Roehrkasse, Brian

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

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

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

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

WHY 120 DAYS IS NOT REALISTIC

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Examples of Difficult Transition Situations

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

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

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

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

This problem is not new ...

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

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

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

2. **South Dakota:**

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

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

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

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

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

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

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

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

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

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

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

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

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

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- **District of Alaska** – Nelson Cohen

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

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

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

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

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

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

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.

SPH
M&L
10/13

DARRELL E. ISSA
[illegible], California

[illegible]

[illegible]

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

COMMITTEE ON GOVERNMENT REFORM
[illegible]

COMMITTEE ON INTERNATIONAL RELATIONS
[illegible]

COMMITTEE ON THE JUDICIARY
[illegible]

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 reoccurring 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 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

[illegible]

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,

Ed Royce

[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	Buck McKeon
Peter King	Mac Thornberry
Dana Rohrabacher	Wally Herger
Doug Ose	[illegible]
[illegible]	[illegible]
Richard Pombo	Randy "Duke" Cunningham
Bill Thomas	

1008963

DARRELL E. ISSA
49TH DISTRICT, CALIFORNIA

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

COMMITTEE ON GOVERNMENT REFORM
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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.

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.

PRINTED ON RECYCLED PAPER

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,

Darrell Issa
Member of Congress

DIANNE FEINSTEIN
CALIFORNIA

COMMITTEE ON APPROPRIATIONS
COMMITTEE ON ENERGY AND NATURAL RESOURCES
COMMITTEE ON THE JUDICIARY
COMMITTEE ON RULES AND ADMINISTRATION
SELECT COMMITTEE ON INTELLIGENCE

United States Senate

WASHINGTON, DC 20510-0504
http://feinstein.senate.gov

June 15, 2006

Honorable Alberto Gonzales
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Gonzales:

During our meeting last week you asked if I had any concerns regarding the U.S. Attorneys in California. I want to follow up on that point and raise the issue of immigration related prosecutions in Southern California.

It has come to my attention that despite high apprehensions rates by Border Patrol agents along California's border with Mexico, prosecutions by the U.S. Attorney's Office Southern District of California appear to lag behind. A concern voiced by Border Patrol agents is that low prosecution rates have a demoralizing effect on the men and women patrolling our Nation's borders.

It is my understanding that the U.S. Attorney's Office Southern District of California may have some of the most restrictive prosecutorial guidelines nationwide for immigration cases, such that many Border Patrol agents end up not referring their cases. While I appreciate the possibility that this office could be overwhelmed with immigration related cases; I also want to stress the importance of vigorously prosecuting these types of cases so that California isn't viewed as an easy entry point for alien smugglers because there is no fear of prosecution if caught. I am concerned that lax prosecution can endanger the lives of Border Patrol agents, particularly if highly organized and violent smugglers move their operations to the area.

Therefore, I would appreciate responses to the following issues:

- Please provide me with an update, over a 5 year period of time, on the numbers of immigration related cases accepted and prosecuted by the

U.S. Attorney Southern District of California, particularly convictions under sections 1324 (alien smuggling), 1325 (improper entry by an alien), and 1326 (illegal re-entry after deportation) of the U.S. Code.

- What are your guidelines for the U.S. Attorney's Office Southern District of California? How do these guidelines differ from other border sectors nationwide?

By way of example, based on numbers provided to my office by the Bureau of Customs and Border Protection and the U.S. Sentencing Commission, in FY05 Border Patrol agents apprehended 182,908 aliens along the border between the U.S. and Mexico. Yet in 2005, the U.S. Attorney's office in Southern California convicted only 387 aliens for alien smuggling and 262 aliens for illegal re-entry after deportation. When looking at the rates of conviction from 2003 to 2005, the numbers of convictions fall by nearly half.

So I am concerned about these low numbers and I would like to know what steps can be taken to ensure that immigration violators are vigorously prosecuted. I appreciate your timely address of this issue and I look forward to working with you to ensure that our immigration laws are fully implemented and enforced.

Sincerely,

Dianne Feinstein
U.S. Senator

Roehrkasse, Brian

From: Goodling, Monica
Sent: Saturday, March 03, 2007 5:56 PM
To: Moschella, William; Hertling, Richard; Seidel, Rebecca; Scott-Finan, Nancy
Cc: Sampson, Kyle; Elston, Michael (ODAG); Roehrkasse, Brian; Scolinos, Tasia
Subject: USA docs

Attachments: EARS Reports.pdf; Short USA stat talkers.pdf

Will -- Here are two additional docs that you requested on Friday -- short stat doc and a couple of points on the EARS reports. They can be shared publicly as well.

EARS Reports.pdf (26 KB) Short USA stat talkers.pdf (26...

EARS REPORTS ARE NOT EVALUATIONS OF U.S. ATTORNEYS

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

- Because United States Attorneys are appointed by the President and confirmed by the Senate, they do not have formal evaluations or annual performance reviews by their supervisors like other Department employees.

- An "EARS" report is not an evaluation of the performance of a United States Attorney by his or her supervisor. It is a peer review of the legal and administrative procedures and internal controls of the overall United States Attorney's Office that occurs once every three to five years.

- The Evaluation and Review Staff (EARS) of the Executive Office for United States Attorneys (EOUSA) conducts periodic peer reviews of each United States Attorney's Office (USAO) in order to evaluate the overall performance of the entire USAO, make reports, and allow the USAO to take corrective action where needed.

- The EARS program serves as a mechanism by which the USAO and the evaluators can share ideas and innovations, in addition to serving as a means of enhancing communication between EOUSA and the USAO. Evaluation teams are generally comprised of Assistant United States Attorneys and administrative staff from other USAOs who volunteer to evaluate their peers -- they are not professional auditors nor inspectors. The teams do not include other United States Attorneys.

Additional Background:

- Evaluators make recommendations for improving the operation of the USAO, analyzing the legal and administrative operations of the office and providing feedback and recommendations to the United States Attorney. The evaluation team relies on experienced AUSAs and USAO staff from all over the country, and is led by an AUSA. The evaluators are in an office for a maximum of one week, during which they interview all civil and criminal AUSA's at the USAO, as well as the administrative staff and some members of the support staff. In addition, the evaluation team interviews the district judges, some circuit judges, magistrate judges, bankruptcy judges, the Clerk of Court, the Probation Officer, other court personnel, the United States Marshal, representatives of the district's major civil and law enforcement agencies, the OCDETF Regional Coordinator, and any other federal officials or persons that appear appropriate to the USAO point-of-contact and the team leader. Employees at non-federal agencies, such as local prosecutors and police chiefs, may also be interviewed.

- The evaluation team produces a draft report, which is sent to the United States Attorney of the reviewed district for a response. Approximately three to four months after the response has been received, a follow-up evaluator or team visits the USAO review corrective measures, provide assistance to the district, assess the performance of the evaluation team, and produce a follow-up report. Once that report has been received, the EARS staff prepares a final evaluation report, which is approximately 6-12 pages in length. The final report is a narrative summary of the assessments and evaluations from the draft report that have been verified during the response and follow-up process, and of the corrective actions taken by the USAO regarding those recommendations. Completion of a final report takes between 235-265 days after the completion of the evaluation team's visit.

THIS ADMINISTRATION IS COMMITTED TO FILLING U.S. ATTORNEY VACANCIES THROUGH NOMINATION AND SENATE CONFIRMATION

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.

- There have been **124 confirmations** of new U.S. Attorneys since January 20, 2001.

- Since March 9, 2006, when the AG's appointment authority was amended, the Administration **has continued to nominate individuals, and has submitted 16 nominations** for U.S. Attorney vacancies (12 have been confirmed to date).

- Since March 9, 2006, when the appointment authority was amended, **18 new vacancies have been created and the Administration has already nominated 6 candidates for those positions – so nominations to fill one-third of those vacancies have been submitted.** In addition to the 6 nominations (3 have been confirmed to date), the Administration has interviewed candidates for 8 more vacancies and has several individuals in background investigations, and is waiting to receive names to set up interviews for the remaining positions – all in consultation with home-state Senators.

- It takes time to develop a nomination. The **average number of days between the resignation of one Senate-confirmed U.S. Attorney and the President's nomination of a candidate for Senate consideration is 273 days** (including 250 USAs during the Clinton Administration and George W. Bush Administration to date). The **average number of days between the nomination of a new U.S. Attorney candidate and Senate confirmation has been 58 days for President George W. Bush's USA nominees** (note - the majority were submitted to a Senate controlled by the same party as the President). Altogether, this demonstrates that it has taken a **combined average of 331 days from resignation of one USA to confirmation of the next.**

The 18 Newest 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 initially selected** to lead the office and took over under the Vacancy Reform Act's provision, **but then retired, at which time the Attorney General selected 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.

Altogether, the Attorney General Has Made 14 Interim Appointments Since the Law's Amendment:

- **In 2 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 until such time as a nomination is submitted to the Senate.

- **In 1 case, the FAUSA had been serving as acting United States Attorney** under the VRA, **but the VRA's 210-day period expired and the Attorney General appointed another Department employee to serve as interim** United States Attorney until a nomination can be submitted.

- **In 1 case, the First Assistant was initially selected** to lead the office and took over under the Vacancy Reform Act's provision, **but then retired, at which time the Attorney General selected 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 originally 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.

Roehrkasse, Brian

From: Scolinos, Tasia
Sent: Monday, March 05, 2007 2:35 PM
To: Sampson, Kyle; McNulty, Paul J; Moschella, William; Hertling, Richard; Battle, Michael (USAEO)
Cc: Elston, Michael (ODAG); Roehrkasse, Brian; Goodling, Monica; Washington, Tracy T
Subject: Re:

Works for me

-----Original Message-----
From: Sampson, Kyle
To: McNulty, Paul J; Moschella, William; Hertling, Richard; Scolinos, Tasia; Battle, Michael (USAEO)
CC: Elston, Michael (ODAG); Roehrkasse, Brian; Goodling, Monica; Washington, Tracy T
Sent: Mon Mar 05 14:30:17 2007
Subject: FW:

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

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

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

OPA000000033

Roehrkasse, Brian

From: Hertling, Richard
Sent: Monday, March 05, 2007 2:38 PM
To: Sampson, Kyle; McNulty, Paul J; Moschella, William; Scolinos, Tasia; Battle, Michael (USAEO)
Cc: Elston, Michael (ODAG); Roehrkasse, Brian; Goodling, Monica; Washington, Tracy T
Subject: Re:

I will rearrange my schedule to make myself available to meet everyone else's schedule. 5 will work.

-----Original Message-----
From: Sampson, Kyle
To: McNulty, Paul J; Moschella, William; Hertling, Richard; Scolinos, Tasia; Battle, Michael (USAEO)
CC: Elston, Michael (ODAG); Roehrkasse, Brian; Goodling, Monica; Washington, Tracy T
Sent: Mon Mar 05 14:30:17 2007
Subject: FW:

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Sent: Monday, March 05, 2007 1:57 PM
To: Sampson, Kyle
Subject:

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Roehrkasse, Brian

From: Hertling, Richard
Sent: Monday, March 05, 2007 4:15 PM
To: McNulty, Paul J; Moschella, William; Elston, Michael (ODAG); Scolinos, Tasia; Roehrkasse, Brian
Subject: Re: Southern California stats

Can we provide these numbers to folks on the Hill?

-----Original Message-----
From: McNulty, Paul J
To: Moschella, William; Elston, Michael (ODAG); Hertling, Richard; Scolinos, Tasia; Roehrkasse, Brian
Sent: Mon Mar 05 16:13:52 2007
Subject: Southern California stats

From EOUSA's statistics. Pay special attention to the last point about the drop in immigration cases over the past two years. The combination of that fact plus Sen Feinstein's letter on the same subject, should make the case.

Gun Prosecutions in SDCA:

--- 88 gun cases in five years ('02 - '06) (during those same years, SDAL, where Sen Sessions was USA, with 1/5th the resources, prosecuted 439 cases.)

--- Only Guam and the Virgin Islands had a worst record during that same stretch.

Immigration prosecutions in SDCA:

--- Both in cases and defendants, SDCA is 4th of the 5 border districts from '02 - '06 (New Mexico is lower but has only about half the prosecutors).

--- The most striking thing is that SDCA immigration prosecutions dropped by more than 40% from '04 to '06, just when the President was pushing for tougher enforcement at the border. Also, Arizona was down 15% during this same time even though it was given more prosecutors. The other 3 districts increased their caseloads.

OPA000000035

Roehrkasse, Brian

Subject:	Updated: U.S. Attorneys Meeting
Location:	EEOB Room 211
Start:	Mon 3/5/2007 5:00 PM
End:	Mon 3/5/2007 6:00 PM
Recurrence:	(none)
Meeting Status:	Accepted
Required Attendees:	Sampson, Kyle; Goodling, Monica; Moschella, William; Elston, Michael (ODAG); Battle, Michael (USAEO); Hertling, Richard; Scolinos, Tasia; Roehrkasse, Brian

When: Monday, March 05, 2007 5:00 PM-6:00 PM (GMT-05:00) Eastern Time (US & Canada).
Where: EEOB Room 211

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

Attendees: Will Moschella, Mike Elston, Kyle Sampson, Monica Goodling, Mike Battle, Richard Hertling, Tasia Scolinos, Brian Roehrkasse

POC: Winnie

OPA000000036

March 05, 2007

Monday

March 2007						
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April 2007						
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7 am

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9

10 00

11 00 Updated: House Judiciary Committee Hearing Prep (ODAG Conference Room 4135)

12 pm

1

2

3 00 Updated: House Judiciary Committee Hearing Prep (continuation) (ODAG Conference Room 4135)

4 00

5 00 Updated: U.S. Attorneys Meeting (EEOB Room 211)

6 00

TaskPad

TaskPad

Notes

OPA000000037

Roehrkasse, Brian

From: Hertling, Richard
Sent: Monday, March 05, 2007 8:01 PM
To: Moschella, William; Scolinos, Tasia; Scott-Finan, Nancy; Goodling, Monica; Roehrkasse, Brian
Cc: Silas, Adrien; Sampson, Kyle
Subject: RE: Revised testimony

If there are no further comments, we will make Tasia's first change and retain the examples. Kyle, still awaiting your blessing. Once we get that, we will send to OMB.

From: Moschella, William
Sent: Monday, March 05, 2007 7:59 PM
To: Hertling, Richard; Scolinos, Tasia; Scott-Finan, Nancy; Goodling, Monica; Roehrkasse, Brian
Cc: Silas, Adrien; Sampson, Kyle
Subject: RE: Revised testimony

I agree with the first point and would leave the examples in. When a court does something stupid down the road, it will serve as an "I told you so."

From: Hertling, Richard
Sent: Monday, March 05, 2007 7:46 PM
To: Scolinos, Tasia; Scott-Finan, Nancy; Goodling, Monica; Moschella, William; Roehrkasse, Brian
Cc: Silas, Adrien; Sampson, Kyle
Subject: RE: Revised testimony

Yes, we can edit the opening graf per your suggestion. Am ambivalent about removing the examples that help to explain why our position is not a far-fetched one. I am trying to get the Senate to pass the Feinstein bill tomorrow night in wrap-up if at all possible, so I think our testimony will be secondary. Still, if people want them out, I will not fight to keep them.

From: Scolinos, Tasia
Sent: Monday, March 05, 2007 7:44 PM
To: Scott-Finan, Nancy; Goodling, Monica; Moschella, William; Roehrkasse, Brian
Cc: Hertling, Richard; Silas, Adrien; Sampson, Kyle
Subject: RE: Revised testimony

Can we edit this first graph to read:
"As previously noted by the Attorney General and the Deputy Attorney General in their testimony, the Department of Justice has some concern about H.R. 580, the "Preserving United States Attorneys Independence Act of 2007"; however, the Department is willing to work with the Committee in an effort to reach common ground on this important issue."

I also am not sure that I would keep in the examples. It reads to me like we are continuing to dig in on the legislation and at this point we just want it to move. The press will be focused on the other action at the hearing and since we are going to go along with the legislation we don't get much out of continuing to argue it is a bad idea at this point.

From: Scott-Finan, Nancy
Sent: Monday, March 05, 2007 7:27 PM
To: Goodling, Monica; Moschella, William; Scolinos, Tasia; Roehrkasse, Brian
Cc: Hertling, Richard; Silas, Adrien
Subject: RE: Revised testimony

<< File: DRAFT Moschella Testimony4.wpd >> This version has all of Monica's edits from Friday. Do we have any other comments? Going once, going twice??????

From: Goodling, Monica

OPA000000038

Sent: Monday, March 05, 2007 7:01 PM
To: Scott-Finan, Nancy; Moschella, William; Scolinos, Tasia; Roehrkasse, Brian
Cc: Hertling, Richard; Silas, Adrien
Subject: RE: Revised testimony

I'll defer to others on whether this is still too leg heavy, but I had a few fixes from Friday that didn't make it into this draft. Please correct the below three paragraphs. Thanks!

Since January 20, 2001, 124 new U.S. Attorneys have been nominated by the President and confirmed by the Senate. On March 9, 2006, the Congress amended the Attorney General's authority to appoint interim U.S. Attorneys, and 18 vacancies have occurred since that date. This amendment has not changed our commitment to nominating candidates for Senate confirmation. In fact, the Administration has nominated a total of 16 individuals for Senate consideration since the appointment authority was amended, with 12 of those nominees having been confirmed to date. Of the 18 vacancies that have occurred since the time that the law was amended, the Administration has nominated candidates to fill six of these positions, has interviewed candidates for nomination for eight more positions, and is waiting to receive names to set up interviews for the remaining positions—all in consultation with home-state Senators.

