez, who was last arrested on suspicion of alien smuggling and held at the Temecula, California, interior checkpoint. In this particular case, Border Patrol agents contacted the Office of the U.S. Attorney for the Southern District of California for guidance on how to proceed with alien Amparo-Lopez (Alien #A76266395), who has a long documented record that includes multiple deportation proceedings and numerous arrests. He was released after your office declined to prosecute.

Alien smugglers, including Amparo-Lopez, should not be given a second, third, or unlimited number of chances before the Department of Justice decides to pursue

The Honorable John Ashcroft
July 30, 2004
Page 2

charges. Alien smuggling is indefensible and when continued unchecked will ultimately lead to far greater taxpayer expenditures than the costs of prosecution and incarceration.

We strongly urge you to consider our request for a zero tolerance alien smuggling policy. If you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

Demetrius Reddy John Cunningham
Don R... Ken Albert
Elton Dally Howard O. "Buck" McLean
John T. D... Am...
... ...
David D... Chris Cox
Ed Royce Jerry Lewis

Congress of the United States

Washington, DC 20515

September 23, 2005

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

There is a crisis along the Southwest border that needs your immediate attention. We are writing to encourage the dedication of resources toward the increased prosecution of human smugglers known as "coyotes." The Justice Department has stated that they lack the necessary resources to prosecute a number of "coyotes," a situation that must change.

Illegal immigration poses one of the greatest dangers to our national security. Many immigrants who enter illegally are dangerous criminals. Smugglers, who assist the entry of such criminals into the country, deserve the same prosecution as the criminals they transport. Additionally, "coyotes" often endanger the lives of those they transport both during and after transit through harsh travel conditions and lack of food, water or other basic necessities. Human smugglers also hold many individuals captive after their arrival to the United States to extract greater fees from relatives abroad. It is unfathomable that these smugglers who risk the lives of others for profit be allowed to go free.

The U.S. Attorney's Office is responsible for the prosecution of smugglers, but they have had insufficient funds to prosecute these criminals to the fullest extent in the past. For example, the Border Patrol was instructed to release known coyote, Antonio Amparo-Lopez, an individual with 21 aliases and 20 prior arrests. Border Patrol agents have stated on numerous occasions that they find such occurrences demoralizing. Why should they put their lives at risk to apprehend "coyotes" when the system has turned into a catch-and-release fiasco?

Further illustrating the problem, the U.S. Attorney's Office in San Diego stated that it is forced to limit prosecution to only the worst "coyote" offenders, leaving countless bad actors to go free. Again, this means they are free to smuggle more criminals into the United States.

There are many demands for prosecutorial funding today. However, eliminating the multi-layered threat posed by "coyotes" is a priority for the Southwest region. We ask that you dedicate additional resources and direct U.S. Attorneys in the Southwest region to make the prosecution of human smugglers a priority.

Sincerely,

Lamar Smith

Paul White

Dana Rohrabacher

Dale Campbell

Clarence Hunt

Janis E. Jager

Boyd Rostenkowski

Buck McKeon

May Bono

David J. Bonior

Ken Calvert

Jonny Lee

Wally Herger

Darin Nunes

DARRELL E. ISSA
49TH DISTRICT, CALIFORNIA

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Congress of the United States
House of Representatives
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COURTS, THE INTERNET & INTELLECTUAL PROPERTY
IMMIGRATION, BORDER SECURITY & CLAIMS

HOUSE POLICY COMMITTEE

October 13, 2005

Ms. Carol C. Lam
United States Attorney
880 Front Street, Room 6293
San Diego, California 92101

Dear Ms. Lam:

I write concerning yet another apparent instance of discretionary non-prosecution of criminal illegal aliens by your office. ~~This recurring situation absolutely must change.~~

I urge you to reconsider your decision not to prosecute Alfredo Gonzales Garcia, a.k.a. Isidro Gonzales Alas, FBI # 180566JA5, a criminal alien who was apprehended by the Border Patrol and remains in their custody. Mr. Garcia has been convicted on narcotics charges on at least two previous occasions and has an outstanding warrant out for his arrest. Nonetheless, I am told that the U.S. Attorney's Office has opted not to prosecute Mr. Garcia. Criminal alien repeat offenders pose a significant danger to our citizens, and must be dealt with more severely than a 24-hour detention and release.

Your office has established an appalling record of refusal to prosecute even the worst criminal alien offenders. Your handling of Mr. Garcia is hardly different than the treatment of Antonio Amparo-Lopez, another criminal illegal alien who your office failed to prosecute. Every time one of these criminals is released, our communities become more dangerous.

I implore you to prosecute criminal illegal aliens such as these to every extent possible. If there is some barrier to the prosecution of these criminals that I am unaware of, please communicate it so we can make sure you have the resources and policies in place needed to allow you to bring these criminal aliens and repeat offenders to justice.

Sincerely,

Darrell Issa
Member of Congress

Congress of the United States

Washington, DC 20515

October 20, 2005

The Honorable Alberto Gonzales
Attorney General
United States Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Dear Attorney General Gonzales:

We write to request a meeting with you to discuss our frustration with the current policies within the Administration related to the prosecution of criminal aliens. To date, many illegal aliens, who deserve jail time, fall instead into the current practice of "catch and release." The recidivism rate among criminal aliens is high, and your Department's lack of action aggravates rather than remedies this problem.

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The U.S. Attorney in San Diego has stated that the office will not prosecute a criminal alien unless they have previously been convicted of two felonies in the district. This lax prosecutorial standard virtually guarantees that both of these individuals will be arrested on U.S. soil in the future for committing further serious crimes.

There is one simple reason why "catch and release" cannot continue: it endangers our citizens. It is the responsibility of the Department of Justice to punish dangerous criminals who violate federal laws, and this includes criminal aliens. When we meet, at the very least we encourage you to be prepared to discuss the current policies used by the U.S. Attorneys to determine when to prosecute criminal aliens, including providing us with a copy of the prosecution guidelines that are applied to such cases in the Southern District of California.

Again, we would like to meet to discuss the disparity between crimes committed and prosecutions conducted at your earliest convenience. Please contact us at 202-225-3906 to schedule this meeting.

Sincerely,



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John Little
By A.O.
Etc. Tracy
Dana Roberts
Levi Nunez
Jon Jung
Richard Rombo
Bill Thomas

Ray Richards
Buck McElroy
Wayne
Wally Hager
Jimmy
Randy "Mike" Cunningham

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IMMIGRATION, BORDER SECURITY & CLAIMS

HOUSE POLICY COMMITTEE

May 24, 2006

Ms. Carol C. Lam
United States Attorney
880 Front Street, Room 6293
San Diego, California 92101

Dear Ms. Lam:

In response to your comments on the Border Patrol internal memo my office obtained and released, your statement misses the mark and exhibits a willful disregard to the documented 251 incidents in fiscal year 2004 where the Border Patrol at the El Cajon station apprehended smugglers but led to smuggling charges for roughly 6% of the cases. The memo I released contains a specific enforcement number for each of the 251 incidents that you or the Department of Homeland Security can confirm by simply typing the number into a computer database.

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In the case of the memo I released, the fact that you have chosen to focus on unspecified alterations to what you freely admit is an "old Border Patrol document" and your assertion that this document was not seen or approved by Border Patrol management does not dismiss the verifiable facts and details in the memo. I can readily understand that the internal memo, written by a Border Patrol employee, is an embarrassment to your office as the memo speaks with such candor about barriers to prosecution that it could not be embraced and released publicly as a report representing the views of Border Patrol management.

On Monday, my office requested your assistance in obtaining a copy of the report you referenced in your statement but your office has not returned that phone call. I find your statement that "all dialogue and debate should be based on well-informed and accurate data" incredibly disingenuous considering your record in response to my past requests for information on criminal aliens and alien smuggling.