Also:

Two examples demonstrate the shortcomings of the previous system and the system contemplated in H.R. 580. During President Reagan's Administration, the district court appointed in the Southern District of West Virginia an interim U.S. Attorney who was neither a Justice Department employee nor an individual who had been subject of a FBI background review. The court-appointed U.S. Attorney, who had ties to a political party, sought access to law-enforcement sensitive investigative materials related to the office's most sensitive public corruption investigation, which was targeting a state-wide leader of the same party. The problem was that the interim U.S. Attorney had no clearances or had then undergone a background investigation so that the Attorney General and the Federal Bureau of Investigation could have complete confidence in the individual or her reasons for making inquiries into the case. The appointment forced the Department to remove the case files from the U.S. Attorney's office in order to protect the integrity of the investigation and prohibit the U.S. Attorney from making any additional inquiries into the case. In addition, the Department expedited a nomination for the permanent U.S. Attorney and with the extraordinary assistance of the Senate, he was confirmed to replace the court-appointed individual within a few weeks.

In a second case, occurring in 2005, the district court attempted to appoint an individual who similarly was not a Department of Justice or federal employee and had never undergone the appropriate background check. As a result, this individual could have no access to classified information. This individual could not receive information from his district's anti-terrorism coordinator, its Joint Terrorism Task Force, or its Field Intelligence Group. In a post 9/11 world, this situation was unacceptable.

From: Scott-Finan, Nancy
Sent: Monday, March 05, 2007 6:38 PM
To: Moschella, William; Goodling, Monica; Scolinos, Tasia; Roehrkasse, Brian
Cc: Hertling, Richard; Silas, Adrien
Subject: Revised testimony

Attached is the revised testimony. Please get back to me with any changes or comments ASAP << File: DRAFT Moschella Testimony4.wpd >>

Roehrkasse, Brian

From: Scolinos, Tasia
Sent: Monday, March 05, 2007 8:06 PM
To: Moschella, William; Hertling, Richard; Scott-Finan, Nancy; Goodling, Monica; Roehrkasse, Brian
Cc: Silas, Adrien; Sampson, Kyle
Subject: Re: Revised testimony

Aren't we already on the record saying we think it is a bad idea and giving examples why? I am concerned we look a little goofy by highlighting why it is bad policy again at the same time saying we don't have the backbone to really oppose it.

-----Original Message-----
From: Moschella, William
To: Hertling, Richard; Scolinos, Tasia; Scott-Finan, Nancy; Goodling, Monica; Roehrkasse, Brian
CC: Silas, Adrien; Sampson, Kyle
Sent: Mon Mar 05 19:59:27 2007
Subject: RE: Revised testimony

I agree with the first point and would leave the examples in. When a court does something stupid down the road, it will serve as an "I told you so."

From: Hertling, Richard
Sent: Monday, March 05, 2007 7:46 PM
To: Scolinos, Tasia; Scott-Finan, Nancy; Goodling, Monica; Moschella, William; Roehrkasse, Brian
Cc: Silas, Adrien; Sampson, Kyle
Subject: RE: Revised testimony

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From: Scolinos, Tasia
Sent: Monday, March 05, 2007 7:44 PM
To: Scott-Finan, Nancy; Goodling, Monica; Moschella, William; Roehrkasse, Brian
Cc: Hertling, Richard; Silas, Adrien; Sampson, Kyle
Subject: RE: Revised testimony

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"As previously noted by the Attorney General and the Deputy Attorney General in their testimony, the Department of Justice has some concern about H.R. 580, the "Preserving United States Attorneys Independence Act of 2007"; however, the Department is willing to work with the Committee in an effort to reach common ground on this important issue."

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From: Scott-Finan, Nancy
Sent: Monday, March 05, 2007 7:27 PM
To: Goodling, Monica; Moschella, William; Scolinos, Tasia; Roehrkasse, Brian
Cc: Hertling, Richard; Silas, Adrien
Subject: RE: Revised testimony

OPA000000040

<< File: DRAFT Moschella Testimony4.wpd >> This version has all of Monica's edits from Friday. Do we have any other comments? Going once, going twice??????

From: Goodling, Monica
Sent: Monday, March 05, 2007 7:01 PM
To: Scott-Finan, Nancy; Moschella, William; Scolinos, Tasia; Roehrkasse, Brian
Cc: Hertling, Richard; Silas, Adrien
Subject: RE: Revised testimony

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Since January 20, 2001, 124 new U.S. Attorneys have been nominated by the President and confirmed by the Senate. On March 9, 2006, the Congress amended the Attorney General's authority to appoint interim U.S. Attorneys, and 18 vacancies have occurred since that date. This amendment has not changed our commitment to nominating candidates for Senate confirmation. In fact, the Administration has nominated a total of 16 individuals for Senate consideration since the appointment authority was amended, with 12 of those nominees having been confirmed to date. Of the 18 vacancies that have occurred since the time that the law was amended, the Administration has nominated candidates to fill six of these positions, has interviewed candidates for nomination for eight more positions, and is waiting to receive names to set up interviews for the remaining positions—all in consultation with home-state Senators.

Also:

Two examples demonstrate the shortcomings of the previous system and the system contemplated in H.R. 580. During President Reagan's Administration, the district court appointed in the Southern District of West Virginia an interim U.S. Attorney who was neither a Justice Department employee nor an individual who had been subject of a FBI background review. The court-appointed U.S. Attorney, who had ties to a political party, sought access to law-enforcement sensitive investigative materials related to the office's most sensitive public corruption investigation, which was targeting a state-wide leader of the same party. The problem was that the interim U.S. Attorney had no clearances or had then undergone a background investigation so that the Attorney General and the Federal Bureau of Investigation could have complete confidence in the individual or her reasons for making inquiries into the case. The appointment forced the Department to remove the case files from the U.S. Attorney's office in order to protect the integrity of the investigation and prohibit the U.S. Attorney from making any additional inquiries into the case. In addition, the Department expedited a nomination for the permanent U.S. Attorney and with the extraordinary assistance of the Senate, he was confirmed to replace the court-appointed individual within a few weeks.

In a second case, occurring in 2005, the district court attempted to appoint an individual who similarly was not a Department of Justice or federal employee and had never undergone the appropriate background check. As a result, this individual could have no access to classified information. This individual could not receive information from his district's anti-terrorism coordinator, its Joint Terrorism Task Force, or its Field Intelligence Group. In a post 9/11 world, this situation was unacceptable.

From: Scott-Finan, Nancy
Sent: Monday, March 05, 2007 6:38 PM
To: Moschella, William; Goodling, Monica; Scolinos, Tasia; Roehrkasse, Brian
Cc: Hertling, Richard; Silas, Adrien
Subject: Revised testimony

Attached is the revised testimony. Please get back to me with any changes or comments ASAP << File: DRAFT Moschella Testimony4.wpd >>

OPA000000041

Roehrkasse, Brian

From: Scolinos, Tasia
Sent: Monday, March 05, 2007 10:52 AM
To: 'Bartlett, Dan'; Martin, Catherine
Cc: Roehrkasse, Brian
Subject: US Attorney Hearing: DRAFT Talking Points

Attachments: 1340525209-attorney letter.doc

attorney letter.doc
(27 KB)

Dan/Cathie -

In preparation for tomorrow's hearing where six of the dismissed US Attorneys will be testifying, we have drafted some talking points that we were going to insert into Will Moschella's testimony (the DOJ witness) that get out the message that although we stand by the decision to remove these folks the process by which they were informed was not optimal. Right now the coverage will be dominated by how qualified these folks were and their theories for their dismissals. We are trying to muddy the coverage up a bit by trying to put the focus on the process in which they were told - I suspect we are going to get to the point where DOJ has to say this anyway. First, it is true. Second, we are having morale problems with our other US Attorneys who understand the decision but think that these folks were not treated well in the process. I think from an internal management perspective it needs to be said.

We are also discussing internally if we can/should release more information about why these folks were let go if we can address the privacy act aspects. I think it cuts both ways - it does prolong the story in a sense because I suspect that the US Attorneys will just go away at some point when they feel they have vindicated their reputations. On the other hand, I don't know if the Senate Dems will let this go until it is all out in the open. Let me know your thoughts. Thanks.

Draft Talking Points for 3/6 Hearing:

- One of the most important responsibilities the Attorney General has is to effectively manage the Department of Justice, including its thousands of employees.
- Managers, as you know, often times have to make difficult decisions for the betterment of the organization.
- It is vitally important that the Department take all necessary steps to ensure that its policies and priorities are served in a consistent manner. This is especially true of those who have the high privilege of serving as presidential appointees.
- DOJ Presidential appointees, both at Main Justice and in the field, are tasked with making prosecutorial decisions but that responsibility does not change or alter in any way the fact that they serve at the pleasure of the President and if they are not executing their responsibilities in a manner that furthers the management and policy goals of departmental leadership it is appropriate that they be replaced with other individuals.
- At a time when America's well being is threatened by terrorism, violent gangs, child predators and corruption in business and government, this responsibility has never been clearer.

- It is also important to note that the Clinton Administration fired all existing U.S. Attorneys when he took office presumably to put in individuals who understood the priorities of his Administration. Removing our own political appointees is not substantively different than that decision.
- That said, it is also important that the Department's management actions be prudently executed once a decision is made.
- The process by which the U.S. attorneys were informed of our decision fell short of this standard. We should have informed the individuals at the time we asked for their resignations of the various matters relating to policy, priorities and management justifying our actions.
- Our intention in not providing a full explanation initially was to avoid protracted discussions and make these difficult discussions as non-inflammatory as possible for those being asked to resign.
- In hindsight, although the Department continues to believe our decision to remove these individuals was the correct one, it would have been much better to have addressed the relevant issues up front with them.
- All of the United States Attorneys asked to resign in this matter are professionals and we appreciate their service. I have no doubt that they will achieve success in their future endeavors along with approximately 40 other U.S. Attorneys who have left their posts for various reasons over the last six years.
- The Department remains focused on making sure that the good work being done by the career lawyers in all of those offices across the country continues uninterrupted and that qualified candidates are nominated as soon as possible for those positions.

Draft Talking Points for 3/6 Hearing:

- One of the most important responsibilities the Attorney General has is to effectively manage the Department of Justice, including its thousands of employees.
- Managers, as you know, often times have to make difficult decisions for the betterment of the organization.
- It is vitally important that the Department take all necessary steps to ensure that its policies and priorities are served in a consistent manner. This is especially true of those who have the high privilege of serving as presidential appointees.
- DOJ Presidential appointees, both at Main Justice and in the field, are tasked with making prosecutorial decisions but that responsibility does not change or alter in any way the fact that they serve at the pleasure of the President and if they are not executing their responsibilities in a manner that furthers the management and policy goals of departmental leadership it is appropriate that they be replaced with other individuals.
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- All of the United States Attorneys asked to resign in this matter are professionals and we appreciate their service. I have no doubt that they will achieve success in their future endeavors along with the other (56?) U.S. Attorneys who have left their posts for various reasons over the last six years.
- The Department remains focused on making sure that the good work being done by the career lawyers in all of those offices across the country continues uninterrupted and that qualified candidates are nominated as soon as possible for those positions.

Roehrkasse, Brian

From: Scolinos, Tasia
Sent: Tuesday, March 06, 2007 10:49 AM
To: Moschella, William
Cc: Roehrkasse, Brian
Subject: RE: Moschella Oral Testimony

can you send me the talking points on each of the US Attorneys that you are going to use? thanks

---

From: Moschella, William
Sent: Tuesday, March 06, 2007 9:48 AM
To: 'Oprison, Christopher G.'
Cc: Sampson, Kyle; Kelley, William K.; Scudder, Michael Y.; Fielding, Fred F.; Gibbs, Landon M.; Scolinos, Tasia; McNulty, Paul J; Elston, Michael (ODAG); Goodling, Monica
Subject: RE: Moschella Oral Testimony

All, attached is the final document. We accepted all of Chris's proposed changes. I have made some other small minor tweaks and those are tracked so that you can see them in "moschellafinal.1.doc" and the clean version is "moschellafinal.2.doc".

From: Oprison, Christopher G. [mailto:Christopher_G._Oprison@who.eop.gov]
Sent: Monday, March 05, 2007 9:33 PM
To: Moschella, William
Cc: Sampson, Kyle; Kelley, William K.; Scudder, Michael Y.; Fielding, Fred F.; Gibbs, Landon M.
Subject: RE: Moschella Oral Testimony

Will - attached please find a redlined version with suggested edits. Thanks

Chris

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Monday, March 05, 2007 8:43 PM
To: Oprison, Christopher G.
Cc: Moschella, William
Subject: RE: Moschella Oral Testimony

Thx, Chris. Will now has the pen, so please send the comments to him directly (but cc me, if you would). Thx!

From: Oprison, Christopher G. [mailto:Christopher_G._Oprison@who.eop.gov]
Sent: Monday, March 05, 2007 8:40 PM
To: Sampson, Kyle
Subject: RE: Moschella Oral Testimony

we are gathering comments and should have this back to you shortly

---

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Monday, March 05, 2007 7:25 PM

To: Kelley, William K.
Cc: Oprison, Christopher G.
Subject: Moschella Oral Testimony
Importance: High

Bill, can you forward this on to Dana and Cathie (and whomever else in the White House you deem appropriate) for review and approval? Thanks!

<<Moschella Oral Statement.doc>>

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

Roehrkasse, Brian

From: Hertling, Richard
Sent: Tuesday, March 06, 2007 1:38 PM
To: Sampson, Kyle; Goodling, Monica; Roehrkasse, Brian; Scolinos, Tasia
Subject: FW: Cummins email for WEM review

Attachments: Cummins Email.pdf

-----Original Message-----
From: Wade, Jill C
Sent: Tuesday, March 06, 2007 12:32 PM
To: Hertling, Richard
Subject: Fw: Cummins email for WEM review

Sorry thought I cc'd you

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

-----Original Message-----
From: Wade, Jill C
To: Moschella, William; Scott-Finan, Nancy
CC: Seidel, Rebecca
Sent: Tue Mar 06 11:50:08 2007
Subject: Cummins email for WEM review

I would not be surprised if this email is raised at WEM hearing today. See attached. (I faxed to catalina just now bc I am on Hill). I will have a summary from this SJC hearing on us atty resignations asap. Hearing is still going strong.

J

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

Cummins Email.pdf
(58 KB)

-----Ori inal Message-----
From: Cabral, Catalina
To: Wade, Jill C; Scott-Finan, Nancy
Sent: Tue Mar 06 11:30:50 2007
Subject:

<<Cummins Email.pdf>>

Catalina Cabral
U.S. DEPARTMENT OF JUSTICE

Office of Legislative Affairs
Catalina.Cabral@USDOJ.gov
(202) 514-4828

Roehrkasse, Brian

Subject:	Hearing on US Attorney Removal
Location:	2141 Rayburn
Start:	Tue 3/6/2007 2:00 PM
End:	Tue 3/6/2007 4:30 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

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

OPA000000049

Roehrkasse, Brian

From: Sours, Raquel
Sent: Tuesday, March 06, 2007 3:59 PM
To: Sampson, Kyle; Goodling, Monica; Moschella, William; Elston, Michael (ODAG); Mercer, Bill (USAMT); Hertling, Richard; Scolinos, Tasia; Roehrkasse, Brian
Subject: TIME CHANGE: US Attorneys Discussion

Importance: High

The US Attorney's meeting will begin at 4pm --- please head to the AG's conference room.

Thanks

Subject: US Attorneys Discussion

Start: Tue 3/6/2007 4:00 PM
End: Tue 3/6/2007 4:30 PM

Recurrence: (none)

Meeting Status: Meeting organizer

Required Attendees: Sampson, Kyle; Goodling, Monica; Moschella, William; Elston, Michael (ODAG); Mercer, William W; Hertling, Richard; Scolinos, Tasia; Roehrkasse, Brian

AG's Conference Room
AO: Kyle Sampson DOJ: Monica Goodling, Will Moschella, Mike Elston, Bill Mercer, Richard Hertling, Tasia Scolinos, Brian Roehrkasse

TIME HAS NOW BEEN CONFIRMED

March 06, 2007

Tuesday

March 2007						
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April 2007						
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11 00

12 pm

1 00

2 00 Hearing on US Attorney Removal (2141 Rayburn)

3 00

4 00

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6 00

TaskPad

TaskPad

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OPA000000051

Scolinos, Tasia

From: Hertling, Richard
Sent: Thursday, January 11, 2007 4:35 PM
To: Roehrkasse, Brian; Moschella, William; Goodling, Monica; Sampson, Kyle; Elston, Michael (ODAG)
Cc: Scolinos, Tasia
Subject: RE: Press calls are coming in to OPA

And who is best equipped to do a paper for the AG prep on this? EOUSA or ODAG?

-----Original Message-----
From: Roehrkasse, Brian
Sent: Thursday, January 11, 2007 4:33 PM
To: Moschella, William; Goodling, Monica; Sampson, Kyle; Elston, Michael (ODAG); Hertling, Richard
Cc: Scolinos, Tasia
Subject: RE: Press calls are coming in to OPA

Mike, I think you should help background if necessary, but I'd like to see the talking points. Who has them? Nowacki said he developed some that he isn't sure are cleared yet?

-----Original Message-----
From: Moschella, William
Sent: Thursday, January 11, 2007 4:32 PM
To: Goodling, Monica; Roehrkasse, Brian; Sampson, Kyle; Elston, Michael (ODAG); Hertling, Richard
Subject: Re: Press calls are coming in to OPA

Adding Richard. We should make sure R's are educated. I would hate to lose this provision.

AG will need a paper on this.

Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: Goodling, Monica
To: Roehrkasse, Brian; Sampson, Kyle; Elston, Michael (ODAG); Moschella, William
Sent: Thu Jan 11 16:15:42 2007
Subject: Press calls are coming in to OPA

Brian - This is why you're getting calls… from Sen. Pryor's website.
Press Release
January 11, 2007

Senators Feinstein, Leahy, Pryor to Fight Administration's Effort to Circumvent Senate Confirmation Process for U.S. Attorneys
Washington, DC – U.S. Senators Dianne Feinstein (D-Calif.), Patrick Leahy (D-Vt.), and Mark Pryor (D-Ark.) today introduced legislation to prevent circumvention of the Senate's constitutional prerogative to confirm U.S. Attorneys.
"It has come to our attention that the Bush Administration is pushing out U.S. Attorneys from across the country under the cloak of secrecy and then appointing indefinite replacements without Senate confirmation. We know that this is not an isolated occurrence, but we don't know how many U.S. Attorneys have been asked to resign – it could be two, it could be ten, it could be more. No one knows," Senator Feinstein said.
"And, we have no idea why this is happening. The Attorney General could have legitimate reasons for asking for specific resignations, or this could be motivated by political concerns or worse, derailing on-going investigations. Again, we just don't know.
"We believe that this use of expanded executive authority to appoint interim replacements

indefinitely undermines essential constitutional checks and balances. It creates unnecessary instability in these offices and has dramatic implications for important cases currently underway. Given all that is going on with this country and the message from the American people this past election, I am surprised that the Administration would pursue a strategy to circumvent the Senate confirmation process and unsettle these important positions.

"U.S. Attorneys around the country are working on public corruption cases, terrorism cases, narcotics and drug trafficking, fighting gangs and violent crime. Which of these cases are impacted by the Attorney General's actions has yet to be determined," Senator Feinstein continued.

"The bottom line is this: U.S. Attorneys are handling major cases that need continuity and leadership. The bill we are introducing today would restore temporary appointment authority to the District Court in which a vacancy arises until a new nominee can be sent to the Senate for confirmation."

"U.S. Attorneys are the key federal law enforcement officers of their states and hold enormous responsibility for implementing anti-terrorism efforts, prosecuting important and often complex cases, and leading the fight against public corruption," said Senator Leahy, a former prosecutor. "Political gerrymandering of these important posts is wrong and an affront to our criminal justice system. It is vital that those holding these critical positions be free from any inappropriate influence and subject to the check and balance of the confirmation process."

"Arkansas has learned first hand the unintended consequence of a little known provision in the Patriot Act," Senator Pryor said. "Unfortunately, the spirit and intent in which this provision was constructed has been abused and needs to be corrected. It appears that the Administration has chosen to use this provision, which was intended to help protect our nation, to circumvent the transparent Constitutional Senate confirmation process to reward political allies."

In a little noticed provision included in the Patriot Act reauthorization last year, the Administration's authority to appoint interim U.S. Attorneys was greatly expanded. The law was changed so that if a vacancy arises the Attorney General may appoint a replacement for an indefinite period of time – thus completely avoiding the Senate confirmation process. The authority to fill U.S. Attorney vacancies on an interim basis was first given to the Attorney General in 1986, but the interim position was valid for a period of only 120 days. And prior to 1986, District Courts had the authority to appoint interim U.S. Attorneys when positions became vacant.

Senators Feinstein, Leahy, and Pryor have learned that the Department of Justice has asked several U.S. Attorneys from around the country to resign their positions prior to the end of their terms without cause. The number of U.S. Attorneys, currently or historically, who have been asked to resign their positions without cause is still unknown.

The measure introduced by Senators Feinstein, Leahy, and Pryor would amend the current statute and restore appointment authority to the District Court within which the vacancy arises.

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OPA000000053

Scolinos, Tasia

From: Moschella, William
Sent: Thursday, January 11, 2007 6:53 PM
To: Goodling, Monica; Scolinos, Tasia; Roehrkasse, Brian; Sampson, Kyle; Elston, Michael (ODAG)
Subject: Re: Draft talkers

In the last bullet, which was based on an email I sent earlier, replace "unconstitutional" with "constitutionally suspect" given that I have noy received an official opinion from OLC.

Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: Goodling, Monica
To: Scolinos, Tasia; Roehrkasse, Brian; Sampson, Kyle; Elston, Michael (ODAG); Moschella, William
Sent: Thu Jan 11 17:28:17 2007
Subject: Draft talkers

<<Appointments.doc>>

U.S. Attorney Appointments by the Attorney General:

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

* When a United States Attorney submits his or her resignation, the Administration has -- in every case -- consulted with home-state Senators regarding candidates for the Presidential nomination and Senate confirmation. The Administration continues to be committed to working to nominate a candidate for Senate consideration in every case that a vacancy is created, as evidenced by the fact that there have been 125 confirmations of new U.S. Attorneys since January 20, 2001.

* With 93 U.S. Attorney positions across the country, the Department has often averaged 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 at the outgoing U.S. Attorney; indicates that he/she does not want to serve as Acting; 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.

Usage Since the Change in the Law:

* Since March 9, 2006, when the appointment authority was amended, there have been 11 vacancies created by outgoing U.S. Attorneys. Of the 11 vacancies, the Administration

nominated candidates to fill four of these positions and has interviewed candidates for the other 7 positions.

* The 11 vacancies were filled as follows:

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

· In 5 cases, the Department selected another Department employee to serve as interim.

· In 1 case, the First Assistant resigned at the same time as the U.S. Attorney, creating a need for an interim.

The Statute:

* 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 staff on behalf of the agency. In early 2006, the statute that authorizes the appointment of interim United States Attorneys (28 U.S.C. § 546) was amended by section 502 of Public Law 109-177 to eliminate the provision of a 120-day appointment. Due to the change in the law, the Attorney General now appoints interim United States Attorneys to serve until the nomination and confirmation of a United States Attorney under 28 U.S.C. § 541. The way the statute previously worked was that, in the case of an AG interim appointment, the federal district judge appointed the U.S. Attorney after 120 days.

* The statute was amended for several reasons: 1) the previous provision was unconstitutional and the Senate respects the Constitution; 2) some federal judges, recognizing the inherent problems, have refused to do appoint, creating a situation where the Attorney General had to do multiple 120-day appointments; 3) a small number of federal judges, disregarding the Constitutional issues, attempted to appoint individuals other than those proposed by the Department – in one case, someone who had never been a federal government official and hence had never been subject of the standard U.S. Attorney national security clearance process.

OPA000000055

Scolinos, Tasia

From: Roehrkasse, Brian
Sent: Thursday, January 18, 2007 1:52 PM
To: Scolinos, Tasia; Sampson, Kyle; Goodling, Monica
Subject: FW: District of NV News Release Attached

Attachments: DAN BOGDEN NEWS RELEASE.pdf

From: Smith, Kimberly A
Sent: Thursday, January 18, 2007 1:52 PM
To: Roehrkasse, Brian
Subject: FW: District of NV News Release Attached

FYI

From: Collins, Natalie (USANV) [mailto:Natalie.Collins@usdoj.gov]
Sent: Thursday, January 18, 2007 1:51 PM
To: Battle, Michael (USAEO)
Cc: Smith, Kimberly A
Subject: District of NV News Release Attached

DAN BOGDEN
:WS RELEASE.pdf (7

U.S. Department of Justice

United States Attorney
District of Nevada

Daniel G. Bogden
United States Attorney

333 Las Vegas Boulevard South
Suite 5000
Las Vegas, NV 89101

(702) 388-6336
FAX: (702) 388-6296

NEWS RELEASE
FOR IMMEDIATE RELEASE:
WEDNESDAY, JANUARY 17, 2007

PRESS CONTACTS:
Natalie Collins, Public Affairs Specialist (702) 388-6508
District Internet Site - http://www.usdoj.gov/usao/nv/

UNITED STATES ATTORNEY FOR THE DISTRICT OF NEVADA ANNOUNCES RESIGNATION

LAS VEGAS - - United States Attorney Daniel G. Bogden announced today that he will be leaving his position as the United States Attorney for the District of Nevada, effective February 28, 2007. "It has been both a great honor and privilege to have served the nation and the District of Nevada for the past five and one-half years," said United States Attorney Bogden. "The dedication and commitment of the men and women of the U.S. Attorney's Office can be seen every day in the important cases they prosecute, including cases related to terrorism, violent crime, public corruption, narcotics, child exploitation, identity theft and fraud, as well as in their successful defense of the United States and its agencies in Court. I thank President George W. Bush for giving me the outstanding opportunity to serve as United States Attorney."

Mr. Bogden, a graduate of Ashland University, Ashland, Ohio, and the University of Toledo College of Law, was nominated on September 4, 2001, by President George W. Bush to be the United States Attorney for the District of Nevada. He was unanimously confirmed by the United States Senate on October 23, 2001. He previously served as the Chief of the Reno Division of the United States Attorney's Office, as an Assistant United States Attorney, as Deputy District Attorney for Washoe County, and as a Judge Advocate General for the United States Air Force.

- MORE-

Mr. Bogden oversaw over 40 attorneys in Las Vegas and Reno, and made the prevention of terrorism, and the prosecution of public corruption, violent crime, and drug crime, his top prosecutorial priorities. He has served on numerous task forces and committees, including the Attorney General's Advisory Committee on Violent Crime and the AGAC on Native American Issues, and the Executive Board of the Nevada High Intensity Drug Trafficking Area (HIDTA).

As United States Attorney, Mr. Bogden oversaw the prosecution of public corruption cases in Clark County, including the case against former county commissioners Dario Herrera, Mary Kincaid-Chauncey and Lance Malone, who were convicted earlier this year of depriving the Clark County Commission and the citizens of Clark County of their right to the honest services of public officials. During U.S. Attorney Bogden's tenure, the District of Nevada's firearm crime (PSN) program has been deemed one of the best in the nation, with almost 1100 individuals prosecuted for federal gun crimes. The District's pursuit and prosecution of violent gang members has made the communities and streets safer, with over 40 members of the Rolling 60s Crips street gang now convicted and serving federal prison sentences. Since 2002, the District also prosecuted 1067 individuals for federal drug offenses, 163 individuals for child sex offenses, and over 1000 individuals for immigration offenses. Additionally, during the last five years, the Civil Division of the United States Attorney's Office has collected over $57 million in fines and forfeitures on behalf of the United States, and in 2006, the Office brought over 200 appellate cases to conclusion with a success rate of 84%.

"The FBI has maintained a strong and productive working relationship with United States Attorney Dan Bogden and his team of dedicated prosecutors," said Steven M. Martinez, Special Agent in Charge of the Las Vegas Field Office of the Federal Bureau of Investigation. "Dan has been instrumental in bringing together federal, local, and tribal law enforcement throughout the State of

Nevada. In addition, Dan and his office have worked hard to protect the citizens of Nevada from terrorist threats. We will miss Dan's leadership and wish him all the best in his future endeavors."

"Dan Bogden is an individual of great integrity who has provided many years of distinguished service as United States Attorney and as an Assistant United States Attorney for Nevada," said United States District Judge Philip Pro.

"Dan Bogden has been a great partner to the U.S. Marshals Service in Nevada, said Fidencio Rivera, Chief Deputy U.S. Marshal for the District of Nevada. "Many of our successes are due to his strong support. Dan Bogden has been an advocate of the Nevada Fugitive Investigative Strike Team (FIST) fugitive task force, the Sex Offender Compliance Apprehension and Prosecution (SOCAP) initiative, Operation FALCON I, Operation FALCON II, and numerous other public safety efforts that have resulted in hundreds of fugitives being apprehended making our community a safer place. Dan Bogden has also provided guidance and support in our combined efforts to obtain additional jail space for federal prisoners and numerous efforts to protect the federal judiciary. His contributions to our organization are valued and appreciated."

"The Las Vegas Metropolitan Police Department has enjoyed a good working relationship with U.S. Attorney Dan Bogden for many years," said Clark County Sheriff Douglas C. Gillespie. "His dedication to fighting crime in Southern Nevada has made him an asset to all areas of law enforcement."

"Dan is a great leader and a huge friend to the Drug Enforcement Administration (DEA) and other federal, state and local law enforcement," said Michael P. Flanagan, Assistant Special Agent in Charge of the DEA for Las Vegas. "His outstanding commitment, guidance, and leadership to drug law enforcement and the Nevada HIDTA will be greatly missed by everyone inside and outside the law enforcement community."

- MORE-

"On behalf of IRS Criminal Investigation and its agents in Nevada, I want to personally thank Dan Bogden for his efforts in the prosecution of tax and money laundering crimes in Nevada," said J. Wesley Eddy, Special Agent in Charge of IRS Criminal Investigation for Nevada and Utah. "He will be greatly missed."

"During his tenure as United States Attorney, Daniel Bogden was always available to assist us in any way possible, particularly in the areas of internet crime, child pornography and the criminal use of weapons," said Richard A. Gammick, Washoe County District Attorney. "His contribution to the cohesive crime fighting efforts between federal, state and local agencies will long be remembered. Dan's departure from the United States Attorney's Office is definitely a loss to all law abiding Nevada citizens."

The District of Nevada comprises the entire state of Nevada, making it one of the largest of the 94 federal judicial districts. The United States Attorney's Office, with staffed offices in Las Vegas and Reno, has 40 attorneys and is responsible for conducting all criminal and civil litigation in the district involving the United States government.

"During the past five years, our office has been tremendously successful in implementing the national and district priorities," said U.S. Attorney Bogden. "We have worked to keep our nation and state safe, and have made a difference in our communities. At the same time, we have carried out the criminal, civil, appellate, asset forfeiture and fine collection functions of the United States Attorney's Office for the District of Nevada. It was an immense undertaking. I want to take this opportunity to thank the talented attorneys and staff of our United States Attorney's Office for serving the citizens of the great state of Nevada in such a committed and dedicated manner."

###

Scolinos, Tasia

From: Monica.Goodling@usdoj.gov
Sent: Thursday, January 25, 2007 8:07 PM
To: Sampson, Kyle; Elston, Michael (ODAG); Moschella, William; Roehrkasse, Brian; Scolinos, Tasia; Nowacki, John (USAEO); Battle, Michael (USAEO)
Subject: FW: My Contact Information
Attachments: MCKAY -1-25-07.wpd

Apparently, McKay put this out today. FYI.

From: McKay, John (USAWAW) [mailto:John.McKay@usdoj.gov]
Sent: Thursday, January 25, 2007 8:05 PM
To: USAEO-USAttorneysOnly
Subject: My Contact Information

Colleagues,

My contact information and office press release is below. All the best.

- JOHN McKAY

Seattle University School of Law

"UNITED STATES ATTORNEY JOHN McKAY JOINS SEATTLE UNIVERSITY LAW SCHOOL"

<<MCKAY -1-25-07.wpd>>

Image Not Available

U.S. Department of Justice

United States Attorney
Western District of Washington

700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271

Tel: (206) 553-7970
Fax: (206) 553-0882

FOR IMMEDIATE RELEASE
January 25, 2007

UNITED STATES ATTORNEY JOHN McKAY JOINS SEATTLE UNIVERSITY LAW SCHOOL

U.S. Attorney Credited with Innovative Leadership of Federal and Local Law Enforcement

United States Attorney John McKay completes his term tomorrow and will join Seattle University Law School as Visiting Professor of Law. After more than five years as the top federal law enforcement official in Western Washington, McKay is looking forward to working with law students and encouraging them to explore opportunities for public service.

McKay's five year tenure as United States Attorney has been marked by a number of key initiatives designed to enhance law enforcement efforts in the Western District of Washington. McKay reorganized the office to address priorities such as terrorism, organized crime, identity theft and methamphetamine abuse. McKay initiated and lead efforts to establish Northwest LInX, (Law Enforcement Information Exchange) a critical computer network that allows state, local and federal law enforcement agencies to share information. The LInX system now connects 138 law enforcement agencies and has been instrumental in solving countless crimes.

"John McKay has provided exceptional leadership and direction to the federal law enforcement community and specifically to ICE," said Leigh Winchell, Special Agent in Charge of U.S. Immigration and Customs Enforcement (ICE). "We are grateful for his support and commend his integrity and dedication to public service. He will be missed."

"One of John's greatest contributions to law enforcement has been his dedication to the idea of information sharing among agencies," said Laura Laughlin, Special Agent in Charge of the FBI. "He has been instrumental in encouraging federal, state and local law enforcement to find common ground and work together. The FBI has benefited greatly from his leadership and support."

"I appreciate John McKay's ability to deal with and support the issues of local law enforcement, more than any U.S. Attorney I have worked with in the last 19 years, said Everett Police Chief Jim Scharf. "John worked hard to make the relationships with local law enforcment work because he understood the importance of local law enforcment. He will be greatly missed, and very hard to replace."

"All of us in the criminal justice community are sorry to be losing US Attorney John McKay. He has been a strong advocate for crime victims and public safety in our communities. He has maintained his focus on the importance of accountability with those responsible for criminal activity and he has maintained a strong and positive relationship with local, state and federal law enforcement," said Port Orchard Police Chief Alan Townsend.

United States Attorney McKay spearheaded efforts to reach out to minority communities concerned about racial and ethnic profiling following the September 11th attacks. McKay organized meetings between law enforcement leaders and leaders in the Arab-American and Muslim communities to promote better understanding and cooperation.

Seattle Police Chief Gil Kerlikowske lauded McKay's concern for civil rights saying, "The co-operation and support that United States Attorney John McKay has shown to local law enforcement and the Seattle Police Department has resulted not only in a safer community, but one in which people should feel that their civil rights are protected."