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Finally, as the representative of a Congressional district that is greatly impacted by border crimes and as a Member of Congress who sits on the Judiciary Committee, the Intelligence Committee, and the Government Reform Committee that collectively have oversight responsibilities for the Department of Justice and the Department of Homeland Security, your lack of cooperation is hindering the ability of Congress to provide proper oversight over your office and to make informed policy decisions. I am asked to craft and vote on legislative policies that determine your legal authority and the resources you receive and having full and correct information on an issue like the challenges of stopping alien smugglers is essential.

I request a joint meeting with you and the Chief Patrol Agent of the San Diego Border Sector to discuss the prosecution of alien smugglers and what resources are needed to establish a zero tolerance policy for prosecuting individuals who traffic in human beings. My office will contact your office to try and arrange a meeting time.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Darrell Issa', written in a cursive style.

Darrell Issa
Member of Congress

OLA000000772

OIP

From: Scott-Finan, Nancy
Sent: Monday, March 05, 2007 11:12 PM
To: Moschella, William
Subject: RE: Carol Lam - other letters

Tracking: Recipient Read
Moschella, William Read: 3/6/2007 6:26 AM

Sent to HJC and SJC R staff

From: Moschella, William
Sent: Monday, March 05, 2007 9:24 PM
To: Scott-Finan, Nancy
Subject: FW: Carol Lam - other letters

Can we get this info to the Hill?

From: Goodling, Monica
Sent: Monday, March 05, 2007 9:19 PM
To: Moschella, William
Subject: Carol Lam - other letters

I don't know all the water under the bridge here, but you may want to also add something about the border patrol.

What San Diego Border Patrol Chief Darryl Griffen said about Lam's policies at a House Hearing on 7/5/06:

"Prosecutions create the consequences to deter illicit activity. Here in the San Diego Sector within the southern jurisdictional district of which has oversight for the San Diego Sector, El Centro Sector, a small segment of Yuma Sector, the guidelines changed in December 2004 that adversely impacted our operations here in San Diego focused on foot guides. Foot guides are the foot soldiers for the criminal cartels that traffic cargo, narcotics, and contraband across our border. With this change in guidelines, within that the preceding year, we have prosecuted 367 foot guides. When the guidelines changed in December, I believe it was December 7, 2004, that left 10 months of the next fiscal year, fiscal year '05, we prosecuted 5. We went from 367 to 5.

What would happen then, we would apprehend people that were guiding people across the country, many times at risk. And without meeting prosecution guidelines, they were simply voluntarily returning back to Mexico where they could continue to conduct illicit activity. There is no level of consequences."

-- Darryl Griffen

San Diego Sector Border Patrol Chief

7/5/06

OLA000000773

3/18/2007

http://commdocs.house.gov/committees/intlrel/hfa28499.000/hfa28499_of.htm

Scott-Finan, Nancy

Subject: Hearing on US Attorney Removal
Location: 2141 Rayburn

Start: Tue 3/6/2007 2:00 PM
End: Tue 3/6/2007 3:00 PM

Recurrence: (none)

Meeting Status: Accepted

Required Attendees: Scott-Finan, Nancy; Moschella, William; Elston, Michael (ODAG); Battle, Michael (USAEO);
Nowacki, John (USAEO); Margolis, David; Macklin, Jay (USAEO); Scolinos, Tasia;
Roehrkasse, Brian; Sampson, Kyle; Goodling, Monica; Hertling, Richard

Optional Attendees: Seidel, Rebecca; Silas, Adrien

When: Tuesday, March 06, 2007 2:00 PM-3:00 PM (GMT-05:00) Eastern Time (US & Canada).
Where: 2141 Rayburn

~~*~*~*~*~*~*~*~*

March 06, 2007

Tuesday

March 2007

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April 2007

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5 ⁰⁰	
6 ⁰⁰	

TaskPad
<input checked="" type="checkbox"/> TaskPad

Notes

OIP

From: Scott-Finan, Nancy [Nancy.Scott-Finan@usdoj.gov]
Sent: Wednesday, March 07, 2007 10:01 AM
To: nancy.scottfinan@usdoj.gov
Subject: FW: Letter from Mike Elston to Senator Schumer Regarding Bud Cummins's Testimony and Email

Attachments: Elston Letter.pdf



Elston Letter.pdf
(56 KB)

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

From: Hertling, Richard
Sent: Wednesday, March 07, 2007 10:00 AM
To: Scott-Finan, Nancy
Subject: Fw: Letter from Mike Elston to Senator Schumer Regarding Bud Cummins's Testimony and Email

FYI. Please talk to Elston and offer him up to brief both SJC and HJC if they want a briefing from him. Also, please call David Margolis and see if he is willing to brief on DiBiagio and if so make the offer on a briefing on that case too.

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

From: Miner, Matt (Judiciary-Rep) <Matt_Miner@judiciary-rep.senate.gov>
To: Higgins, Stephen (Judiciary-Rep) <Stephen_Higgins@judiciary-rep.senate.gov>; Matal, Joe (Judiciary-Rep) <Joe_Matal@judiciary-rep.senate.gov>; O'Connor, Reed (Judiciary-Rep) <Reed_O'Connor@judiciary-rep.senate.gov>; Pai, Ajit (Judiciary-Rep) <Ajit_Pai@judiciary-rep.senate.gov>; Galyean, James (Judiciary-Rep) <James_Galyean@judiciary-rep.senate.gov>; Harned, Mary (Judiciary-Rep) <Mary_Harned@judiciary-rep.senate.gov>; Hayden, Cindy (Judiciary-Rep) <Cindy_Hayden@judiciary-rep.senate.gov>; Hayes, Bradley (Judiciary-Rep) <Bradley_Hayes@judiciary-rep.senate.gov>; Lari, Rita (Judiciary-Rep) <Rita_Lari@judiciary-rep.senate.gov>; Baker, Jesse (Judiciary-Rep) <Jesse_Baker@judiciary-rep.senate.gov>; Johnson, Jace (Hatch) <Jace_Johnson@hatch.senate.gov>
CC: Hertling, Richard
Sent: Wed Mar 07 09:34:24 2007
Subject: Letter from Mike Elston to Senator Schumer Regarding Bud Cummins's Testimony and Email

Attached is a letter from Mike Elston to Senator Schumer regarding Bud Cummins's testimony and email from yesterday's hearing. DOJ sent this to me this morning.



U.S. Department of Justice
Office of the Deputy Attorney General

Washington, D.C. 20530

March 6, 2007

The Honorable Charles E. Schumer
Chairman, Subcommittee on Administrative
Oversight and the Courts
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Given the testimony that you heard this morning, I thought it was important for you to hear from me personally. I currently serve as chief of staff to the Deputy Attorney General, but I first joined the Department in 1999 as a career prosecutor in the Northern District of Illinois. In April 2002, I transferred to the U.S. Attorney's Office in the Eastern District of Virginia, where I served as a cybercrime prosecutor, appellate supervisor and, ultimately, counsel to the U.S. Attorney. Before joining the Department, I served as a law clerk to a federal circuit court judge and spent several years in private practice in Kansas City, Missouri.

I have had only three or four phone conversations with former U.S. Attorney Bud Cummins. All of them occurred after he left office, and all of them were cordial and professional. As far as I can recall, I did not have any conversations with him on any subject while he was employed by the Department. I heard his testimony this morning and have reviewed the e-mail he sent to several other U.S. Attorneys, and all I can tell you is that I am shocked and baffled. I do not understand how anything that I said to him in our last conversation in mid-February could be construed as a threat of any kind, and I certainly had no intention of leaving him with that impression. At no time did I try to suggest to him what he or any other former U.S. Attorney should or should not say about their resignations.

It is important and fair to note that Mr. Cummins stated today that he did not view any of my comments as an attempt to discourage him from testifying. In fact, on two prior occasions, Mr. Cummins had called me and asked me whether he should testify voluntarily in response to invitations he had received from Members of Congress. I told him that the Department had no position on whether he should testify, and that he should testify if he wanted to testify or decline to testify if he did not want to testify. I told him the same thing the second time he asked. I respect the role of Congress in our constitutional system, and I have never suggested to anyone that it would be appropriate to withhold information or testimony from Congress.