"John McKay is and always has been the utmost professional in the perfomance of his duties as the U.S. Attorney in Western Washington. Above and beyond that, he has continually tried to do the right thing for the sake of justice. He will be missed as a law enforcement leader here in Washington," said Special Agent in Charge Kelvin N. Crenshaw, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

Under McKay's leadership the United States Attorney's Office has significantly improved productivity, despite declining budgets. Preliminary statistics indicated that in 2006, the U.S. Attorney's Office charged nearly twice as many defendants as it did in 2001. The prosecutions are the second highest in the history of the office, despite declining manpower. The office has established itself as a national leader in prosecuting computer crimes, identity theft and multi-national criminal drug organizations. McKay has worked to build bridges between Canadian and U.S. law enforcement to combat cross border crime, and has enhanced federal law enforcement resources in the fast growing counties of Southwest Washington.

"The Drug Enforcement Administration knows John McKay to be a superb leader who for the past five years has led an outstanding group of Federal prosecutors in targeting some of the nations most prolific drug trafficking organizations," said DEA Special Agent in Charge Rodney Benson. "John recognized that drug traffickers are using any and all means, including the use of the latest technology, to circumvent law enforcement efforts to disrupt and dismantle their organizations. Through his outstanding efforts, the United States Attorney's Office in the Western District of Washington adapted to this evolving threat with aggressive wiretap prosecutions against the largest traffickers operating in and around the Pacific Northwest. John is a true friend to law enforcement and, more importantly, a dedicated individual who succeeded in making the communities we live in safer."

"John McKay did an outstanding job in helping to increase federal law enforcement presence in southwest Washington during the time he was U.S. Attorney for the Western District," said Clark County Prosecutor Art Curtis. "We are greatly indebted to him, and he will be missed."

Prior to his appointment, McKay served as President of Legal Services Corporation (LSC) in Washington D.C. Congress established LSC in 1974 as a private non-profit corporation to ensure justice under the law for all low income Americans. From 1989 to 1990 McKay served as a White House Fellow, where he worked as Special Assistant to the Director of the FBI. Following his graduation from Creighton Law School in Nebraska, McKay was a litigation partner at Lane Powell Spears Lubersky in Seattle, and later was a managing partner at the Seattle law firm of Cairncross &

Hempelmann.

United States Attorney General Alberto Gonzalez has the authority to appoint an interim United States Attorney whose term lasts until a new United States Attorney is nominated by President Bush and confirmed by the U.S. Senate.

For additional information please contact Emily Langlie, Public Affairs Officer for the United States Attorney's Office, at (206) 553-4110

Scolinos, Tasia

From: Monica.Goodling@usdoj.gov

Sent: Monday, February 05, 2007 6:04 AM

To: Sampson, Kyle; Elston, Michael (ODAG); Moschella, William; Hertling, Richard; Seidel, Rebecca; Scott-Finan, Nancy; Roehrkasse, Brian; Scolinos, Tasia

Cc: Nowacki, John (USAEO)

Subject: USA Info (not all is for public use)

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

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

Current talking points on USAs **(has changed; replace old versions)**:
<<TPS - US Attorney vacancy-appointment points.pdf>>

Current fact sheet on USAs (has not changed):
<<FACT SHEET - USA appointments.pdf>>

Interesting USA stats:
<<USA stats.doc>>

List of status of current and upcoming vacancies (DO NOT DISTRIBUTE OUTSIDE DOJ):
<<Current & upcoming vacancies.doc>>

List of vacancies over the past year (DO NOT DISTRIBUTE OUTSIDE DOJ):
<<Vacancies over the past year.doc>>

Talking points on Tim Griffin:
<<Griffin Talkers.doc>>

Griffin and prior nominees in the state of Arkansas (his experience is well within the norm):
<<ARK Biographies.doc>>

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

Overview:

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

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

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

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

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

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

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

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

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

The Administration Must Ensure an Effective Transition When Vacancies Occur:

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

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

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

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

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

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

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

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

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

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

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

Amending the Statute Was Necessary:

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

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

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

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

- The statute was amended for several reasons:

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

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

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

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

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

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

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

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

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

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

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

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

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

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

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

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

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

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

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

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

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

- **District of Alaska** – Nelson Cohen

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

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

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

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

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

UNITED STATES ATTORNEYS STATISTICS

Average Ages of U.S. Attorneys:

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

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

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

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

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

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

- 98 had prior experience as prosecutors (79 %)

    - 71 had prior experience as federal prosecutors (57 %)

    - 54 had prior experience as state or local prosecutors (44%)

- 104 had prior experience as prosecutors or government litigators on the civil side (84 %)

- 10 had judicial experience (8%); 13 had Hill experience (10%)

- Of the 10 who had worked at Main Justice in the George W. Bush Administration before being nominated for a U.S. Attorney position, please note that 8 were either career AUSAs or former career AUSAs.

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

- 84 had prior experience as prosecutors (69 %)

    - 56 had prior experience as federal prosecutors (46 %)

    - 40 had prior experience as state or local prosecutors (33 %)

- 87 had prior experience as prosecutors or government litigators on the civil side (71 %)

- 12 had judicial experience (9 %); 10 had Hill experience (8 %)

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

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

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

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

CURRENT & UPCOMING VACANCIES

Current vacancies (15):

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

Publicly-announced or known upcoming resignations (9):

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

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

Non-public resignation (1):

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

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

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

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

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

****

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

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

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

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

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

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

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

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

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

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

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

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

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

BIOGRAPHIES OF U.S. ATTORNEYS FROM ARKANSAS

EASTERN DISTRICT

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

Educational Background:

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

Prosecution & Military Background:

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

Political experience:

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

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

Talkers:

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

Background:

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

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

****

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

Talkers:

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

Background:

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

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

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

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WESTERN DISTRICT

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

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

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

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

****

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

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

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

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

****

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

Talkers:

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

Background:

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

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

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Scolinos, Tasia

From: Elston, Michael (ODAG)
Sent: Tuesday, February 13, 2007 6:10 PM
To: Scolinos, Tasia
Cc: Roehrkasse, Brian; Nowacki, John (USAEO)
Subject: SF Press Release

Tasia:

Kevin Ryan plans to announce his departure tomorrow, and we got word of a laudatory press release with comments from law enforcement officials. I have asked the First AUSA, Eumi Choi, to e-mail it to you and to me for review prior to submission. I made it clear that it is not to go out the door without your approval.

Let me know if you want to talk about it.

Mike

Michael J. Elston
Chief of Staff and Counselor
to the Deputy Attorney General
950 Pennsylvania Avenue, N.W., Room 4210
Washington, D.C. 20530
(202) 307-2090
(202) 514-9368 (fax)

OPA000000083

Scolinos, Tasia

From: Macaulay, Luke (USACAN) [Luke.Macaulay@usdoj.gov]
Sent: Thursday, February 15, 2007 12:10 PM
To: Scolinos, Tasia
Subject: RE: Kevin Ryan Draft Press Release

Thanks Tasia.
Luke

Luke Macaulay
Public Affairs Officer
U.S. Attorney's Office
U.S. Department of Justice
415-436-6757
Cell: 415-308-7843

-----Original Message-----
From: Scolinos, Tasia
Sent: Thursday, February 15, 2007 11:02 AM Eastern Standard Time
To: Macaulay, Luke (USACAN)
Subject: RE: Kevin Ryan Draft Press Release

thanks Luke - this looks good to me

From: Macaulay, Luke (USACAN) [mailto:Luke.Macaulay@usdoj.gov]
Sent: Tuesday, February 13, 2007 10:04 PM
To: Scolinos, Tasia
Subject: Kevin Ryan Draft Press Release

Hi Tasia,

I hope you're well. I'm attaching the draft press release regarding Kevin Ryan's departure. Looking at tomorrow for release. Let me know if you have any questions.

Thanks and take care,
Luke

Luke T. Macaulay
Public Affairs Officer
U.S. Attorney's Office - Northern District of California
450 Golden Gate Ave.
San Francisco, CA 94102
Desk: 415-436-6757
Cell: 415-308-7843
Fax: 415-436-7234

Scolinos, Tasia

From: Elston, Michael (ODAG)
Sent: Thursday, February 15, 2007 5:18 PM
To: Scolinos, Tasia
Subject: RE: Press Release

The press release announcing interims in SDCA and NDCA.

-----Original Message-----
From: Scolinos, Tasia
Sent: Thursday, February 15, 2007 5:02 PM
To: Elston, Michael (ODAG)
Subject: Re: Press Release

What is this?

-----Original Message-----
From: Elston, Michael (ODAG)
To: Macaulay, Luke (USACAN)
CC: Ryan, Kevin (USACAN); Choi, Eumi (USACAN); Scolinos, Tasia
Sent: Thu Feb 15 16:58:24 2007
Subject: Press Release

Luke:

Attached is a press release that we would like to have issued from NDCA as soon as possible. I have spoken with Kevin about it. When you have issued the press release, please reply to this message with confirmation that it has been released to the media.

Thank you for your assistance.

Mike

<<Hewitt - Schools Release.pdf>>

Michael J. Elston
Chief of Staff and Counselor
to the Deputy Attorney General
950 Pennsylvania Avenue, N.W., Room 4210
Washington, D.C. 20530
(202) 307-2090
(202) 514-9368 (fax)

Scolinos, Tasia

From: Smith, Kimberly A
Sent: Thursday, February 15, 2007 6:04 PM
To: Scolinos, Tasia; Elston, Michael (ODAG); Nowacki, John (USAEO)
Subject: FW: Press Release
Attachments: Hewitt - Schools Release.pdf; KVR_departure2.doc

Attached please find the two releases from the NDCA. Not sure that OPA approved this second one ....

From: Macaulay, Luke (USACAN) [mailto:Luke.Macaulay@usdoj.gov]
Sent: Thursday, February 15, 2007 6:02 PM
To: Smith, Kimberly A
Subject: FW: Press Release

Attached are 2 press releases we're looking to put out very shortly. Tasia and the DAG's office have approved the Kevin Ryan one.

Luke

From: Elston, Michael (ODAG)
Sent: Thursday, February 15, 2007 1:58 PM
To: Macaulay, Luke (USACAN)
Cc: Scolinos, Tasia; Choi, Eumi (USACAN); Ryan, Kevin (USACAN)
Subject: Press Release

Luke:

Attached is a press release that we would like to have issued from NDCA as soon as possible. I have spoken with Kevin about it. When you have issued the press release, please reply to this message with confirmation that it has been released to the media.

Thank you for your assistance.

Mike

<<Hewitt - Schools Release.pdf>>

Michael J. Elston
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(202) 307-2090
(202) 514-9368 (fax)

Department of Justice

FOR IMMEDIATE RELEASE
THURSDAY, FEBRUARY 15, 2007
WWW.USDOJ.GOV

EOUSA
(202) 514-2007
TDD (202) 514-1888

JUSTICE DEPARTMENT ANNOUNCES APPOINTMENTS OF INTERIM UNITED STATES ATTORNEYS FOR THE SOUTHERN AND NORTHERN DISTRICTS OF CALIFORNIA

WASHINGTON, D.C. — The Justice Department today announced the appointments of Karen P. Hewitt to serve as the interim United States Attorney for the Southern District of California and Scott N. Schools to serve as the interim United States Attorney for the Northern District of California. Ms. Hewitt will succeed Carol Lam, who resigned today, and Mr. Schools will succeed Kevin Ryan, whose resignation takes effect tomorrow. Both Ms. Hewitt and Mr. Schools will serve on an interim basis until a United States Attorney is nominated by the President and confirmed by the Senate.

In addition to being a career federal prosecutor, Ms. Hewitt is an experienced attorney manager. She currently serves as the Executive Assistant United States Attorney in the Southern District of California, supervising approximately 230 attorneys and support staff, and participating in the oversight of the office's civil and criminal work. Prior to her appointment as the Executive AUSA, Ms. Hewitt served as Deputy Chief of the district's Civil Division from October 2003 to January 2006, and as an Assistant United States Attorney from October 2000 to October 2003. She previously served as a Trial Attorney and Litigation Team Leader in the Constitutional and Special Torts Section of the Justice Department's Civil Division from May 1992 to October 2000, where she was co-counsel on a litigation team that received the Secretary's Award for Distinguished Service from the Department of Health and Human Services. From August 1989 to May 1992, Ms. Hewitt was in private practice at the former San Diego firm of McInnis, Fitzgerald, Rees, Sharkey, and McIntyre.

Ms. Hewitt is a native of San Diego County. She graduated from the University of California at Berkeley, and received her law degree from the University of San Diego School of Law.

A career federal prosecutor, Mr. Schools is an experienced attorney manager who has previous experience as an interim United States Attorney. Mr. Schools currently serves as the General Counsel for the Justice Department's Executive Office for United States Attorneys (EOUSA), leading a staff that is responsible for providing legal guidance in ethics and employee matters to all 94 United States Attorneys' Offices across the Nation. From November 2001 to December 2005, he served as the First Assistant United States Attorney in the District of South Carolina overseeing approximately 125

attorneys and support staff. Mr. Schools served as the interim United States Attorney in South Carolina from February 2001 to November 2001, and as an Assistant United States Attorney in that district from August 1989 to August 1992 and from May 1997 to February 2001. During his tenure in the United States Attorney's Office, he focused primarily on criminal prosecutions, specifically white collar cases involving bank fraud, mail fraud, wire fraud, and health care fraud. In 2004, just prior to assuming his current position as General Counsel in EOUSA, he prosecuted two death penalty cases. From August 1992 to May 1997, he was in private practice in Charleston, South Carolina. Upon graduating law school, he clerked for U.S. District Judge Falcon B. Hawkins for two years, from August 1987 to August 1989.

Mr. Schools graduated *magna cum laude* from Duke University with a degree in mathematics, and he received his law degree, with honors, from the University of Texas School of Law.

# # #

07-086

U.S. Attorney Kevin V. Ryan Announces Departure

Thanks U.S. Attorney's Office and Law Enforcement Agency Staff

U.S. Attorney Kevin V. Ryan completes his tenure this Friday as the 48th U.S. Attorney for the Northern District of California. The prosecutions under Mr. Ryan's 4 ½-year tenure cover a wide range of areas including white collar crime, gang and violent crime, securities fraud, cybercrime, organized crime drug rings, healthcare fraud, child exploitation cases, alien harboring, and tax cases. Outside of the courtroom, Ryan has considerably diversified the office by hiring and promoting a significant number of extraordinary women and minorities. Mr. Ryan, who previously served as a California Superior Court Judge, was recently named one of the top 100 California Lawyers of 2006 by the *San Francisco Daily Journal.*

U.S. Attorney Kevin V. Ryan stated, "I am grateful to have had the opportunity to serve as the United States Attorney. I sincerely thank all of the staff at the office for their hard work to make our community a safer place to live. I also thank all of our partners in law enforcement who have put in countless hours in investigating and prosecuting crimes in Northern California."

"Kevin was instrumental in bringing diversity to the U.S. Attorney's Office," said Superior Court Judge C. Don Clay, who served as Ryan's top deputy from 2002-2003. "The women and minorities he hired fundamentally changed the dynamic of the office for the better. One of the things I noticed in working with Kevin was that he was not afraid to make people accountable for their actions. Most importantly, Kevin brought courage to, and a fresh look at, complex problems that merited the government's attention. Kevin was not afraid to pursue complex cases and issues, like terrorism, Balco, stock options backdating, and corporate fraud."

Gangs and Violent Crime:

Ryan's tenure has been noted for taking an aggressive stance in criminal street gang cases, and using powerful federal RICO statutes to take violent offenders off the street. The office has also been productive in aggressively prosecuting felons possessing firearms as part of the President's Project Safe Neighborhoods initiative. Outside of the courtroom, Ryan has been instrumental in securing over $3 million in federal funding to weed out the worst offenders, and to provide community organizations with funding to create and sustain programs and initiatives. Ryan supported the Northern District Gang Prevention Summit, which worked to build relationships to help prevent gang violence by bringing together nationally renowned experts, community leaders, policy makers, and law enforcement officials to discuss ongoing efforts to prevent gang violence.

Police Chief Heather Fong said, "We have had great successes, at all levels, because of our partnership with the Office of the U. S. Attorney. In San Francisco, we have made significant accomplishments in suppressing gun and gang violence, as well as human trafficking, due to our collaboration with the U. S. Attorney. All of us will miss

U. S. Attorney Kevin Ryan and his support and energy for our law enforcement endeavors."

Some noteworthy cases in this area include:

- In October 2005, twelve members of the Down Below Gang – a violent street gang in San Francisco – were indicted on charges of seven murders and seven attempted murders. Eight pleaded guilty in December 2006. Four of those convicted received sentences of 15 years or more in federal prison.

- In March 2006, 15 associates of the Project Trojan criminal street gang in North Richmond individuals were indicted on conspiracy drug dealing charges.

- In March 2006, the final two defendants in a four-year prosecution – which netted 35 convictions of members and associates of the Big Block gang in San Francisco – were sentenced to 20 and 23 years in prison respectively.

"In my five years as City Attorney, Kevin Ryan helped forge an unprecedented level of cooperation between the U.S. Attorney's Office and mine on issues like gang violence and others." said San Francisco City Attorney Dennis Herrera. "Kevin has demonstrated himself to be an extremely capable, forward-thinking leader, and I'm confident he will continue to be an important force in the legal community for the cause of justice."

"Over the years, the San Francisco Police Bureau of Investigations has enjoyed an extremely close working relationship with U.S. Attorney Kevin Ryan," said Deputy Chief of Police Morris Tabak. "His office has been instrumental in charging many of San Francisco's gang related murders and other gang associated crimes. An example is the many federal indictments issued resulting in the arrests of members of the Big Block, West Mob, Page Street and most recently the Down Below gangs, essentially dismantling them as a result. We also thank the U.S. Attorney for prosecuting a major out-of-state gun smuggling operation that was supplying firearms to San Francisco gang members. San Francisco is truly a much safer city today thanks to Kevin Ryan."

District Attorney Tom Orloff stated, "During his term as United States Attorney, Kevin has been a great supporter of local law enforcement. He understood the issues we face and was always willing to work with us to protect our communities. I wish him the best in all future endeavors.

White Collar Crime, Securities Fraud, Computer Hacking and Intellectual Property, Environmental Crimes:

As a member of the President's Corporate Fraud Task Force and the Department of Justice's Intellectual Property Task Force, Kevin V. Ryan has overseen a number of significant 'firsts' in the prosecution of white collar crime and intellectual property offenses. Notably, Ryan established the Northern California U.S. Attorney's Office as a national leader in prosecuting stock options backdating cases after he formed the

Northern California Stock Options Backdating Task Force. The office also had numerous successes in computer hacking and intellectual property, environmental crimes, as well as over $129.4 million in payments from two large healthcare fraud cases.

Some of the noteworthy cases in these areas include:

- The country's first indictment for stock options backdating offenses against two executives of Brocade Communications Systems, Inc.

- Three Enron executives were convicted for their role in manipulating the energy markets during the California Energy Crisis.

- Williams Power Company paid $50 million in a deferred prosecution agreement for knowingly submitting false natural gas price data to benefit their position in the market. Additionally, six natural gas traders have pleaded guilty for manipulating natural gas prices.

- The first conviction for pretexting involving Hewlett-Packard officials and journalists

- Two founders and four brokers of the Dorean Group have been indicted for their role in a fraudulent "mortgage elimination scheme." Investigators are continuing to investigate more than 550 properties throughout 35 states with a potential value of greater than $88 million in loans that may have been affected by this alleged scheme

- Former Ukrainian Prime Minister, Pavel Lazarenko, was sentenced in August 2006 to nine years in prison and ordered to pay a $10 million fine for extorting over $40 million dollars from Ukranian citizens and laundering over $20 million through American banks.

Heathcare Fraud:

- Endovascular Technologies, Inc. a subsidiary of Guidant Corporation, pleaded guilty to 10 felonies and agreed to pay $92.4 million to resolve criminal and civil charges that it covered up thousands of incidents in which a medical device used to treat aneurysms in the aorta malfunctioned. Among the thousands of incidents covered up by the company were 12 deaths and dozens of invasive surgeries.

- InterMune, Inc., a Brisbane, California biopharmaceutical company, agreed to enter into a deferred prosecution agreement and to pay nearly $37 million to resolve criminal charges and civil liability in connection with its illegal promotion and marketing of its drug Actimmune (Interferon gamma-1b) in October 2006.

Computer Hacking and Intellectual Property – The CHIP Unit:

The CHIP Unit, which is based in the San Jose branch of the U.S. Attorney's Office, was established in 2000 and was the first federal specialized prosecution unit in a U.S. Attorney's Office. This model has been followed in other U.S. Attorney's Offices and there are now about twenty-five CHIP Units in offices around the country. Some of the noteworthy cases prosecuted by this unit include:

- The country's first conviction for violations of the Economic Espionage Act of 1996. Additionally, the CHIP Unit brought the second and third indictments in the country under the ten years of this statute. These cases involve trade secrets stolen with the intent to benefit foreign governments, including China, Malaysia, and Thailand.

- Operation Remaster netted approximately 494,000 CDs and 5,500 stampers in what the Recording Industry Association of America said was the largest seizure of counterfeit CDs in the country at that time. All three defendants in that case have pleaded guilty.

- Operation Copycat has yielded 35 convictions. Defendants have pleaded guilty to illegally distributing pirated movies, games and software over the Internet. Two film critics who sold pre-release movies for illegal distribution have been convicted, and the operation has yielded the first convictions in the country for camcording in a movie theater and uploading "pre-release" movies on the Internet.

Environmental:

- One of the world's largest shipping companies, A.P. Moller-Maersk, A/S of Denmark pleaded guilty in September 2005 to providing false documents to the U.S. Coast Guard during a routine inspection of one of its cargo ships to ensure compliance with the international MARPOL treaty, which limits oil pollution from ships.

- Earlier this week, Mr. Ryan announced that $1.5 million has been designated for rehabilitating and restoring marine wildlife habitat in the San Francisco Bay to further protect the California leopard shark. Over $900,000 came from payments by a San Leandro church, and restitution by the church's pastor and five other criminal defendants who were involved with an operation that poached thousands of California leopard sharks from the San Francisco Bay for more than ten years.

Balco:

U.S. Attorney Ryan has overseen the Balco steroids prosecution, which has resulted in five felony convictions to date, exposed the harmful side-effects of doping, and has shined a light on the surprisingly widespread use of performance-enhancing drugs in sports. Since the initiation of the investigation, more than 15 athletes have been disciplined by regulators in their various sports. Congress has held extensive hearings on

steroids in sports, including taking testimony from Major League Baseball players, and has classified Norbolethone and THG as Schedule III drugs. The U.S. Sentencing Commission has toughened federal sentencing guidelines for steroids-related offenses.

San Mateo District Attorney Jim Fox stated, "I have enjoyed the working relationship that my office has had with Kevin. In the cases we worked together, the level of cooperation was fabulous. I wish him the best."

Child Exploitation:

Some of the noteworthy cases that the office has prosecuted to protect the most vulnerable members of our society include:

- In the first prosecution of its kind, Peace Corps volunteer Timothy Obert pleaded guilty in February 2006 to sexually assaulting a minor while serving as a Peace Corps volunteer in Costa Rica.

- In July 2005, a creator of child pornography websites, Edward Aaron Harvey, was indicted with advertisement of child pornography, transportation and attempted transportation of child pornography, and money laundering. Five subscribers from the Northern District of California were also charged.

Organized Crime Drug Enforcement Task Force – The OCDETF Section:

"Kevin always demonstrated great integrity and moral courage and could be counted upon to follow his convictions on controversial issues, including his defense of the Patriot Act and the prosecution of large scale marijuana traffickers who were hiding behind medical marijuana as a defense to their multi-million dollar drug trafficking operations," stated Ron Brooks, Director of the Northern California High Intensity Drug Task Force. "Because of his vision, Kevin and his office were engaged in the early stages of the fight against to stop the violent street gangs that are threatening our neighborhoods. He was a leader in supporting the vigorous enforcement and prosecution of gang related crimes but he also recognized the importance of preventing gang crimes before they happen. Kevin was an innovator in Northern California by using his Project Safe Neighborhoods Grant Program to develop and fund prevention and outreach programs. He will be remembered by his colleagues as a tough but fair prosecutor, a champion of public safety, a person who placed service to his community before himself; and in my opinion, the finest United States Attorney I have ever known."

- Operation Ice Ax has resulted in the indictment of 19 individuals for conspiracy to distribute and distribution of methamphetamine and cocaine throughout the San Francisco Bay Area and Hawaii in May 2006.

"It has been a privilege to work side-by-side with U.S. Attorney Kevin Ryan in helping to make Northern California and the San Francisco Bay community a safer place for all citizens," said Special Agent in Charge Javier Pena. "When you are fighting international drug traffickers everyday, I can't tell you how important it is to have a U.S.

Attorney who is as equally dedicated to the challenge at hand. In Kevin, DEA is losing a great partner and Northern California is losing a great asset to the community. We wish him the best in his future endeavors."

Alien Harboring, Public Corruption, and other Notable Cases:

Additionally, Mr. Ryan oversaw a number of cases involving public corruption, alien harboring, and public safety:

- Five California DMV employees and five "brokers" were charged and convicted in 2005 and 2006 for their role in selling hundreds of fraudulent Califoria Driver's Licenses for up to $4,500.

- Operation Gilded Cage has charged over 30 Bay Area brothel owners and others involved in the operation of massage parlors that allegedly harbored aliens for commercial advantage. Numerous defendants have pleaded guilty to date.

- Deputy District Attorney Robert Roland was convicted of accepting drugs from state court defendants in February 2006. He was sentenced to six months in prison.

- Four defendants were convicted and sentenced for stealing over 700 pounds of explosives from law enforcement bunkers on July 4, 2004.

- Marcus O. Armstrong, formerly the highest-ranking technology officer in San Francisco's Department of Building Inspection, pleaded guilty to public corruption charges in July 2003, admitting that he defrauded San Francisco taxpayers out of more than half a million dollars through a phony invoicing and kickback scheme.

Tax:

Some of the noteworthy cases prosecuted by the Tax Division include:

- In April 2005, prominent estate planner and tax specialist Owen George Fiore pleaded guilty to tax evasion and was sentenced to 18 months in prison and ordered to pay $626,623 in restitution.

- In December 2004, offshore tax shelter promoter and Canadian resident Jerome Schneider was sentenced to six months in prison, in addition to a $4,000 fine and $100,000 restitution, for his role in a conspiracy to defraud the Internal Revenue Service.

U.S. Attorney Kevin V. Ryan concluded, "It has been an honor and privilege to have served as U.S. Attorney. I thank the staff at the U.S. Attorney's Office for their hard work on behalf of the Northern District of California, the Justice Department and the American people."

###

Scolinos, Tasia

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

Scolinos, Tasia

From: Ablin, Erik
Sent: Wednesday, February 21, 2007 12:54 PM
To: Scolinos, Tasia
Subject: FW: State and local enforcement of immigration laws

Are you aware of any talkers we might have on state/local enforcement of immigration laws?

From: Voris, Natalie (USAEO) [mailto:Natalie.Voris@usdoj.gov]
Sent: Wednesday, February 21, 2007 12:36 PM
To: Holland, Eric W; Ablin, Erik
Cc: Nowacki, John (USAEO)
Subject: FW: State and local enforcement of immigration laws

Eric and Erik,
Do we have anything on this topic? If so, I would like to provide it to USA Iglesias. Feel free to call me if you have any questions or concerns.

Natalie
6-2128

From: Iglesias, David C. (USANM)
Sent: Wednesday, February 21, 2007 12:31 PM
To: Voris, Natalie (USAEO)
Subject: State and local enforcement of immigration laws

N: do you have any talking points on above subj? If so, could you please send to me asap?
Regards,
dci

Scolinos, Tasia

From: Scott-Finan, Nancy
Sent: Wednesday, February 21, 2007 3:51 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

We are playing musical chairs. The briefing is now back to 1:30 to 3 pm on the 28th.

-----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
Cc: Hertling, Richard; Seidel, Rebecca; Silas, Adrien
Subject: RE: US Attorneys briefing

The Committee now has a heaering 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
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

Scolinos, Tasia

From: Scott-Finan, Nancy
Sent: Monday, February 26, 2007 6:26 PM
To: Hertling, Richard; Burton, Faith; Elston, Michael (ODAG); Moschella, William; Margolis, David; Sampson, Kyle; Goodling, Monica; Battle, Michael (USAEO); Nowacki, John (USAEO); Macklin, Jay (USAEO); Scolinos, Tasia; Roehrkasse, Brian
Cc: Seidel, Rebecca; Tracci, Robert N
Subject: FW: HJC USA Briefing and Hearing Invitation

Attachments: HJC Hearing Invitation USA.pdf; HJC Briefing Request re USAs.pdf

Attached is the hearing invitation letter for the March 6 HJC hearing on "Restoring Checks and Balances in the Confirmation Process of U.S. Attorneys." Please note that they specifically request Paul and do not indicate that this is a Subcommittee hearing. The second letter is the briefing request and request for the EARS reports—please note that they ask for the EARS reports for all US Attorneys who have resigned since March 9, 2006--we have had 16 vacancies since March 9th.

From: Cabral, Catalina
Sent: Monday, February 26, 2007 6:16 PM
To: Scott-Finan, Nancy; Clifton, Deborah J
Subject: HJC USA Briefing and Hearing Invitation

Debbie,
The first document is a hearing invitation.

HJC Hearing Invitation USA.pdf... HJC Briefing Request re USAs.p...

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

OPA000000100

JOHN CONYERS, JR., Michigan
CHAIRMAN

LAMAR S. SMITH, Texas
RANKING MINORITY MEMBER

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

February 26, 2007

Mr. Richard A. Hertling
Acting Assistant Attorney General
Office of Legislative Affairs
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Hertling:

I am writing to invite a representative of the Administration to testify at a hearing next Tuesday, March 6, 2007, on H.R. 580, Restoring Checks and Balances in the Confirmation Process of U.S. Attorneys. We would like to invite Paul McNulty, Deputy Attorney General, to testify.

The hearing will take place at 2:00 p.m. on March 6, in room 2141, Rayburn House Office Building. Mr. McNulty's written statement for submission to the Committee may be as extensive as you wish and will be included in the hearing record, and the most significant points of the written statement should be highlighted in an oral presentation lasting no more than five minutes. Oral testimony at the hearing, including answers to questions, will be printed as part of the verbatim record of the hearing.

To facilitate preparation for the hearing, an electronic copy of the written statement and curriculum vitae should be sent to the Committee 48 hours in advance of the hearing. The Committee will publish the statement on our website and, therefore, requests that the documents be provided in either Word Perfect, Microsoft Word, or Adobe Acrobat. We would appreciate it if all pages of the written statement are numbered and a cover page is attached with the witness' name, position, date, and title of hearing. The title of the hearing is: H.R. 580, Restoring Checks and Balances in the Nomination Process of U.S. Attorneys. These documents may be e-mailed to Elias Wolfberg on my staff at Elias.Wolfberg@mail.house.gov.

In addition, the Committee requests that 100 copies of the written statement be provided 48 hours in advance of the hearing. If a published document or report is to be introduced as part of the written statement, 50 copies should be provided. Due to delays with our mail delivery

system, the copies should be hand delivered in an unsealed package to Mr. Wolfberg in room 2138, Rayburn House Office Building.

If you have any questions or concerns, please contact Mr. Wolfberg or Eric Tamarkin at 226-7680. Thank you for your cooperation,

Sincerely,

John Conyers, Jr.
Chairman

JC:ew

U. S. HOUSE OF REPRESENTATIVES

FYI copy

Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515
Fax: (202) 225-7680

FACSIMILE COVER LETTER

TO: Richard Hertling

FAX NO: 202 514 4482 # PAGES: 3 (including this page)

FROM:

____STACEY DANSKY	____LILLIAN GERMAN
____JONATHAN GODFREY	____MICHONE JOHNSON
____ELLIOT MINCBERG	____MATTHEW MORGAN
____MICHELLE PERSAUD	____ROBERT REED
____GEORGE SLOVER	____GAYE STAFFORD
____RENATA STRAUSE	____DWIGHT SULLIVAN
____TERESA VEST	X Eric Tamarkin

COMMENTS:

If parts of this transmission are unclear or transmission was faulted, please call: (202) 225-3951.

JOHN CONYERS, JR., Michigan
CHAIRMAN

LAMAR S. SMITH, Texas
RANKING MINORITY MEMBER

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515–6216
One Hundred Tenth Congress

February 26, 2007

The Honorable Alberto R. Gonzales
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

I write to obtain a briefing of all members of the House Judiciary Committee concerning the personnel records and related materials concerning the resignations of at least seven United States Attorneys since March 9, 2006. In order to properly conduct our oversight responsibilities, it is imperative that members of the House Judiciary Committee have equal access to the records and information shared with the Senate Judiciary Committee on this matter. I request that you provide all information and documents that would be helpful to respond to our oversight interests. Furthermore, I request that you provide copies of the Evaluations and Review Staff Reports ("EARS Reports") of the United States Attorneys who have resigned since March 9, 2006.

Important questions regarding these resignations remain unanswered and a Department of Justice briefing will be critical for the House Judiciary Committee to properly evaluate the current framework for appointing interim United States Attorneys. I understand that staff have discussed a briefing to be held at 1:30 p.m. this Wednesday, February 28, in room 2237, Rayburn House Office Building, and I would appreciate your prompt response to this request and confirmation of those arrangements. Please reply through the Judiciary Committee office, 2138 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-3951; fax: 202-225-7680).

Sincerely,

John Conyers, Jr.
Chairman

cc: Hon. Richard A. Hertling
Hon. Lamar Smith

OPA000008104

U. S. HOUSE OF REPRESENTATIVES

FYI copy

Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515
Fax: (202) 225-7680

FACSIMILE COVER LETTER

TO: Hon. Richard Hertling

FAX NO: 514-4482 ~~305-2643~~ # PAGES: 2 (including this page)

FROM:

____ STACEY DANSKY	____ LILLIAN GERMAN
____ JONATHAN GODFREY	____ MICHONE JOHNSON
X ELLIOT MINCBERG	____ MATTHEW MORGAN
____ MICHELLE PERSAUD	____ ROBERT REED
____ GEORGE SLOVER	____ GAYE STAFFORD
____ RENATA STRAUSE	____ DWIGHT SULLIVAN
____ TERESA VEST	____

COMMENTS: _____

If parts of this transmission are unclear or transmission was faulted, please call: (202) 225-3951.

Scolinos, Tasia

From: Elston, Michael (ODAG)
Sent: Monday, February 26, 2007 8:07 PM
To: Scott-Finan, Nancy; Hertling, Richard; Burton, Faith; Moschella, William; Margolis, David; Sampson, Kyle; Goodling, Monica; Battle, Michael (USAEO); Nowacki, John (USAEO); Macklin, Jay (USAEO); Scolinos, Tasia; Roehrkasse, Brian
Cc: Seidel, Rebecca; Tracci, Robert N
Subject: Re: HJC USA Briefing and Hearing Invitation

They'll have to be satisfied with Will -- Will says he is more photogenic anyway.