OLA000000778

The Honorable Charles E. Schumer
Page 2

I regret that Mr. Cummins read into our last conversation anything that could be construed as a threat of any kind. I had no intention of communicating anything to him about what he or the other former U.S. Attorneys should say or not say about their resignations.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael J. Elston". The signature is fluid and cursive, with the first name "Michael" being the most prominent.

Michael J. Elston
Chief of Staff
Office of the Deputy Attorney General

cc: The Honorable Jeff Sessions

OLA000000779

OIP

From: Scott-Finan, Nancy
Sent: Wednesday, March 07, 2007 5:40 PM
To: Hertling, Richard; Moschella, William; Elston, Michael (ODAG)
Subject: RE: For tomorrow's meeting

Tracking:	Recipient	Read
	Hertling, Richard	Read: 3/7/2007 5:51 PM
	Moschella, William	Read: 3/12/2007 11:56 AM
	Elston, Michael (ODAG)	Read: 3/7/2007 5:47 PM

This is the Elston briefing tomorrow with regard to his contact with Cummins.

From: Flores, Daniel [mailto:Daniel.Flores@mail.house.gov]
Sent: Wednesday, March 07, 2007 5:37 PM
To: Scott-Finan, Nancy
Cc: Jeziarski, Crystal; Jeffries, Stewart
Subject: For tomorrow's meeting

Nancy, could we make sure that during the meeting tomorrow we cover what further DOJ would like to get in the record about H.R. 580 or what amendments to the bill might interest the Department?

Roland, Sarah E

From: Seidel, Rebecca
Sent: Tuesday, August 01, 2006 1:15 PM
To: Epley, Mark D; Voris, Natalie (USAEO); Jordan, Wyevetra G
Cc: Parent, Steve (USAEO); Roland, Sarah E; Scott-Finan, Nancy
Subject: RE: Lam is meeting with Issa and Sensenbrenner

Natalie / Mark - what do we tell Carol Lam? She needs something before meeting with Issa (which is 2pm our time)

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

From: Voris, Natalie (USAEO)
To: Seidel, Rebecca; Jordan, Wyevetra G; Epley, Mark D
CC: Parent, Steve (USAEO)
Sent: Tue Aug 01 12:45:57 2006
Subject: FW: Lam is meeting with Issa and Sensenbrenner

Looping you all in - I'm not sure what we would want to share with the Hill, but the info below explains the 29% number. Please let me know if you need anything else.

nv

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Cc: Bevels, Lisa (USAEO); Erickson, Michael (USAEO)
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2005	OCDETF	3
	Total	14

If you have any questions, please let us know.

Mike Erickson

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From: Bevels, Lisa (USAEO)
 Sent: Tuesday, August 01, 2006 6:55 AM
 To: Erickson, Michael (USAEO)
 Subject: Fw: Lam is meeting with Issa and Sensenbrenner

Call me on my cell

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 To: Parent, Steve (USAEO) <SParent@usa.doj.gov>; Bevels, Lisa (USAEO) <LBevels@usa.doj.gov>; Lam, Carol (USACAS) <CLam@usa.doj.gov>; Voris, Natalie (USAEO) <NVoris@usa.doj.gov>
 CC: Epley, Mark D <Mark.D.Epley@usdoj.gov>; Jordan, Wyevetra G <Wyevetra.G.Jordan@usdoj.gov>
 Sent: Mon Jul 31 21:01:45 2006
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 Subject: Re: Lam is meeting with Issa and Sensenbrenner

This is definitely a question for rmp - I have added lisa and steve to the email.

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From: Lam, Carol (USACAS) <CLam@usa.doj.gov>
 To: Voris, Natalie (USAEO) <NVoris@usa.doj.gov>; Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>
 Sent: Mon Jul 31 20:09:54 2006
 Subject: RE: Lam is meeting with Issa and Sensenbrenner

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Roland, Sarah E

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Sent: Tuesday, August 01, 2006 1:30 PM
To: Seidel, Rebecca; Epley, Mark D; Voris, Natalie (USAEO)
Cc: Parent, Steve (USAEO); Roland, Sarah E; Scott-Finan, Nancy
Subject: RE: Lam is meeting with Issa and Sensenbrenner

Attachments: Jordan, Wyevetra G.vcf



Jordan, Wyevetra
G.vcf (4 KB)...

Rebecca and Mark,

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I would say, the 29% increase is the case for that area over that period of time however, there are still many unfunded positions remaining to be filled throughout the USA districts.

-- Wyevetra Jordan, Appropriations Liaison Officer

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Roland, Sarah E

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Sent: Tuesday, August 01, 2006 2:04 PM
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Cc: Roland, Sarah E; Scott-Finan, Nancy
Subject: Re: Lam is meeting with Issa and Sensenbrenner

It is the funded FTE over those years.

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

From: Jordan, Wyevetra G <Wyevetra.G.Jordan@usdoj.gov>
To: Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>; Epley, Mark D <Mark.D.Epley@usdoj.gov>; Voris, Natalie (USAEO) <NVoris@usa.doj.gov>
CC: Roland, Sarah E <Sarah.E.Roland@usdoj.gov>; Scott-Finan, Nancy <Nancy.Scott-Finan@usdoj.gov>; Parent, Steve (USAEO) <SParent@usa.doj.gov>
Sent: Tue Aug 01 13:30:18 2006
Subject: RE: Lam is meeting with Issa and Sensenbrenner

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Roland, Sarah E

From: Seidel, Rebecca
Sent: Wednesday, August 02, 2006 6:56 PM
To: Voris, Natalie (USAEO); Epley, Mark D; Otis, Lee L; Bounds, Ryan W (OLP); Mullane, Hugh
Cc: Scott-Finan, Nancy; Roland, Sarah E
Subject: FW: Lam is meeting with Issa and Sensenbrenner

Sounds like she handled well and it was actually constructive. See below.

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

From: Lam, Carol (USACAS)
Sent: Wednesday, August 02, 2006 6:50 PM
To: Seidel, Rebecca
Subject: RE: Lam is meeting with Issa and Sensenbrenner

Sorry, meant to email you earlier but other events overtook me.

It was fine (at least I think it was). The tone was civil and at times even friendly. I was accompanied by my appellate chief Roger Haines and our Intake supervisor Steve Peak. Issa and Sensenbrenner had about 4 staffers there total. Chrm Sensenbrenner had a single theme he kept coming back to, which is that we aren't doing enough coyote prosecutions and that they are the key to controlling the border. (This is obviously the Border Patrol complaint that was channelled through Issa to Sensenbrenner). I noted that the first 3 times we prosecute a coyote, we get sentences of 60 days, 6 months, and maybe a year, respectively, if we are lucky; whereas the same attorney resources can be used to prosecute criminal aliens with priors for rape, murder and child molestations and we can get sentences of 7-8 years. We have more of the latter type of case than we can handle, so essentially I must make a choice -- prosecute the coyotes who are smuggling but not endangering anyone, or the rapists and murderers who are coming back to rape and murder again.

He noted that among the Southwest Border USAOs, our felony immigration filings are low. I explained that we set out a couple of years ago to deliberately seek higher sentences for the worst offenders; this meant more cases would go to trial, but we would hold the line and not sell the cases for less time. The statistics show that we have, in fact, achieved significantly higher average sentences in our immigration cases; the cost was that our immigration trial rate more than DOUBLED (from 42 trials in 2004 to 89 trials in 2005) and we had to reduce the number of low-end coyote cases we filed. Cong Issa seemed to grasp this concept quickly; he commented that it is too bad we don't have statistics that reflect the matrix of felony immigration filings against lengths of sentences.