-----Original Message-----
From: Scott-Finan, Nancy
To: Hertling, Richard; Burton, Faith; Elston, Michael (ODAG); Moschella, William; Margolis, David; Sampson, Kyle; Goodling, Monica; Battle, Michael (USAEO); Nowacki, John (USAEO); Macklin, Jay (USAEO); Scolinos, Tasia; Roehrkasse, Brian
CC: Seidel, Rebecca; Tracci, Robert N
Sent: Mon Feb 26 18:25:44 2007
Subject: FW: HJC USA Briefing and Hearing Invitation

Attached is the hearing invitation letter for the March 6 HJC hearing on "Restoring Checks and Balances in the Confirmation Process of U.S. Attorneys." Please note that they specifically request Paul and do not indicate that this is a Subcommittee hearing. The second letter is the briefing request and request for the EARS reports---please note that they ask for the EARS reports for all US Attorneys who have resigned since March 9, 2006--we have had 16 vacancies since March 9th.

From: Cabral, Catalina
Sent: Monday, February 26, 2007 6:16 PM
To: Scott-Finan, Nancy; Clifton, Deborah J
Subject: HJC USA Briefing and Hearing Invitation

Debbie,
The first document is a hearing invitation.

<<HJC Hearing Invitation USA.pdf>> <<HJC Briefing Request re USAs.pdf>>

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

Scolinos, Tasia

From: Schwartz, Arthur
Sent: Thursday, March 01, 2007 7:59 PM
To: 'cmartin@who.eop.gov'; 'kklunk@who.eop.gov'; 'rsaliterman@who.eop.gov'
Cc: Peterson, Evan; Scolinos, Tasia; Roehrkasse, Brian; Schwartz, Arthur; Block, Jonathan
Subject: DEPARTMENT OF JUSTICE NIGHT NOTES

Department of Justice Night Notes
Thursday, March 1, 2007

Today, Attorney General Gonzales spoke to the American Bar Association White Collar Crime Conference in San Diego on DOJ's efforts to investigate and prosecute corporate fraud.

Today, House Judiciary Committee Chairman John Conyers, Jr. and Subcommittee Chairwoman Linda Sánchez announced they are issuing subpoenas for former U.S. Attorneys Iglesias, Carol Lam, H.E. Cummins, III, and John McKay to appear at a hearing on the forced resignations of U.S. Attorneys next Tuesday, March 6. DOJ Principal Associate Deputy Attorney General Will Moschella will also testify at the hearing.

OPA000000107

Scolinos, Tasia

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

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

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

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

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.

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

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

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

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

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

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

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

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

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

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

J. TIMOTHY GRIFFIN

EDUCATION

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

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

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

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

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

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

LEGAL EXPERIENCE

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

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

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

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

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

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

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

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

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

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

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

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

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

- Drafted legal memoranda and pleadings and conducted depositions.

ADDITIONAL WORK EXPERIENCE

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

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

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

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

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

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

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

SUMMARY OF MILITARY SERVICE

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

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

ACTIVITIES AND ASSOCIATIONS

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

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

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

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

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

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

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

OPA000000116

Scolinos, Tasia

Subject:	US Attorneys Issue
Start:	Sat 3/3/2007 4:00 PM
End:	Sat 3/3/2007 4:45 PM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Required Attendees:	Sampson, Kyle; McNulty, Paul J; Moschella, William; Scolinos, Tasia; Hertling, Richard

AG's Conference Room
AO: Kyle Sampson DOJ: Paul McNulty, Will Moschella, Tasia Scolinos, Richard Hertling

March 03, 2007

Saturday

March 2007						
S	M	T	W	T	F	S
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April 2007						
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7 am

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12 pm

1 00

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4 00 4:00pm–4:45pm US Attorneys Issue

5 00

6 00

TaskPad

TaskPad

Notes

OPA000000118

Scolinos, Tasia

From: Tasia Scolinos [
Sent: Sunday, March 04, 2007 8:03 PM
To: Moschella, William
Cc: Scolinos, Tasia
Subject: Fwd: DRAFT Talking Points

Attachments: pat520183069

attorney letter.doc
(27 KB)

This bounced back the fist time - sorry
--- Tasia Scolinos < wrote:

> Date: Sun, 4 Mar 2007 17:01:46 -0800 (PST)
> From: Tasia Scolinos >
> Subject: DRAFT Talking Points
> To: kyle.sampson@usdoj.gov,
> paul.j.mcnulty@usdoj.gov,
> william.moscella@usdoj.gov,
> brian.roehrkasse@usdoj.gov
> CC: tasia.scolinos@usdoj.gov
>
> Below are draft message points that we could insert
> into Will's testimony or figure out another tactic
> to
> move it. I think this will get some traction with
> media but without it going under the AG's name less
> so. Let me know what you think- I would like to send
> these over to Dan before the 1 PM WH meeting. Also,
> WH
> comms in under the impression that we did not remove
> all the Clinton USA's in '01 like he did when he
> took
> office. Is this true?
>
> Draft Talking Points for 3/6 Hearing:
> • One of the most important responsibilities the
> Attorney General has is to effectively manage the
> Department of Justice, including its thousands of
> employees.
> • Managers, as you know, often times have to make
> difficult decisions for the betterment of the
> organization.
> • It is vitally important that the Department take
> all
> necessary steps to ensure that its policies and
> priorities are served in a consistent manner. This
> is
> especially true of those who have the high privilege
> of serving as presidential appointees.
> • DOJ Presidential appointees, both at Main Justice
> and in the field, are tasked with making
> prosecutorial
> decisions but that responsibility does not change or
> alter in any way the fact that they serve at the
> pleasure of the President and if they are not
> executing their responsibilities in a manner that
> furthers the management and policy goals of

OPA000000119

> departmental leadership it is appropriate that they
> be
> replaced with other individuals.
> • At a time when America's well being is threatened
> by
> terrorism, violent gangs, child predators and
> corruption in business and government, this
> responsibility has never been clearer.
> • It is also important to note that the Clinton
> Administration fired all existing U.S. Attorneys
> when
> he took office presumably to put in individuals who
> understood the priorities of his Administration.
> Removing our own political appointees is not
> substantively different than that decision.
> • That said, it is also important that the
> Department's management actions be prudently
> executed
> once a decision is made.
> • The process by which the U.S. attorneys were
> informed of our decision fell short of this
> standard.
> We should have informed the individuals at the time
> we
> asked for their resignations of the various matters
> relating to policy, priorities and management
> justifying our actions.
> • Our intention in not providing a full explanation
> initially was to avoid protracted discussions and
> make
> these difficult discussions as non-inflammatory as
> possible for those being asked to resign.
> • In hindsight, although the Department continues to
> believe our decision to remove these individuals was
> the correct one, it would have been much better to
> have addressed the relevant issues up front with
> them.
> • All of the United States Attorneys asked to resign
> in this matter are professionals and we appreciate
> their service. I have no doubt that they will
> achieve
> success in their future endeavors along with the
> other
> (56?) U.S. Attorneys who have left their posts for
> various reasons over the last six years.
> • The Department remains focused on making sure that
> the good work being done by the career lawyers in
> all
> of those offices across the country continues
> uninterrupted and that qualified candidates are
> nominated as soon as possible for those positions.

Draft Talking Points for 3/6 Hearing:

- One of the most important responsibilities the Attorney General has is to effectively manage the Department of Justice, including its thousands of employees.
- Managers, as you know, often times have to make difficult decisions for the betterment of the organization.
- It is vitally important that the Department take all necessary steps to ensure that its policies and priorities are served in a consistent manner. This is especially true of those who have the high privilege of serving as presidential appointees.
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Scolinos, Tasia

From: Sampson, Kyle
Sent: Sunday, March 04, 2007 8:40 PM
To: ; McNulty, Paul J; 'william.moscella@usdoj.gov'; Roehrkasse, Brian
Cc: Scolinos, Tasia
Subject: Re: DRAFT Talking Points

* Clinton fired all Bush USAs in one fell swoop. Has been described to me as "have your offices cleared out by the end of the week."
* We fired all Clinton USAs (except Mueller and Warner), but staggered it more and permitted some to stay on for several months (including Mary Jo White in SDNY who we permitted to stay on for many months).

-----Original Message-----
From: Tasia Scolinos
To: Sampson, Kyle; McNulty, Paul J; william.moscella@usdoj.gov <william.moscella@usdoj.gov>; Roehrkasse, Brian
CC: Scolinos, Tasia
Sent: Sun Mar 04 20:01:46 2007
Subject: DRAFT Talking Points

Below are draft message points that we could insert into Will's testimony or figure out another tactic to move it. I think this will get some traction with media but without it going under the AG's name less so. Let me know what you think- I would like to send these over to Dan before the 1 PM WH meeting. Also, WH comms in under the impression that we did not remove all the Clinton USA's in '01 like he did when he took office. Is this true?

Draft Talking Points for 3/6 Hearing:

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- That said, it is also important that the Department's management actions be prudently executed once a decision is made.
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- In hindsight, although the Department continues to believe our decision to remove these individuals was the correct one, it would have been much better to have addressed the relevant issues up front with them.
- All of the United States Attorneys asked to resign in this matter are professionals and we appreciate their service. I have no doubt that they will achieve success in their future endeavors along with the other (56?) U.S. Attorneys who have left their posts for various reasons over the last six years.
- The Department remains focused on making sure that the good work being done by the career lawyers in all of those offices across the country continues uninterrupted and that qualified candidates are nominated as soon as possible for those positions.

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Scolinos, Tasia

From: Hertling, Richard
Sent: Monday, March 05, 2007 9:55 AM
To: Scolinos, Tasia; Sampson, Kyle
Subject: FW: More CAL Subpoenas/NOTICE OF SUBCOMMITTEE MEETING

From: Tracci, Robert N
Sent: Monday, March 05, 2007 9:54 AM
To: Moschella, William; Hertling, Richard; Scott-Finan, Nancy
Subject: FW: More CAL Subpoenas/NOTICE OF SUBCOMMITTEE MEETING

SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

NOTICE OF SUBCOMMITTEE MEETING

TIME	DATE	PLACE
10:00 a.m.	Tuesday, March 6, 2007	2141 Rayburn

Consideration of issuing subpoenas to former United States Attorneys

- Daniel Bogden, District of Nevada
- Paul K. Charlton, District of Arizona

By Direction of the Chair

House Judiciary Committee

Subcommittee on Commercial and Administrative Law

H2-362 Ford House Office Building

Telephone: (202) 226-7680

Scolinos, Tasia

From: Sullivan, Kevin F. [Kevin_F._Sullivan@who.eop.gov]
Sent: Monday, March 05, 2007 12:45 PM
To: Scolinos, Tasia
Subject: Fw: US Attorney Hearing: DRAFT Talking Points

Attachments: 1340525209-attorney letter.doc

attorney letter.doc
(27 KB)

Hey tasia - cathie is good about forwarding, but pls include me on this kind of stuff - thx

Sully

-----Original Message-----
From: Martin, Catherine
To: Sullivan, Kevin F.; Perino, Dana M.
Sent: Mon Mar 05 12:40:25 2007
Subject: Fw: US Attorney Hearing: DRAFT Talking Points

-----Original Message-----
From: Scolinos, Tasia
To: Bartlett, Dan; Martin, Catherine
CC: Roehrkasse, Brian
Sent: Mon Mar 05 10:51:44 2007
Subject: US Attorney Hearing: DRAFT Talking Points
<<1340525209-attorney letter.doc>>
<<1340525209-attorney letter.doc>>
Dan/Cathie -

In preparation for tomorrow's hearing where six of the dismissed US Attorneys will be testifying, we have drafted some talking points that we were going to insert into Will Moschella's testimony (the DOJ witness) that get out the message that although we stand by the decision to remove these folks the process by which they were informed was not optimal. Right now the coverage will be dominated by how qualified these folks were and their theories for their dismissals. We are trying to muddy the coverage up a bit by trying to put the focus on the process in which they were told - I suspect we are going to get to the point where DOJ has to say this anyway. First, it is true. Second, we are having morale problems with our other US Attorneys who understand the decision but think that these folks were not treated well in the process. I think from an internal management perspective it needs to be said.

We are also discussing internally if we can/should release more information about why these folks were let go if we can address the privacy act aspects. I think it cuts both ways - it does prolong the story in a sense because I suspect that the US Attorneys will just go away at some point when they feel they have vindicated their reputations. On the other hand, I don't know if the Senate Dems will let this go until it is all out in the open. Let me know your thoughts. Thanks.

Draft Talking Points for 3/6 Hearing:
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* In hindsight, although the Department continues to believe our decision to remove these individuals was the correct one, it would have been much better to have addressed the relevant issues up front with them.

* All of the United States Attorneys asked to resign in this matter are professionals and we appreciate their service. I have no doubt that they will achieve success in their future endeavors along with approximately 40 other U.S. Attorneys who have left their posts for various reasons over the last six years.

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OPA000000128

Draft Talking Points for 3/6 Hearing:

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Scolinos, Tasia

From: Scolinos, Tasia
Sent: Monday, March 05, 2007 12:46 PM
To: 'Sullivan, Kevin F.'
Subject: RE: US Attorney Hearing: DRAFT Talking Points

Of course - sorry about that

-----Original Message-----
From: Sullivan, Kevin F. [mailto:Kevin_F._Sullivan@who.eop.gov]
Sent: Monday, March 05, 2007 12:45 PM
To: Scolinos, Tasia
Subject: Fw: US Attorney Hearing: DRAFT Talking Points

Hey tasia - cathie is good about forwarding, but pls include me on this kind of stuff - thx

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-----Original Message-----
From: Martin, Catherine
To: Sullivan, Kevin F.; Perino, Dana M.
Sent: Mon Mar 05 12:40:25 2007
Subject: Fw: US Attorney Hearing: DRAFT Talking Points

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From: Scolinos, Tasia
To: Bartlett, Dan; Martin, Catherine
CC: Roehrkasse, Brian
Sent: Mon Mar 05 10:51:44 2007
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OPA000000131

Scolinos, Tasia

From: Scolinos, Tasia
Sent: Monday, March 05, 2007 1:12 PM
To: Sampson, Kyle
Subject: For the chop

I am not wedded to using this verbatim but I think the tone and flow as laid out here might work better for the oral. I don't want to provoke these folks further but we also need to hold our ground on the decision itself.

Draft Talking Points for 3/6 Hearing:

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Tasia Scolinos
Director of Public Affairs
Department of Justice
(202) 616-0079

Scolinos, Tasia

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

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

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

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

Scolinos, Tasia

From: Scolinos, Tasia
Sent: Monday, March 05, 2007 2:35 PM
To: Sampson, Kyle; McNulty, Paul J; Moschella, William; Hertling, Richard; Battle, Michael (USAEO)
Cc: Elston, Michael (ODAG); Roehrkasse, Brian; Goodling, Monica; Washington, Tracy T
Subject: Re:

Works for me

-----Original Message-----
From: Sampson, Kyle
To: McNulty, Paul J; Moschella, William; Hertling, Richard; Scolinos, Tasia; Battle, Michael (USAEO)
CC: Elston, Michael (ODAG); Roehrkasse, Brian; Goodling, Monica; Washington, Tracy T
Sent: Mon Mar 05 14:30:17 2007
Subject: FW:

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

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

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OPA000000135

Scolinos, Tasia

From: Roehrkasse, Brian
Sent: Monday, March 05, 2007 2:38 PM
To: Scolinos, Tasia
Subject: RE:

Can you ask Kyle if I can attend too since I am sure the WH will have multiple communications people in the meeting?

-----Original Message-----
From: Scolinos, Tasia
Sent: Monday, March 05, 2007 2:35 PM
To: Sampson, Kyle; McNulty, Paul J; Moschella, William; Hertling, Richard; Battle, Michael (USAEO)
Cc: Elston, Michael (ODAG); Roehrkasse, Brian; Goodling, Monica; Washington, Tracy T
Subject: Re:

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-----Original Message-----
From: Sampson, Kyle
To: McNulty, Paul J; Moschella, William; Hertling, Richard; Scolinos, Tasia; Battle, Michael (USAEO)
CC: Elston, Michael (ODAG); Roehrkasse, Brian; Goodling, Monica; Washington, Tracy T
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OPA000000136

Scolinos, Tasia

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

yes, and already told him so

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

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

---

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

Okay -- two things:

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

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To: McNulty, Paul J; Moschella, William; Hertling, Richard; Scolinos, Tasia; Battle, Michael (USAEO)
Cc: Elston, Michael (ODAG); Roehrkasse, Brian; Goodling, Monica; Washington, Tracy T
Subject: FW:
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into possible times? Thanks, and sorry to impose.

Scolinos, Tasia

From: Elston, Michael (ODAG)
Sent: Monday, March 05, 2007 2:53 PM
To: Scott-Finan, Nancy; Moschella, William; Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO); Roehrkasse, Brian; Scolinos, Tasia
Cc: Hertling, Richard; Seidel, Rebecca; Tracci, Robert N
Subject: RE: Joint Statement of Former U.S. Attorneys
Attachments: Statement of Hon. George J Terwilliger III March 6 2007.pdf

Attached is the prepared testimony of George Terwilliger.

From: Scott-Finan, Nancy
Sent: Monday, March 05, 2007 2:14 PM
To: Moschella, William; Elston, Michael (ODAG); Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO); Roehrkasse, Brian; Scolinos, Tasia
Cc: Hertling, Richard; Seidel, Rebecca; Tracci, Robert N
Subject: FW: Joint Statement of Former U.S. Attorneys

Attached is the joint USA statement for tomorrow afternoon.

United States of America

House of Representatives

Committee on the Judiciary

Subcommittee on Commercial and Administrative Law

Statement of the

Hon. George J. Terwilliger III

Washington, D.C.

March 6, 2007

Madam Chairwoman and members of the Subcommittee,

Thank you for inviting me to appear today to testify regarding the appointment of interim United States Attorneys. Those filling the office of the United States Attorney in each district play a vital role in promoting the safety and well-being of all Americans. Altering the process for filing vacant United States Attorney positions therefore deserves careful and thoughtful consideration.

It was my privilege to serve as an Assistant United States Attorney for eight years, the United States Attorney for the District of Vermont for five years, and to supervise the nation's 93 United States Attorneys as Deputy Attorney General of the United States. While serving as Deputy Attorney General, I had the opportunity to comment on the merits of potential nominees for the office of United States Attorney, to consult with United States Attorneys as to their performance, and to be involved in the removal or resignation of United States Attorneys.

I considered these duties to be matters wholly within the Executive Branch. Because of the sensitive nature of these duties both to the Department and, obviously, to the persons whose careers were affected, I treated such matters as ones of great confidence. These matters were neither suitable for, nor amenable to, public discourse.

My current private practice brings me into frequent contact with United States Attorneys and their offices. While my practice sometimes places me in the position of persuading United States Attorneys and their Assistants to take another view of certain matters before them, I have the utmost respect, admiration, and, indeed, gratitude for the work that the United States Attorneys and their assistants perform. As a general proposition, but with rare and sometimes troubling exception, I find the United States Attorneys and their assistants to be among the most honorable and dedicated of professionals. I am before the Committee today because I believe strongly that protecting the integrity of the office of United States Attorney is essential to our system of justice.

It was my privilege to serve in the Department of Justice for 15 years. My comments today are informed by my experience and the high offices in which I had the privilege to serve. It is also a privilege for me to know personally much of today's leadership of the Department of Justice, including Attorney General Gonzalez and Deputy Attorney General McNulty. In addition, I am fortunate to enjoy the friendship of many of their staff members and of many long-serving career Department of Justice lawyers, men and women for whom I have sincere personal and professional admiration.

From my experience with the current leadership of the Department, I have every reason to believe that the Department's leaders completely share my views

OPA000000141

about the importance of maintaining the integrity of and respect for the office of United States Attorney. I am, of course, aware that some level of controversy has ensued about recent changes in the leadership of several United States Attorneys' offices and the manner in which these changes were brought about. I know, or have had dealings of a professional nature with, some of the United States Attorneys involved. In my view, they are lawyers of considerably high professional reputation.

In my experience, particularly as Deputy Attorney General, there are a variety of reasons why a change in leadership at a United States Attorney's office may be appropriate, or even necessary. These reasons might generally be termed to be on account of "performance," but I would not interpret such a characterization as limited in reference to a level of performance that is either substandard or below some level of appropriate professional behavior. Rather, I would interpret a "performance-related" reason for making a change as having more to do with an overall assessment of the performance of an office. Such a broad assessment would include an office's implementation of the administration's law enforcement policies and priorities.

During my tenure as United States Attorney for the District of Vermont, I believe it would be fair to say that there were those who praised my performance and those who found it wanting. I received my fair share of criticism for both policy and operational decisions. Such criticism comes with the territory; if one does not want to suffer such criticism, one should not assume such an office. I considered the proper execution of my duties to require both a recognition that I served as a subordinate to the leadership of the Department of Justice and an awareness of my responsibility for forwarding within my district the goals and objectives of the administration. I held the United States Attorneys whom I supervised as Deputy Attorney General to the same standards. Where I and/or the Attorney General believed that performance in regard to these core responsibilities was wanting, we acted upon that belief.

United States Attorneys are, of course, political appointees of the President. Their position is, in fact, unique in the Executive Branch bureaucracy. United States Attorneys are responsible for securing the mission of the Executive Branch in their respective districts, and are therefore required, in my judgment, to facilitate teamwork and joint effort in the field among the several Executive agencies vested with law-enforcement, counterterrorism, and other responsibilities vital to the well-being and safety of Americans. It is decidedly not within the scope of a United States Attorney's responsibilities for her or him to execute her or his duties in a manner that is politically-driven. Nothing is more inimical to the administration of justice, and the public's perception of the government's interest that justice be done, than having a prosecutor utilize politics as a basis for, or determining the direction of, the prosecution of a federal case.

OPA000000142

That said, it is part of United States Attorney's job, as an officer in a political administration, to carry out, within her or his district, the administration's policies and priorities. United States Attorneys are given an important voice, both as individuals and as a group, in setting those policies and priorities and in deciding how, in a given locale, they are best carried out. However, if a United States Attorney is unable to agree with such policies and priorities and to carry them forward, that United States Attorney does not have, in my judgment, the authority to simply ignore them. Rather, such a United States Attorney should either resign and move on to other pursuits, or, if she or he fails to do so, then the failure to execute such policies and priorities would be grounds for removal.

All of these factors are relevant to the selection of persons to have the privilege to serve in this great office. Given the substantial latitude and discretion that United States Attorneys are traditionally accorded, the selection of a person to serve in this office is a critical decision. I have been working in or with United States Attorneys' offices for my entire legal career, which, I am now forced to acknowledge, is approaching 30 years in duration. In that time, and having had occasion to historically examine the office of United States Attorney, it seems to me that there has been a studied effort to continually professionalize both the functions of those offices and to look more to professional than political credentials for those who should lead them. At least up to some time in the twentieth century, entire United States Attorney's offices, including all assistants, would be replaced with a change in administration. Today, Assistant United States Attorneys, while not in the civil service, are selected and appointed on the basis of their professional, rather than political, credentials. During my time in the Justice Department, it seemed to me that the ideal United States Attorney candidate was someone of experience and accomplishment as a lawyer and, ideally, as a prosecutor, who also had such a political background as to suggest an ability to lead, to carry out an administration's policies and priorities, and, perhaps above all, whose career indicated a soundness of judgment and intellect that would permit the candidate to carry out ably the duties of office if selected.

Considering the importance of the office to the administration of justice, it might, at first blush, seem appropriate for the judicial branch to have a role in appointing interim United States Attorneys in the event of a vacancy. However, upon reflection, I think returning to that process is not well advised. I say this knowing that I first assumed the office of United States Attorney when appointed by then Chief Judge of the United States District Court for the District of Vermont, the late Albert Coffrin, Jr., one of the finest judges and men whom I have had the privilege to know. Nonetheless, because the United States Attorney serves as a subordinate to the President, it is most appropriate that the authority to appoint an interim United States Attorney be delegated to the Attorney General, who is her- or himself, of course, a presidential appointee.

I realize there is some case law supporting the notion that judicial appointment of interim United States Attorneys does not offend the constitutional

OPA000000143

principle of separation of powers. I think the holdings in these cases are suspect as matters of constitutional law and have been subject to question by learned minds.

Historical considerations also counsel against returning to the pre-2006 regime. The office of United States Attorney was not created as an appendage to federal courts, but rather began as a presidential appointment supervised by the Executive Branch. The Judiciary Act of 1789 established the office of federal "district attorneys." These federal prosecutors were brought under the supervision of the Treasury Department in 1797, in light of the fact that most of district attorneys' work in the new Republic involved debt collection.[1] It was not until the Civil War that Congress gave District Courts authority to fill interim vacancies arising in the office.[2] The District Courts retained this authority until 1986, when the Attorney General was allowed to make a 120-day interim appointment, upon the expiration of which the District Court had power to appoint an interim United States Attorney.[3] In 2006, the interim appointment process came full circle when Congress vested interim appointment authority solely within the Executive Branch.[4]

Several practical concerns also favor leaving the current system in place. Suppose the District Court, for whatever reason, simply declined to act in making an appointment? The uncertainty that would ensue regarding the authority of the office to carry out its functions is inconsistent with the efficient and predictable administration of justice. Given the tenor of our times, take this supposition one step further and assume that the District Court is not in a position to act because it has been immobilized as a result of terrorism, or even a natural disaster. A vacancy in a United States Attorney position at such a time would be a critical gap that needs to be filled as rapidly as possible and with a person who understands that her or his appointment is firmly under Executive authority. Finally, as a practical matter, as learned and capable as chief judges of the various district courts tend to be, they may not know best about making appointments to Executive offices. The responsibility for the supervision and management of United States Attorney's offices has been vested by Congress in the Attorney General and the Department of Justice. It seems to me, as both a practical and a legal matter, that such responsibility should carry with it the authority to appoint the persons necessary to carry it out. I do recognize and support the notion that the advice and consent process is critical to the balance of power between Congress and the Executive Branch. I would hope that both

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[1] See Ross E. Wiener, Inter-Branch Appointments after the Independent Counsel: Court Appointment of United States Attorneys, 86 Minn. L. Rev. 363, 375-76 (2001).

[2] See United States v. Gantt, 194 F.3d 987, 998 (9th Cir. 1999) (citing Act of March 3, 1863, ch. 93, § 2, 12 Stat. 768 (1863) (Rev. Stat. 1873, § 793)).

[3] See 28 U.S.C. § 546(a)-(d) (1986).

[4] 28 U.S.C. § 546(c) (2006).

OPA000000144

branches of government would act in a responsible manner to see that the nomination and appointment process necessary to fill a vacancy in the office of United States Attorney would move with dispatch.

In conclusion, I regret the circumstances which have led to this hearing. I would urge all parties to recall that the United States Attorneys serve at the pleasure of the President and may be removed for any reason, or no reason at all. I would most respectfully urge Congress, and this Committee, to accord deference to that fundamental aspect of the office and urge restraint in exploring any particular or individual decision regarding a particular office.

I thank the Chairwoman and the Sub-Committee for allowing me to be heard. I welcome the members' questions.

OPA000000145

Scolinos, Tasia

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

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

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

Witness List

Hearing before the
Senate Judiciary Committee

On

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

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

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

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

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

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

Scolinos, Tasia

From: Scott-Finan, Nancy

Sent: Monday, March 05, 2007 2:58 PM

To: Seidel, Rebecca; Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO); Scolinos, Tasia; Hertling, Richard; Moschella, William; Elston, Michael (ODAG)

Subject: RE: US ATTY II Hearing 3/6/07: Cummins, Iglesias, Lam and McKay Joint Testimony & Individual Bios

Looks to be identical to House testimony without the signatories of Bogden and Charlton.

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

did you already get these?

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

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

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

Thank you

Scolinos, Tasia

From: McNulty, Paul J
Sent: Monday, March 05, 2007 3:39 PM
To: Sampson, Kyle; Moschella, William; Hertling, Richard; Scolinos, Tasia; Battle, Michael (USAEO)
Cc: Elston, Michael (ODAG); Roehrkasse, Brian; Goodling, Monica; Washington, Tracy T
Subject: RE:

I can take 4 others in my car and there would be no need for WAVES info.

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

Okay -- two things:

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

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Scolinos, Tasia

From: Hertling, Richard
Sent: Monday, March 05, 2007 4:15 PM
To: McNulty, Paul J; Moschella, William; Elston, Michael (ODAG); Scolinos, Tasia; Roehrkasse, Brian
Subject: Re: Southern California stats

Can we provide these numbers to folks on the Hill?

-----Original Message-----
From: McNulty, Paul J
To: Moschella, William; Elston, Michael (ODAG); Hertling, Richard; Scolinos, Tasia; Roehrkasse, Brian
Sent: Mon Mar 05 16:13:52 2007
Subject: Southern California stats

From EOUSA's statistics. Pay special attention to the last point about the drop in immigration cases over the past two years. The combination of that fact plus Sen Feinstein's letter on the same subject, should make the case.

Gun Prosecutions in SDCA:

--- 88 gun cases in five years ('02 - '06) (during those same years, SDAL, where Sen Sessions was USA, with 1/5th the resources, prosecuted 439 cases.)

--- Only Guam and the Virgin Islands had a worst record during that same stretch.

Immigration prosecutions in SDCA:

--- Both in cases and defendants, SDCA is 4th of the 5 border districts from '02 - '06 (New Mexico is lower but has only about half the prosecutors).

--- The most striking thing is that SDCA immigration prosecutions dropped by more than 40% from '04 to '06, just when the President was pushing for tougher enforcement at the border. Also, Arizona was down 15% during this same time even though it was given more prosecutors. The other 3 districts increased their caseloads.

OPA000000150

Scolinos, Tasia

From: Goodling, Monica
Sent: Monday, March 05, 2007 7:01 PM
To: Scott-Finan, Nancy; Moschella, William; Scolinos, Tasia; Roehrkasse, Brian
Cc: Hertling, Richard; Silas, Adrien
Subject: RE: Revised testimony

I'll defer to others on whether this is still too leg heavy, but I had a few fixes from Friday that didn't make it into this draft. Please correct the below three paragraphs. Thanks!

Since January 20, 2001, 124 new U.S. Attorneys have been nominated by the President and confirmed by the Senate. On March 9, 2006, the Congress amended the Attorney General's authority to appoint interim U.S. Attorneys, and 18 vacancies have occurred since that date. This amendment has not changed our commitment to nominating candidates for Senate confirmation. In fact, the Administration has nominated a total of 16 individuals for Senate consideration since the appointment authority was amended, with 12 of those nominees having been confirmed to date. Of the 18 vacancies that have occurred since the time that the law was amended, the Administration has nominated candidates to fill six of these positions, has interviewed candidates for nomination for eight more positions, and is waiting to receive names to set up interviews for the remaining positions—all in consultation with home-state Senators.

Also:

Two examples demonstrate the shortcomings of the previous system and the system contemplated in H.R. 580. During President Reagan's Administration, the district court appointed in the Southern District of West Virginia an interim U.S. Attorney who was neither a Justice Department employee nor an individual who had been subject of a FBI background review. The court-appointed U.S. Attorney, who had ties to a political party, sought access to law-enforcement sensitive investigative materials related to the office's most sensitive public corruption investigation, which was targeting a state-wide leader of the same party. The problem was that the interim U.S. Attorney had no clearances or had then undergone a background investigation so that the Attorney General and the Federal Bureau of Investigation could have complete confidence in the individual or her reasons for making inquiries into the case. The appointment forced the Department to remove the case files from the U.S. Attorney's office in order to protect the integrity of the investigation and prohibit the U.S. Attorney from making any additional inquiries into the case. In addition, the Department expedited a nomination for the permanent U.S. Attorney and with the extraordinary assistance of the Senate, he was confirmed to replace the court-appointed individual within a few weeks.

In a second case, occurring in 2005, the district court attempted to appoint an individual who similarly was not a Department of Justice or federal employee and had never undergone the appropriate background check. As a result, this individual could have no access to classified information. This individual could not receive information from his district's anti-terrorism coordinator, its Joint Terrorism Task Force, or its Field Intelligence Group. In a post 9/11 world, this situation was unacceptable.

From: Scott-Finan, Nancy
Sent: Monday, March 05, 2007 6:38 PM
To: Moschella, William; Goodling, Monica; Scolinos, Tasia; Roehrkasse, Brian
Cc: Hertling, Richard; Silas, Adrien
Subject: Revised testimony

Attached is the revised testimony. Please get back to me with any changes or comments ASAP << File: DRAFT

Scolinos, Tasia

From: Scott-Finan, Nancy
Sent: Monday, March 05, 2007 7:04 PM
To: Goodling, Monica; Moschella, William; Scolinos, Tasia; Roehrkasse, Brian
Cc: Hertling, Richard; Silas, Adrien
Subject: RE: Revised testimony

That is my fault entirely. I will change the numbers.

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Sent: Monday, March 05, 2007 7:01 PM
To: Scott-Finan, Nancy; Moschella, William; Scolinos, Tasia; Roehrkasse, Brian
Cc: Hertling, Richard; Silas, Adrien
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Two examples demonstrate the shortcomings of the previous system and the system contemplated in H.R. 580. During President Reagan's Administration, the district court appointed in the Southern District of West Virginia an interim U.S. Attorney who was neither a Justice Department employee nor an individual who had been subject of a FBI background review. The court-appointed U.S. Attorney, who had ties to a political party, sought access to law-enforcement sensitive investigative materials related to the office's most sensitive public corruption investigation, which was targeting a state-wide leader of the same party. The problem was that the interim U.S. Attorney had no clearances or had then undergone a background investigation so that the Attorney General and the Federal Bureau of Investigation could have complete confidence in the individual or her reasons for making inquiries into the case. The appointment forced the Department to remove the case files from the U.S. Attorney's office in order to protect the integrity of the investigation and prohibit the U.S. Attorney from making any additional inquiries into the case. In addition, the Department expedited a nomination for the permanent U.S. Attorney and with the extraordinary assistance of the Senate, he was confirmed to replace the court-appointed individual within a few weeks.

In a second case, occurring in 2005, the district court attempted to appoint an individual who similarly was not a Department of Justice or federal employee and had never undergone the appropriate background check. As a result, this individual could have no access to classified information. This individual could not receive information from his district's anti-terrorism coordinator, its Joint Terrorism Task Force, or its Field Intelligence Group. In a post 9/11 world, this situation was unacceptable.

From: Scott-Finan, Nancy
Sent: Monday, March 05, 2007 6:38 PM
To: Moschella, William; Goodling, Monica; Scolinos, Tasia; Roehrkasse, Brian
Cc: Hertling, Richard; Silas, Adrien
Subject: Revised testimony

Attached is the revised testimony. Please get back to me with any changes or comments ASAP << File: DRAFT Moschella Testimony4.wpd >>

Scolinos, Tasia

From: Scott-Finan, Nancy
Sent: Monday, March 05, 2007 7:27 PM
To: Goodling, Monica; Moschella, William; Scolinos, Tasia; Roehrkasse, Brian
Cc: Hertling, Richard; Silas, Adrien
Subject: RE: Revised testimony

Attachments: DRAFT Moschella Testimony4.wpd

DRAFT Moschella Testimony4.wpd...

This version has all of Monica's edits from Friday. Do we have any other comments? Going once, going twice??????