We urged them to fully fund the President's budget; thanked Chrm Sensenbrenner for the enforcement provisions in his immigration bill; and some observations were exchanged about the difficulties of prosecuting cases in the 9th Circuit. Congressman Issa asked me how the 4 additional SW border AUSA positions (announced by the AG on Monday) would help me; I said that they would allow me to fill attorney vacancies that I have had to leave vacant because of the budget situation. Issa noted to Sensenbrenner that he doesn't understand why their prior appropriations don't seem to be "trickling down" to the USAOs, and I interjected that the unfunded COLAs and government-wide rescissions were erasing what appeared to be additional appropriations.

That was about it. We left on very cordial terms without any request

for follow-up information. Let me know if you need any additional information, and thanks for preparing me.

Carol

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

From: Seidel, Rebecca
Sent: Wednesday, August 02, 2006 3:16 PM
To: Lam, Carol (USACAS)
Cc: Epley, Mark D
Subject: RE: Lam is meeting with Issa and Sensenbrenner

How did the Issa/Sensenbrenner meeting go?

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

From: Lam, Carol (USACAS)
Sent: Wednesday, August 02, 2006 11:53 AM
To: Seidel, Rebecca; Parent, Steve (USAEO); Bevels, Lisa (USAEO); Voris, Natalie (USAEO)
Cc: Jordan, Wyevetra G; Epley, Mark D
Subject: RE: Lam is meeting with Issa and Sensenbrenner

Thanks, Steve; this helps. -- Carol

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

From: Parent, Steve (USAEO)
Sent: Wednesday, August 02, 2006 5:24 AM
To: Lam, Carol (USACAS); Seidel, Rebecca; Bevels, Lisa (USAEO); Voris, Natalie (USAEO)
Cc: Epley, Mark D; Jordan, Wyevetra G
Subject: Re: Lam is meeting with Issa and Sensenbrenner

The 29 percent figure is actual funded position increase from FY 2000 to present.

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

From: Lam, Carol (USACAS) <CLam@usa.doj.gov>
To: Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>; Parent, Steve (USAEO) <SParent@usa.doj.gov>; Bevels, Lisa (USAEO) <LBevels@usa.doj.gov>; Voris, Natalie (USAEO) <NVoris@usa.doj.gov>
CC: Epley, Mark D <Mark.D.Epley@usdoj.gov>; Jordan, Wyevetra G <Wyevetra.G.Jordan@usdoj.gov>
Sent: Tue Aug 01 22:12:05 2006
Subject: Re: Lam is meeting with Issa and Sensenbrenner

I assume nobody is taking credit for the 29% figure, and I'm on my own?

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

From: Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>
To: Parent, Steve (USAEO) <SParent@usa.doj.gov>; Bevels, Lisa (USAEO) <LBevels@usa.doj.gov>; Lam, Carol (USACAS) <CLam@usa.doj.gov>; Voris, Natalie (USAEO) <NVoris@usa.doj.gov>
CC: Epley, Mark D <Mark.D.Epley@usdoj.gov>; Jordan, Wyevetra G <Wyevetra.G.Jordan@usdoj.gov>
Sent: Mon Jul 31 18:01:45 2006
Subject: RE: Lam is meeting with Issa and Sensenbrenner

Also adding Mark Epley and Wyevetra Jordan . Mark, Wye - where did the 29% increase number come from? (this is re the press release on the supplemental approps funding AUSAs)

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

From: Voris, Natalie (USAEO)
Sent: Monday, July 31, 2006 8:17 PM
To: Seidel, Rebecca; Lam, Carol (USACAS); Bevels, Lisa (USAEO); Parent, Steve (USAEO)
Subject: Re: Lam is meeting with Issa and Sensenbrenner

This is definitely a question for rmp - I have added lisa and steve to the email.

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

From: Lam, Carol (USACAS) <CLam@usa.doj.gov>
To: Voris, Natalie (USAEO) <NVoris@usa.doj.gov>; Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>
Sent: Mon Jul 31 20:09:54 2006
Subject: RE: Lam is meeting with Issa and Sensenbrenner

Thanks, Natalie. I do have one other concern -- the DOJ press release sent out today says that the "the number of AUSAs in the Southwest border districts has increased 29 percent since 2000, to a total of 561." I'm not sure where the 29% figure came from; my own FTE increased from 119 to 125 during the last 4 years; I think the percentage increase has been similar in the other districts. Can anyone tell me how the 29% increase was calculated, in case the Congressmen use this figure in our discussion?

From: Voris, Natalie (USAEO)
Sent: Monday, July 31, 2006 4:08 PM
To: Lam, Carol (USACAS)
Subject: FW: Lam is meeting with Issa and Sensenbrenner

Carol,
Lisa Bevels is traveling to the Budget Officers training at the NAC this week, but she gives you the best times for a conversation with her below. I clarified with Lisa that it's human trafficking approps Issa is interested in, not prosecutions. Lisa said that she was unaware of any specific human trafficking funds ever going to USAOs.

Please let me know if you need anything else. I'm not the budget expert, but I can try to point you in the right direction.

nv

From: Bevels, Lisa (USAEO)
Sent: Monday, July 31, 2006 6:16 PM
To: Voris, Natalie (USAEO); Parent, Steve (USAEO)
Subject: RE: Lam is meeting with Issa and Sensenbrenner

I will be giving a speech at the BO Conference on Wednesday. If she wants, she can email me and set up a time to talk tomorrow or Wednesday last morning or all afternoon. Civil Rights tracks the Human Trafficking case data for the Department. I'm not sure if Barbara Tone can come up with these cases through our system--they are probably part of immigration or some could even be in child abuse (women and children trafficking for sexual exploitation). Dave Smith asked us a few weeks ago about Human Trafficking and we did not have the data.

From: Voris, Natalie (USAEO)
Sent: Monday, July 31, 2006 6:02 PM
To: Bevels, Lisa (USAEO); Parent, Steve (USAEO)
Subject: Lam is meeting with Issa and Sensenbrenner

On Wednesday at 11 a.m. PST. OLA has approved this meeting. Carol knows that Issa is curious about what happened to human trafficking funds that Issa believes were provided to USAOs a year ago. Do we have any info on that? Lisa - Carol will probably give you a call in the next day to go over a few things prior to the meeting.

Thanks,
nv

Roland, Sarah E

From: Seidel, Rebecca
Sent: Friday, June 23, 2006 5:29 PM
To: Moschella, William
Cc: Roland, Sarah E; Scott-Finan, Nancy
Subject: FW: Congressman Issa's Request for a Meeting

Attachments: tmp.htm

Will, see below. Wanted you to be aware.

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

From: Fridman, Daniel (ODAG)
Sent: Friday, June 23, 2006 5:28 PM
To: Seidel, Rebecca
Cc: Mercer, Bill (ODAG); Elston, Michael (ODAG)
Subject: Fw: Congressman Issa's Request for a Meeting

Rebecca -

I'm prepared to help you with this. I have a lot of the relevant stats and reports in hand. We should talk on Monday.

Dan

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



tmp.htm (4 KB)

From: Smith, David L. (USAEO)
To: Seidel, Rebecca; Scott-Finan, Nancy
CC: Fridman, Daniel (ODAG); Otis, Lee L; Crews, John (USAEO); Voris, Natalie (USAEO); Harrigan, Shane (USACAS)
Sent: Fri Jun 23 17:19:55 2006
Subject: FW: Congressman Issa's Request for a Meeting

Rebecca and Nancy,

Rep. Issa has contacted the SDCA to seek a meeting with USA Lam in early July. I understand that Carol is presently out of the country and will be for at least another week.

Presumably he would ask her what resources she needs to achieve "zero tolerance" on immigration and she would be limited to urging him to support the President's budget. Still, with appropriate talking points, I see this as an opportunity to ratchet down the venom coming from Issa. Carol may be able to create a relationship with Issa in a face to face setting that she could not do otherwise.

Let us know what the thinking is on this and whether you will be responding to Issa's staff.

Thanks

Dave

>

> **From:** Porter, Brenda (USACAS)
> **Sent:** Friday, June 23, 2006 4:59 PM

> To: Smith, David L. (USAEO)
> Cc: Harrigan, Shane (USACAS)
> Subject: Congressman Issa's Request for a Meeting
>
> Mr. Smith,
>
> We wanted you to be aware of a phone call we received today from Don
> McKinney of Congressman Darrell Issa's office, requesting to schedule
> a meeting between Congressman Issa and United States Attorney Carol
> Lam. Mr. McKinney said that the Congressman will be in town on July 6
> and he would like to see if the U.S. Attorney is available to meet
> that afternoon -- he referred to the meeting as a
> "needs/assessment-type meeting." (The House is having hearings on the
> Immigration Bill on July 5, 2006, in San Diego). I believe you are
> familiar with the history between Congressman Issa and our office. At
> this time, I was planning to call Mr. McKinney and state that we must
> notify the Department to get this cleared, and that he should expect
> another call with a reply, but at this time, we could not schedule a
> meeting. I will await your reply for further guidance regarding this
> matter.
>
> Thank you,
>
> Brenda Porter
> Administrative Assistant to
> United States Attorney Carol C. Lam
> Southern District of California
> (619) 557-5892

Roland, Sarah E

From: Lam, Carol (USACAS)
Sent: Friday, July 28, 2006 6:17 PM
To: Seidel, Rebecca
Cc: Roland, Sarah E; Voris, Natalie (USAEO)
Subject: Re: Heads up

Thanks, Rebecca. Do you want me to meet with them?

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

From: Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>
To: Lam, Carol (USACAS) <CLam@usa.doj.gov>
CC: Roland, Sarah E <Sarah.E.Roland@usdoj.gov>; Voris, Natalie (USAEO) <NVoris@usa.doj.gov>
Sent: Fri Jul 28 15:14:10 2006
Subject: Heads up

Chairman Sensenbrenner and Cong. Issa will be in your area next week., Aug 2-3 for a field hearing highlighting the differences between the House and Senate immigration bills. I got heads up that they will try to meet with you (Sensenbrenner too as a means to show support for Issa).

Roland, Sarah E

From: Lam, Carol (USACAS)
Sent: Friday, July 28, 2006 6:22 PM
To: Seidel, Rebecca
Cc: Roland, Sarah E; Voris, Natalie (USAEO)
Subject: Re: Heads up

I'm about to give a talk. I'll get back to you in about an hour. Sorry.

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

From: Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>
To: Lam, Carol (USACAS) <CLam@usa.doj.gov>
CC: Roland, Sarah E <Sarah.E.Roland@usdoj.gov>; Voris, Natalie (USAEO) <NVoris@usa.doj.gov>
Sent: Fri Jul 28 15:20:00 2006
Subject: RE: Heads up

If you are in town, you probably need to. What are your thoughts? Has there been any follow up from Issa since your call with him?

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

From: Lam, Carol (USACAS)
Sent: Friday, July 28, 2006 6:17 PM
To: Seidel, Rebecca
Cc: Roland, Sarah E; Voris, Natalie (USAEO)
Subject: Re: Heads up

Thanks, Rebecca. Do you want me to meet with them?

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

From: Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>
To: Lam, Carol (USACAS) <CLam@usa.doj.gov>
CC: Roland, Sarah E <Sarah.E.Roland@usdoj.gov>; Voris, Natalie (USAEO) <NVoris@usa.doj.gov>
Sent: Fri Jul 28 15:14:10 2006
Subject: Heads up

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Roland, Sarah E

From: Lam, Carol (USACAS)
Sent: Friday, July 28, 2006 8:04 PM
To: Seidel, Rebecca
Cc: Roland, Sarah E; Voris, Natalie (USAEO)
Subject: Re: Heads up

I have not heard anything from Issa since our telephone conversation (except one bizarre call where his staffer inquired if they could use our conference room for their immigration hearings -- fortunately they found another facility), but he seems to have stopped his visceral attacks on this office and me, perhaps only temporarily. Must have been my personal charm. Anyway, I will meet with them if you wish. I don't think it will do any harm at this point. I think the AG is making comments about additional border resources when he speaks in New Mexico on Monday, so I will need to track those. Do you want me to agree to see them if they call, or do you want me to call you first?

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

From: Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>
To: Lam, Carol (USACAS) <CLam@usa.doj.gov>
CC: Roland, Sarah E <Sarah.E.Roland@usdoj.gov>; Voris, Natalie (USAEO) <NVoris@usa.doj.gov>
Sent: Fri Jul 28 15:20:00 2006
Subject: RE: Heads up

If you are in town, you probably need to. What are your thoughts? Has there been any follow up from Issa since your call with him?

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

From: Lam, Carol (USACAS)
Sent: Friday, July 28, 2006 6:17 PM
To: Seidel, Rebecca
Cc: Roland, Sarah E; Voris, Natalie (USAEO)
Subject: Re: Heads up

Thanks, Rebecca. Do you want me to meet with them?

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

From: Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>
To: Lam, Carol (USACAS) <CLam@usa.doj.gov>
CC: Roland, Sarah E <Sarah.E.Roland@usdoj.gov>; Voris, Natalie (USAEO) <NVoris@usa.doj.gov>
Sent: Fri Jul 28 15:14:10 2006
Subject: Heads up

Chairman Sensenbrenner and Cong. Issa will be in your area next week., Aug 2-3 for a field hearing highlighting the differences between the House and Senate immigration bills. I got heads up that they will try to meet with you (Sensenbrenner too as a means to show support for Issa).

Roland, Sarah E

From: Lam, Carol (USACAS)
Sent: Friday, July 28, 2006 9:15 PM
To: Seidel, Rebecca
Cc: Roland, Sarah E; Voris, Natalie (USAEO)
Subject: Re: Heads up

Ok. Talk to you on Monday. Have a nice weekend.

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

From: Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>
To: Lam, Carol (USACAS) <CLam@usa.doj.gov>
CC: Roland, Sarah E <Sarah.E.Roland@usdoj.gov>; Voris, Natalie (USAEO) <NVoris@usa.doj.gov>
Sent: Fri Jul 28 17:50:57 2006
Subject: Re: Heads up

You raise a good point. It is not public yet, but it may be by the time they visit you (re the additional resources for SW border). Let's chat Monday.

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

From: Lam, Carol (USACAS)
To: Seidel, Rebecca
CC: Roland, Sarah E; Voris, Natalie (USAEO)
Sent: Fri Jul 28 20:03:31 2006
Subject: Re: Heads up

I have not heard anything from Issa since our telephone conversation (except one bizarre call where his staffer inquired if they could use our conference room for their immigration hearings -- fortunately they found another facility), but he seems to have stopped his visceral attacks on this office and me, perhaps only temporarily. Must have been my personal charm. Anyway, I will meet with them if you wish. I don't think it will do any harm at this point. I think the AG is making comments about additional border resources when he speaks in New Mexico on Monday, so I will need to track those. Do you want me to agree to see them if they call, or do you want me to call you first?

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From: Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>
To: Lam, Carol (USACAS) <CLam@usa.doj.gov>
CC: Roland, Sarah E <Sarah.E.Roland@usdoj.gov>; Voris, Natalie (USAEO) <NVoris@usa.doj.gov>
Sent: Fri Jul 28 15:20:00 2006
Subject: RE: Heads up

If you are in town, you probably need to. What are your thoughts? Has there been any follow up from Issa since your call with him?

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From: Lam, Carol (USACAS)
Sent: Friday, July 28, 2006 6:17 PM
To: Seidel, Rebecca
Cc: Roland, Sarah E; Voris, Natalie (USAEO)
Subject: Re: Heads up

Thanks, Rebecca. Do you want me to meet with them?

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

From: Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>
To: Lam, Carol (USACAS) <CLam@usa.doj.gov>
CC: Roland, Sarah E <Sarah.E.Roland@usdoj.gov>; Voris, Natalie (USAEO) <NVoris@usa.doj.gov>

Sent: Fri Jul 28 15:14:10 2006
Subject: Heads up

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Roland, Sarah E

From: Scott-Finan, Nancy
Sent: Monday, July 10, 2006 4:09 PM
To: Voris, Natalie (USAEO); Smith, David L. (USAEO)
Cc: Wade, Jill C; Waring, Matthew; Roland, Sarah E
Subject: Feinstein letter --- 1021001

Where are you on the response to Senator Feinstein about immigration prosecutions in Southern California? Thanks.

Roland, Sarah E

From: Seidel, Rebecca
Sent: Wednesday, July 05, 2006 1:49 PM
To: Kebodeaux, Tiffany (DHS); Kent, Don (DHS); 'Michael_P._Moreland@who.eop.gov'
Cc: Roland, Sarah E; Bounds, Ryan W (OLP); Otis, Lee (SMO); Voris, Natalie (USAEO)
Subject: FW: Issa Questions and Response

Importance: High

Attachments: tmp.htm



tmp.htm (7 KB)

see below. Who prepped the Border Patrol for this hearing? Who is he to say what prosecution standards should be? If you aren't already watching, you can stream it on C-Span.org

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

From: Crews, John (USAEO)
Sent: Wednesday, July 05, 2006 1:34 PM
To: Seidel, Rebecca; McHenry, Teresa; Voris, Natalie (USAEO)
Cc: Smith, David L. (USAEO); Hahn, Paul (USAEO); Roberts, Tom; Campbell, Benton
Subject: RE: Issa Questions and Response

He just did it again. He was asked a question by a Republic Congresswoman from Tennessee. He suggested uniformity in national intake criteria. He said that cases which were declined earlier had been prosecuted as 8 USC 1326 defendants rather than 1324 defendants. However now they weren't being prosecuted. JGC.

From: Crews, John (USAEO) [mailto:John.Crews@usdoj.gov]
Sent: Wednesday, July 05, 2006 1:19 PM
To: Seidel, Rebecca; Voris, Natalie (USAEO); McHenry, Teresa
Cc: Smith, David L. (USAEO); Hahn, Paul (USAEO); Roberts, Tom
Subject: Issa Questions and Response
Importance: High

Listening to HJC field hearing now ongoing on CSPAN.

Congressman Issa, vice chair of the committee having the hearings, asked questions regarding the prosecutions guidelines of SDCA. Congressman Issa made reference to the station report he's made reference to in the past, and which he referenced in his recent letter to Ms. Lam. Congressman Issa said wasn't it true that only 6% of the individuals apprehended were prosecuted for alien smuggling.

Border Patrol Sector Chief Darryl Griffen said that USAO SD CA changed prosecution guidelines in December, 2004, he believed on December 7, 2004. Griffen said in the year prior to that time his office had taken for prosecution some 367 aliens transporters, mostly guides. The intake guidelines changed, and in the remainder of that fiscal year they had prosecuted 5. Chief Griffen went on to say that it was his understanding each USA had discretion to set his or her own intake guidelines; and that these varied between each judicial district. Griffen went on to suggest that there be uniform national intake guidelines.

JGC

Silas, Adrien

From: Scott-Finan, Nancy
Sent: Tuesday, February 20, 2007 5:21 PM
To: Elston, Michael (ODAG); Moschella, William; Battle, Michael (USAEO); Nowacki, John (USAEO); Margolis, David; Scolinos, Tasia; Macklin, Jay (USAEO); Roehrkasse, Brian; Sampson, Kyle; Goodling, Monica
Cc: Hertling, Richard; Seidel, Rebecca; Silas, Adrien
Subject: FW: US Attorneys briefing

See below. They have confirmed February 28 from 1:30 to 3 pm for the briefing with the hearing on March 6th. With a hearing on the 6th, John, we would need the revised testimony from you Friday, February 23, no later than Noon.

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

From: Tamarkin, Eric [mailto:Eric.Tamarkin@mail.house.gov]
Sent: Tuesday, February 20, 2007 4:50 PM
To: Scott-Finan, Nancy
Subject: RE: US Attorneys briefing

Nancy,

Sorry for the delay in getting back to you. I just got confirmation that Wed., Feb. 28th from 1:30 - 3 pm works with the Committee's schedule. It will be in the main Committee room (2141 Rayburn). Our hearing date is now tentatively set for March 6. I will let you know as soon as possible when the details get finalized.

Thanks,
Eric

Silas, Adrien

From: Nowacki, John (USAEO) [John.Nowacki@usdoj.gov]
Sent: Tuesday, February 20, 2007 5:44 PM
To: Scott-Finan, Nancy; Elston, Michael (ODAG); Moschella, William; Margolis, David; Scolinos, Tasia; Roehrkasse, Brian; Sampson, Kyle; Goodling, Monica; Battle, Michael (USAEO); Macklin, Jay (USAEO)
Cc: Hertling, Richard; Seidel, Rebecca; Silas, Adrien
Subject: RE: US Attorneys briefing

Got it, thanks.

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

From: Scott-Finan, Nancy
Sent: Tuesday, February 20, 2007 5:21 PM
To: Elston, Michael (ODAG); Moschella, William; Margolis, David; Scolinos, Tasia; Roehrkasse, Brian; Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO); Battle, Michael (USAEO); Macklin, Jay (USAEO)
Cc: Hertling, Richard; Seidel, Rebecca; Silas, Adrien
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Thanks,
Eric

Silas, Adrien

From: Scott-Finan, Nancy
Sent: Wednesday, February 21, 2007 1:40 PM
To: Elston, Michael (ODAG); Moschella, William; Battle, Michael (USAEO); Nowacki, John (USAEO); Margolis, David; Scolinos, Tasia; Macklin, Jay (USAEO); Roehrkasse, Brian; Sampson, Kyle; Goodling, Monica
Cc: Hertling, Richard; Seidel, Rebecca; Silas, Adrien
Subject: RE: US Attorneys briefing

The Committee now has a hearing scheduled for 2 pm on the 28th of February. They would like change the briefing from 1:30 to 3 to an earlier time: between Noon and 1:30 pm. Additionally, they have proposed 2 pm as the hearing time for March 6. Will/Mike, does this work for you? Thanks.
Nancy

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

From: Scott-Finan, Nancy
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To: Elston, Michael (ODAG); Moschella, William; Battle, Michael (USAEO); Nowacki, John (USAEO); Margolis, David; Scolinos, Tasia; Macklin, Jay (USAEO); Roehrkasse, Brian; Sampson, Kyle; Goodling, Monica
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Thanks,
Eric

Silas, Adrien

From: Moschella, William
Sent: Wednesday, February 21, 2007 1:45 PM
To: Scott-Finan, Nancy; Elston, Michael (ODAG); Battle, Michael (USAEO); Nowacki, John (USAEO); Margolis, David; Scolinos, Tasia; Macklin, Jay (USAEO); Roehrkasse, Brian; Sampson, Kyle; Goodling, Monica
Cc: Hertling, Richard; Seidel, Rebecca; Silas, Adrien
Subject: RE: US Attorneys briefing

Ok with me. Please send a scheduling invite.

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

From: Scott-Finan, Nancy
Sent: Wednesday, February 21, 2007 1:40 PM
To: Elston, Michael (ODAG); Moschella, William; Battle, Michael (USAEO); Nowacki, John (USAEO); Margolis, David; Scolinos, Tasia; Macklin, Jay (USAEO); Roehrkasse, Brian; Sampson, Kyle; Goodling, Monica
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Subject: RE: US Attorneys briefing

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Thanks,
Eric

Silas, Adrien

From: Margolis, David
Sent: Wednesday, February 21, 2007 3:45 PM
To: Moschella, William; Scott-Finan, Nancy; Elston, Michael (ODAG); Battle, Michael (USAEO); Nowacki, John (USAEO); Scolinos, Tasia; Macklin, Jay (USAEO); Roehrkasse, Brian; Sampson, Kyle; Goodling, Monica
Cc: Hertling, Richard; Seidel, Rebecca; Silas, Adrien
Subject: RE: US Attorneys briefing

Are we going to do a moot court?

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

From: Moschella, William
Sent: Wednesday, February 21, 2007 1:45 PM
To: Scott-Finan, Nancy; Elston, Michael (ODAG); Battle, Michael (USAEO); Nowacki, John (USAEO); Margolis, David; Scolinos, Tasia; Macklin, Jay (USAEO); Roehrkasse, Brian; Sampson, Kyle; Goodling, Monica
Cc: Hertling, Richard; Seidel, Rebecca; Silas, Adrien
Subject: RE: US Attorneys briefing

Ok with me. Please send a scheduling invite.

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

From: Scott-Finan, Nancy
Sent: Wednesday, February 21, 2007 1:40 PM
To: Elston, Michael (ODAG); Moschella, William; Battle, Michael (USAEO); Nowacki, John (USAEO); Margolis, David; Scolinos, Tasia; Macklin, Jay (USAEO); Roehrkasse, Brian; Sampson, Kyle; Goodling, Monica
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From: Tamarkin, Eric [mailto:Eric.Tamarkin@mail.house.gov]
Sent: Tuesday, February 20, 2007 4:50 PM
To: Scott-Finan, Nancy
Subject: RE: US Attorneys briefing

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Silas, Adrien

From: Silas, Adrien
Sent: Wednesday, February 21, 2007 4:19 PM
To: Scott-Finan, Nancy
Subject: FW: US Attorneys briefing

This is a stupid questions, but is this on the removals?

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Silas, Adrien

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Sent: Wednesday, February 21, 2007 5:27 PM
To: Silas, Adrien
Subject: RE: US Attorneys briefing

No stupid questions
Yes, it is on the removals.
We will be testifying again on March 6. I believe it will be Will as the PADAG.

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Silas, Adrien

From: Silas, Adrien
Sent: Wednesday, February 21, 2007 5:29 PM
To: Scott-Finan, Nancy
Subject: RE: US Attorneys briefing

Thanks!

Tracking:	Recipient	Read
	Scott-Finan, Nancy	Read: 2/21/2007 5:32 PM

Silas, Adrien

Subject: Hearing on US Attorney Removal
Location: 2141 Rayburn

Start: Tue 3/6/2007 2:00 PM
End: Tue 3/6/2007 3:00 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Required Attendees: Scott-Finan, Nancy; Moschella, William; Elston, Michael (ODAG); Battle, Michael (USAEO);
Nowacki, John (USAEO); Margolis, David; Macklin, Jay (USAEO); Scolinos, Tasia;
Roehrkasse, Brian; Sampson, Kyle; Goodling, Monica; Hertling, Richard

Optional Attendees: Seidel, Rebecca; Silas, Adrien

OIP

From: Moschella, William
Sent: Friday, September 02, 2005 11:08 AM
To: Nichols, Grant W; Ulliyot, Theodore; Sampson, Kyle
Cc: Sours, Raquel; Clinger, James H
Subject: Re: Sen. Domenici

We will call his chief of staff first. What is the AG's availability?

Jim, please call Domenici's Chief of staff to determine why Domenici is calling. I will be back by noon.

Sent from my BlackBerry Wireless Handheld

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

From: Nichols, Grant W <Grant.W.Nichols@SMOJMD.USDOJ.gov>
To: Ulliyot, Theodore <Theodore.Ulliyot@SMOJMD.USDOJ.gov>; Sampson, Kyle <Kyle.Sampson@SMOJMD.USDOJ.gov>; Moschella, William <William.Moschella@SMOJMD.USDOJ.gov>
CC: Sours, Raquel <Raquel.Sours@SMOJMD.USDOJ.gov>
Sent: Fri Sep 02 10:52:27 2005
Subject: Sen. Domenici

Sen. Domenici called to speak with the AG.

He did not say what it was regarding. Should I have the AG return his call?

He can be reached at home or on his cell.

OIP

From: Nichols, Grant W
Sent: Friday, September 02, 2005 11:10 AM
To: Moschella, William; Ulyot, Theodore; Sampson, Kyle
Cc: Sours, Raquel; Clinger, James H
Subject: RE: Sen. Domenici

The AG will be in the office within the hour and will have time to speak the Senator at that time, if needed.

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Sent: Friday, September 02, 2005 11:08 AM
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He can be reached at home or on his cell.

OIP

From: Wade, Jill C
Sent: Thursday, June 01, 2006 6:33 PM
To: Wade, Jill C
Subject: DOJ/OLA Notification: FEDERAL GRAND JURY CHARGES ARIZONA AND CALIFORNIA COMPANIES AND THEIR OWNERS WITH OBSCENITY VIOLATIONS

Attachments: Picture (Metafile); Picture (Metafile); obscenity.fivestar.indict.pdf

A copy of the Indictment is attached.



Department of Justice

FOR IMMEDIATE RELEASE
THURSDAY, JUNE 1, 2006
WWW.USDOJ.GOV

CRM
(202) 514-2008
TDD (202) 514-1888

FEDERAL GRAND JURY CHARGES ARIZONA AND CALIFORNIA COMPANIES AND THEIR OWNERS WITH OBSCENITY VIOLATIONS

WASHINGTON – A Chatsworth, California film production company and a Tempe, Arizona video distributor and retailer, along with three owners of the businesses, have been charged by a federal grand jury in Phoenix, Arizona with operating an obscenity distribution business and related offenses, Assistant Attorney General Alice S. Fisher of the Justice Department’s Criminal Division and U.S. Attorney Paul K. Charlton of the District of Arizona announced today.

In an indictment unsealed yesterday, Five Star Video, LLC, of Tempe, Arizona, and Phoenix residents Christopher Warren Ankeney and Kenneth James Graham were charged with four counts of using an interactive computer service to sell and distribute DVDs containing obscene matter – identified as “Gag Factor 18,” “Filthy Things 6,” “Gag Factor 15” and “American Bukkake 13” – and three counts of using an interstate common carrier to transport obscene DVDs. In addition, Five Star was charged in a separate count with using the mails to deliver a DVD containing obscene matter. Jeff Norton Productions of Chatsworth, California, also known as JM Productions, and Mike Leonard Norton, who resides in Woodland Hills, California, were charged with six counts of using an interstate common carrier to transport DVDs that are obscene. All of the defendants were also charged with three counts of engaging in the business of selling and transferring obscene matter. The government is also seeking forfeiture of certain obscene materials and profits, together with Internet domain name and website ownership rights.

According to the indictment, JM Productions and Norton distributed to Five Star via UPS various obscene films in DVD format that were in turn sold and distributed to the public by Five Star, Ankeney and Graham via UPS and the mails.

If convicted, the defendants face a maximum penalty of five years in prison on each of the obscenity counts.

An indictment is merely an accusation. All defendants are presumed innocent of the charges and it is the

government's burden to prove a defendant's guilt beyond a reasonable doubt at trial.

The case is being prosecuted by trial attorney Sheila Phillips of the Obscenity Prosecution Task Force of the U.S. Department of Justice and the U.S. Attorney's Office for the District of Arizona. The Justice Department's Obscenity Prosecution Task Force was formed recently to focus on the prosecution of adult obscenity nationwide. The Task Force is directed by Brent D. Ward.

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06-343



obscurity.fivestar.i
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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America,
Plaintiff,

v.

FIVE STAR VIDEO, L.C.,
FIVE STAR VIDEO OUTLET, L.C.,
CHRISTOPHER WARREN ANKENY,
KENNETH JAMES GRAHAM,
JEFF MIKE PRODUCTIONS, INC., and
MIKE LEONARD NORTON

Defendants.

INDICTMENT

VIO: 18 U.S.C. §1465
(Transportation of Obscene Matter)
Counts 1 - 4

18 U.S.C. §1461
(Mailing Obscene Matter)
Count 5

18 U.S.C. §1462
(Transportation of Obscene Material Using
a Common Carrier)
Counts 6 - 14

18 U.S.C. §1466
(Engaging in a Business of
Selling or Transferring Obscene Material)
Counts 15 - 17

18 U.S.C. §1467
(Forfeiture Allegation)
Count 18

THE GRAND JURY CHARGES:

COUNTS 1-4

On or about February 6, 2006 through February 9, 2006 in the District of Arizona, and elsewhere the defendants, FIVE STAR VIDEO, L.C., and/or FIVE STAR VIDEO OUTLET, L.C., CHRISTOPHER WARREN ANKENY, and KENNETH JAMES GRAHAM,

1 knowingly used an interactive computer service and other facilities and means of interstate
2 and foreign commerce, to sell and distribute to a location in Northern Virginia, obscene
3 DVDs, identified as:

4	<u>Title</u>	<u>Date</u>
5	Count 1: Gag Factor 18	February 6, 2006
6	Count 2: Filthy Things 6	February 6, 2006
7	Count 3: Gag Factor 15	February 9, 2006
8	Count 4: American Bukkake 13	February 9, 2006

9 In violation of Title 18, United States Code, Sections 1465 and (2)(a).

10 **COUNT 5**

11 On or about February 10, 2006, in the District of Arizona, and elsewhere, the
12 defendants, FIVE STAR VIDEO, L.C., and/or FIVE STAR VIDEO OUTLET, L.C.,
13 knowingly used the United States mails to mail and deliver to a location in Northern
14 Virginia, a DVD containing obscene matter, identified as Gag Factor 15.

15 In violation of Title 18, United States Code, Sections 1461 and (2)(a).

16

17 **COUNTS 6 -7**

18 On or about February 6, 2006 in the District of Arizona, and elsewhere the defendants,
19 FIVE STAR VIDEO, L.C., and/or FIVE STAR VIDEO OUTLET, L.C., CHRISTOPHER
20 WARREN ANKENY, and KENNETH JAMES GRAHAM, knowingly used an express
21 company or other common carrier for carriage in interstate commerce and delivery to a
22 location outside the State of Arizona, of a package which contained DVDs that are obscene,
23 identified as:

24 Count 6: Filthy Things 6

25 Count 7: Gag Factor 18

26 In violation of Title 18, United States Code, Sections 1462 and (2)(a).

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COUNT 8

On or about February 9, 2006 in the District of Arizona, and elsewhere the defendants, FIVE STAR VIDEO, L.C., and/or FIVE STAR VIDEO OUTLET, L.C., CHRISTOPHER WARREN ANKENY, and KENNETH JAMES GRAHAM, knowingly used an express company or other common carrier for carriage in interstate commerce and delivery to a location outside the State of Arizona, of a package which contained a DVD that is obscene, identified as American Bukkake 13.

In violation of Title 18, United States Code, Sections 1462 and (2)(a).

COUNT 9

On or about January 25, 2006 in the District of Arizona, and elsewhere the defendants, JEFF MIKE PRODUCTIONS, INC. and MIKE LEONARD NORTON, knowingly used an express company or other common carrier for carriage in interstate commerce from a location outside the State of Arizona to a location within the State of Arizona, a package which contained a DVD that is obscene, identified as American Bukkake 13.

In violation of Title 18, United States Code, Sections 1462 and (2)(a).

COUNTS 10-12

On or about November 8, 2005 in the District of Arizona, and elsewhere the defendants, JEFF MIKE PRODUCTIONS, INC. and MIKE LEONARD NORTON, knowingly used an express company or other common carrier for carriage in interstate commerce from a location outside the State of Arizona to a location within the State of Arizona, a package which contained DVDs that are obscene, identified as:

- Count 10: Filthy Things 6
- Count 11: Gag Factor 15
- Count 12: Gag Factor 18

In violation of Title 18, United States Code, Sections 1462 and (2)(a).

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COUNTS 13-14

_____ On or about February 28, 2006 in the District of Arizona, and elsewhere the defendants, JEFF MIKE PRODUCTIONS, INC. and MIKE LEONARD NORTON, knowingly used an express company or other common carrier for carriage in interstate commerce from a location outside the State of Arizona to a location within the State of Arizona, a package which contained DVDs that are obscene, identified as:

- Count 13: Gag Factor 15
- Count 14: American Bukkake 13

In violation of Title 18, United States Code, Sections 1462 and (2)(a).

COUNTS 15-17

_____ On or about January 1, 2006, and prior, to April 11, 2006, in the District of Arizona, and elsewhere the defendants, FIVE STAR VIDEO, L.C., and/or FIVE STAR VIDEO OUTLET, L.C., CHRISTOPHER WARREN ANKENNEY and KENNETH JAMES GRAHAM, JEFF MIKE PRODUCTIONS, INC., and MIKE LEONARD NORTON, aided and abetted by each other, while engaged in the business of selling and transferring obscene matter, did knowingly receive and possess with the intent to distribute an obscene matter, that is, three DVDs which are obscene, identified as:

- Count 15: Gag Factor 15
- Count 16: American Bukkake 13
- Count 17: Filthy Things 6

which had been shipped and transported in interstate commerce, all in violation of Title 18, United States Code, Sections 1466 and (2)(a).

FORFEITURE ALLEGATION
COUNT 18

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2
3 1. The allegations of Counts One to Seventeen of this indictment are re-alleged
4 and incorporated by reference as if fully restated here for the purpose of alleging forfeiture
5 pursuant to the provisions of Title 18, United States Code, Section 1467.

6 2. As a result of the violations of Title 18, United States Code, Section 1461,
7 1462, 1465 or 1466, FIVE STAR VIDEO, L.C., and/or FIVE STAR VIDEO OUTLET, L.C.
8 and JEFF MIKE PRODUCTIONS, INC., shall forfeit to the United States, pursuant to Title
9 18, United States Code, Section 1467, all obscene material produced, transported, mailed,
10 shipped and received, and all property, real or personal, constituting or traceable to gross
11 profits or other proceeds obtained from such offense(s), and all property, real or personal,
12 used or intended to be used to commit or to promote the commission of such offense(s).

13 3. The interests of the defendant subject to forfeiture pursuant to Title 18, United
14 States Code, Section 1467 are including but not limited to the following items:

15 (a) All copies of Filthy Things 6, Gag Factor 15, Gag Factor 18 and American
16 Bukkake 13.

17 (b) Gross Profits from the sale of obscene material, to wit: Filthy Things 6, Gag
18 Factor 15, Gag Factor 18 and American Bukkake 13.

19 (c) Ownership and rights to the domain name and website www.fivestardvd.com.

20 4. To the extent that the property described above as being subject to forfeiture
21 pursuant to Title 18, United States Code, Section 1467, as a result of any act or omission of
22 the defendant:

23 (a) cannot be located upon the exercise of due diligence;

24 (b) has been transferred to, sold to, or deposited with a third person;

25 (c) has been placed beyond the jurisdiction of the court;

26 (d) has been substantially diminished in value; or

27 (e) has been commingled with other property that cannot be subdivided

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without difficulty, the United States shall be entitled to forfeiture of substitute property under the provisions of Title 18, United States Code, Section 1467(n).

the court shall order the forfeiture of any other property of the Defendants up to the value of any property described in paragraphs (1) through (3).

5. The above-named Defendants, and each of them, are jointly and severally liable for the forfeiture obligations as alleged above.

A TRUE BILL

FOREPERSON OF THE GRAND JURY
Date: May 23, 2006

PAUL K. CHARLTON
United States Attorney
District of Arizona

BRENT D. WARD
Director, Obscenity Prosecution Task Force

SHEILA PHILLIPS
Trial Attorney