From: Goodling, Monica
Sent: Monday, March 05, 2007 7:01 PM
To: Scott-Finan, Nancy; Moschella, William; Scolinos, Tasia; Roehrkasse, Brian
Cc: Hertling, Richard; Silas, Adrien
Subject: RE: Revised testimony

I'll defer to others on whether this is still too leg heavy, but I had a few fixes from Friday that didn't make it into this draft. Please correct the below three paragraphs. Thanks!

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STATEMENT

OF

WILLIAM E. MOSCHELLA
PRINCIPAL ASSOCIATE DEPUTY ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

"H.R. 580, RESTORING CHECKS AND BALANCES IN THE NOMINATION PROCESS OF U.S. ATTORNEYS"

PRESENTED ON

MARCH 6, 2007

Testimony
of

William E. Moschella
Principal Associate Deputy Attorney General
U.S. Department of Justice

Committee on the Judiciary
United States House of Representatives

"H.R. 580, Restoring Checks and Balances in the Nomination Process of U.S. Attorneys"

March 6, 2007

Chairman Conyers, Congressman Smith, and members of the Committee, thank you for the invitation to discuss the importance of the Justice Department's United States Attorneys.

As previously noted by the Attorney General and the Deputy Attorney General in their testimony, the Department of Justice has significant concern about H.R. 580, the "Preserving United States Attorneys Independence Act of 2007"; however, the Department is willing to work with the Committee in an effort to reach common ground.

As the chief federal law-enforcement officers in their districts, our 93 U.S. Attorneys represent the Attorney General and the Department of Justice throughout the United States. U.S. Attorneys are not just prosecutors; they are government officials charged with managing and implementing the policies and priorities of the President and the Attorney General. The Attorney General has set forth key priorities for the Department of Justice, and in each of their

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districts, U.S. Attorneys lead the Department's efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families—including child pornography, obscenity, and human trafficking.

United States Attorneys serve at the pleasure of the President. Like any other high-ranking officials in the Executive Branch, they may be removed for any reason or no reason. The Department of Justice—including the office of United States Attorney—was created precisely so that the government's legal business could be effectively managed and carried out through a coherent program under the supervision of the Attorney General. Unlike judges, who are supposed to act independently of those who nominate them, U.S. Attorneys are accountable to the Attorney General, and through him, to the President—the head of the Executive Branch. This accountability ensures compliance with Department policy, and is often recognized by the Members of Congress who write to the Department to encourage various U.S. Attorneys' Offices to focus on a particular area of law enforcement.

The Attorney General and the Deputy Attorney General are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their offices effectively. It should come as no surprise to anyone that, in an organization as large as the Justice Department, U.S. Attorneys are removed or asked or encouraged to resign from time to time. However, in this Administration U.S. Attorneys are never—repeat, never—removed, or asked or encouraged to resign, in an effort to retaliate against them, or interfere with, or inappropriately influence a particular investigation, criminal prosecution, or civil case. Any

OPA000000159

suggestion to the contrary is unfounded, and it irresponsibly undermines the reputation for impartiality the Department has earned over many years and on which it depends.

Turnover in the position of U.S. Attorney is not uncommon and should be expected, particularly after a U.S. Attorney's four-year term has expired. When a presidential election results in a change of administration, every U.S. Attorney leaves and the new President nominates a successor for confirmation by the Senate. Moreover, U.S. Attorneys do not necessarily stay in place even during an administration. For example, approximately half of the U.S. Attorneys appointed at the beginning of the Bush Administration had left office by the end of 2006. Of the U.S. Attorneys whose resignations have been the subject of recent discussion, each one had served longer than four years prior to being asked to resign.

Given the reality of turnover among the United States Attorneys, our system depends heavily on the dedicated service of the career investigators and prosecutors. While a new U.S. Attorney may articulate new priorities or emphasize different types of cases, the effect of a U.S. Attorney's departure on an existing investigation is, in fact, minimal, and that is as it should be. The career civil servants who prosecute federal criminal cases are dedicated professionals and an effective U.S. Attorney relies on the professional judgment of those prosecutors.

The leadership of an office is more than the direction of individual cases. It involves managing limited resources, maintaining high morale in the office, and building relationships with federal, state, and local law enforcement partners. When a U.S. Attorney submits his or her resignation, the Department must first determine who will serve temporarily as interim U.S.

Attorney. The Department has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's Office during the period when there is not a presidentially-appointed, Senate-confirmed United States Attorney. Often, the Department looks to the First Assistant U.S. Attorney or another senior manager in the office to serve as U.S. Attorney on an interim basis. When neither the First Assistant nor another senior manager in the office is able or willing to serve as interim U.S. Attorney, or when the appointment of either would not be appropriate in the circumstances, the Department has looked to other, qualified Department employees. For example, in the District of Minnesota and the Northern District of Iowa, the First Assistant took federal retirement at or near the same time that the U.S. Attorney resigned, which required the Department to select another official to lead the office.

At no time, however, has the Administration sought to avoid the confirmation process in the Senate by appointing an interim U.S. Attorney and then refusing to move forward—in consultation with home-State Senators—on the selection, nomination, confirmation and appointment of a new U.S. Attorney. Not once. In every single case where a vacancy occurs, the Bush Administration is committed to having a United States Attorney who is confirmed by the Senate. And the Administration's actions bear this out. Every time a vacancy has arisen, the President has either made a nomination, or the Administration is working to select candidates for nomination. The appointment of U.S. Attorneys by and with the advice and consent of the Senate is unquestionably the appointment method preferred by the Senate, and it is unquestionably the appointment method preferred by the Administration.

Since January 20, 2001, 124 new U.S. Attorneys have been nominated by the President and confirmed by the Senate. On March 9, 2006, the Congress amended the Attorney General's authority to appoint interim U.S. Attorneys, and 18 vacancies have occurred since that date. This amendment has not changed our commitment to nominating candidates for Senate confirmation. In fact, the Administration has nominated a total of 16 individuals for Senate consideration since the appointment authority was amended, with 12 of those nominees having been confirmed to date. Of the 18 vacancies that have occurred since the time that the law was amended, the Administration has nominated candidates to fill six of these positions, has interviewed candidates for nomination for eight more positions, and is waiting to receive names to set up interviews for the remaining positions—all in consultation with home-state Senators.

However, while that nomination process continues, the Department must have a leader in place to carry out the important work of these offices. To ensure an effective and smooth transition during U.S. Attorney vacancies, the office of the U.S. Attorney must be filled on an interim basis. To do so, the Department relies on the Vacancy Reform Act ("VRA"), 5 U.S.C. § 3345(a)(1), when the First Assistant is selected to lead the office, or the Attorney General's appointment authority in 28 U.S.C. § 546 when another Department employee is chosen. Under the VRA, the First Assistant may serve in an acting capacity for only 210 days, unless a nomination is made during that period. Under an Attorney General appointment, the interim U.S. Attorney serves until a nominee is confirmed the Senate. There is no other statutory authority for filling such a vacancy, and thus the use of the Attorney General's appointment authority, as amended last year, signals nothing other than a decision to have an interim U.S.

OPA000000162

Attorney who is not the First Assistant. It does not indicate an intention to avoid the confirmation process, as some have suggested.

H.R. 580 would supersede last year's amendment to 28 U.S.C. § 546 that authorized the Attorney General to appoint an interim U.S. Attorney to serve until a person fills the position by being confirmed by the Senate and appointed by the President. Last year's amendment was intended to ensure continuity of operations in the event of a U.S. Attorney vacancy that lasts longer than expected.

Prior to last year's amendment, the Attorney General could appoint an interim U.S. Attorney for the first 120 days after a vacancy arose; thereafter, the district court was authorized to appoint an interim U.S. Attorney. In cases in which a Senate-confirmed U.S. Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in recurring problems. Some district courts recognized the conflicts inherent in the appointment of an interim U.S. Attorney who would then have matters before the court—not to mention the oddity of one branch of government appointing officers of another—and simply refused to exercise the appointment authority. In those cases, the Attorney General was consequently required to make multiple successive 120-day interim appointments. Other district courts ignored the inherent conflicts and sought to appoint as interim U.S. Attorneys wholly unacceptable candidates who lacked the required clearances or appropriate qualifications.

OPA000000163

Two examples demonstrate the shortcomings of the previous system and the system contemplated in H.R. 580. During President Reagan's Administration, the district court appointed in the Southern District of West Virginia an interim U.S. Attorney who was neither a Justice Department employee nor an individual who had been subject of a FBI background review. The court-appointed U.S. Attorney, who had ties to a political party, sought access to law-enforcement sensitive investigative materials related to the office's most sensitive public corruption investigation, which was targeting a state-wide leader of the same party. The problem was that the interim U.S. Attorney had no clearances or had undergone a background investigation so that the Attorney General and the Federal Bureau of Investigation could have complete confidence in the individual or his reasons for making inquiries into the case. The appointment forced the Department to remove the case files from the U.S. Attorney's office in order to protect the integrity of the investigation and prohibit the U.S. Attorney from making any additional inquiries into the case. In addition, the Department expedited a nomination for the permanent U.S. Attorney and with the extraordinary assistance of the Senate, he was confirmed to replace the court-appointed individual within a few weeks.

In a second case, occurring in 2005, the district court attempted to appoint an individual who similarly was not a Department of Justice or federal employee and had never undergone the appropriate background check. As a result, this individual could have not access to classified information. This individual could have no access to classified information. The U.S. Attorney could not receive information from his district's anti-terrorism coordinator, its Joint Terrorism Task Force, or its Field Intelligence Group. In a post 9/11 world, this situation was unacceptable.

OPA000000164

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

The Department's principal concern with H.R. 580 is that it would be inappropriate, and inconsistent with sound separation of powers principles, to vest federal courts with the authority to appoint a critical Executive Branch officer such as a United States Attorney. We are aware of no other agency where federal judges—members of a separate branch of government—appoint on an interim basis senior, policymaking staff of an agency. Such a judicial appointee would have authority for litigating the entire federal criminal and civil docket before the very district court to whom he or she was beholden for the appointment. This arrangement, at a minimum, gives rise to an appearance of potential conflict that undermines the performance or perceived performance of both the Executive and Judicial Branches. A judge may be inclined to select a U.S. Attorney who shares the judge's ideological or prosecutorial philosophy. Or a judge may select a prosecutor apt to settle cases and enter plea bargains, so as to preserve judicial resources. *See* Wiener, Inter-Branch Appointments After the Independent Counsel: Court Appointment of United States Attorneys, 86 Minn. L. Rev. 363, 428 (2001) (concluding that court appointment of interim U.S. Attorneys is unconstitutional).

OPA000000165

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

H.R. 580 appears to be aimed at addressing a problem that has not arisen. The Administration has repeatedly demonstrated its commitment to having a Senate-confirmed U.S. Attorney in every federal district. As noted, when a vacancy in the office of U.S. Attorney occurs, the Department typically looks first to the First Assistant or another senior manager in the office to serve as an acting or interim U.S. Attorney. Where neither the First Assistant nor another senior manager is able or willing to serve as an acting or interim U.S. Attorney, or where their service would not be appropriate under the circumstances, the Administration has looked to other Department employees to serve temporarily. No matter which way a U.S. Attorney is temporarily appointed, the Administration has consistently sought, and will continue to seek, to fill the vacancy—in consultation with home-State Senators—with a presidentially-nominated and Senate-confirmed nominee. The Department, therefore, does not believe a case has been made to repeal the current authority for appointing interim U.S. Attorneys.

OPA000000166

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

STATEMENT

OF

WILLIAM E. MOSCHELLA
PRINCIPAL ASSOCIATE DEPUTY ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

"H.R. 580, RESTORING CHECKS AND BALANCES IN THE NOMINATION PROCESS OF U.S. ATTORNEYS"

PRESENTED ON

MARCH 6, 2007

OPA000000168

Testimony
of

William E. Moschella
Principal Associate Deputy Attorney General
U.S. Department of Justice

Committee on the Judiciary
United States House of Representatives

"H.R. 580, Restoring Checks and Balances in the Nomination Process of U.S. Attorneys"

March 6, 2007

Chairman Conyers, Congressman Smith, and members of the Committee, thank you for the invitation to discuss the importance of the Justice Department's United States Attorneys.

As previously noted by the Attorney General and the Deputy Attorney General in their testimony, the Department of Justice has significant concern about H.R. 580, the "Preserving United States Attorneys Independence Act of 2007"; however, the Department is willing to work with the Committee in an effort to reach common ground.

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OPA000000169

districts, U.S. Attorneys lead the Department's efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families—including child pornography, obscenity, and human trafficking.

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The Attorney General and the Deputy Attorney General are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their offices effectively. It should come as no surprise to anyone that, in an organization as large as the Justice Department, U.S. Attorneys are removed or asked or encouraged to resign from time to time. However, in this Administration U.S. Attorneys are never—repeat, never—removed, or asked or encouraged to resign, in an effort to retaliate against them, or interfere with, or inappropriately influence a particular investigation, criminal prosecution, or civil case. Any

OPA000000170

suggestion to the contrary is unfounded, and it irresponsibly undermines the reputation for impartiality the Department has earned over many years and on which it depends.

Turnover in the position of U.S. Attorney is not uncommon and should be expected, particularly after a U.S. Attorney's four-year term has expired. When a presidential election results in a change of administration, every U.S. Attorney leaves and the new President nominates a successor for confirmation by the Senate. Moreover, U.S. Attorneys do not necessarily stay in place even during an administration. For example, approximately half of the U.S. Attorneys appointed at the beginning of the Bush Administration had left office by the end of 2006. Of the U.S. Attorneys whose resignations have been the subject of recent discussion, each one had served longer than four years prior to being asked to resign.

Given the reality of turnover among the United States Attorneys, our system depends heavily on the dedicated service of the career investigators and prosecutors. While a new U.S. Attorney may articulate new priorities or emphasize different types of cases, the effect of a U.S. Attorney's departure on an existing investigation is, in fact, minimal, and that is as it should be. The career civil servants who prosecute federal criminal cases are dedicated professionals and an effective U.S. Attorney relies on the professional judgment of those prosecutors.

The leadership of an office is more than the direction of individual cases. It involves managing limited resources, maintaining high morale in the office, and building relationships with federal, state, and local law enforcement partners. When a U.S. Attorney submits his or her resignation, the Department must first determine who will serve temporarily as interim U.S.

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OPA000000173

Attorney who is not the First Assistant. It does not indicate an intention to avoid the confirmation process, as some have suggested.

H.R. 580 would supersede last year's amendment to 28 U.S.C. § 546 that authorized the Attorney General to appoint an interim U.S. Attorney to serve until a person fills the position by being confirmed by the Senate and appointed by the President. Last year's amendment was intended to ensure continuity of operations in the event of a U.S. Attorney vacancy that lasts longer than expected.

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OPA000000174

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OPA000000175

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

The Department's principal concern with H.R. 580 is that it would be inappropriate, and inconsistent with sound separation of powers principles, to vest federal courts with the authority to appoint a critical Executive Branch officer such as a United States Attorney. We are aware of no other agency where federal judges—members of a separate branch of government—appoint on an interim basis senior, policymaking staff of an agency. Such a judicial appointee would have authority for litigating the entire federal criminal and civil docket before the very district court to whom he or she was beholden for the appointment. This arrangement, at a minimum, gives rise to an appearance of potential conflict that undermines the performance or perceived performance of both the Executive and Judicial Branches. A judge may be inclined to select a U.S. Attorney who shares the judge's ideological or prosecutorial philosophy. Or a judge may select a prosecutor apt to settle cases and enter plea bargains, so as to preserve judicial resources. *See* Wiener, Inter-Branch Appointments After the Independent Counsel: Court Appointment of United States Attorneys, 86 Minn. L. Rev. 363, 428 (2001) (concluding that court appointment of interim U.S. Attorneys is unconstitutional).

OPA000000176

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H.R. 580 appears to be aimed at addressing a problem that has not arisen. The Administration has repeatedly demonstrated its commitment to having a Senate-confirmed U.S. Attorney in every federal district. As noted, when a vacancy in the office of U.S. Attorney occurs, the Department typically looks first to the First Assistant or another senior manager in the office to serve as an acting or interim U.S. Attorney. Where neither the First Assistant nor another senior manager is able or willing to serve as an acting or interim U.S. Attorney, or where their service would not be appropriate under the circumstances, the Administration has looked to other Department employees to serve temporarily. No matter which way a U.S. Attorney is temporarily appointed, the Administration has consistently sought, and will continue to seek, to fill the vacancy—in consultation with home-State Senators—with a presidentially-nominated and Senate-confirmed nominee. The Department, therefore, does not believe a case has been made to repeal the current authority for appointing interim U.S. Attorneys.

OPA000000177

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

Scolinos, Tasia

From: Scolinos, Tasia
Sent: Monday, March 05, 2007 7:44 PM
To: Scott-Finan, Nancy; Goodling, Monica; Moschella, William; Roehrkasse, Brian
Cc: Hertling, Richard; Silas, Adrien; Sampson, Kyle
Subject: RE: Revised testimony

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Attachments: DRAFT Moschella Testimony4.wpd

DRAFT Moschella Testimony4.wpd...

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STATEMENT

OF

WILLIAM E. MOSCHELLA
PRINCIPAL ASSOCIATE DEPUTY ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

"H.R. 580, RESTORING CHECKS AND BALANCES IN THE NOMINATION PROCESS OF U.S. ATTORNEYS"

PRESENTED ON

MARCH 6, 2007

OPA000000185

Testimony
of

William E. Moschella
Principal Associate Deputy Attorney General
U.S. Department of Justice

Committee on the Judiciary
United States House of Representatives

"H.R. 580, Restoring Checks and Balances in the Nomination Process of U.S. Attorneys"

March 6, 2007

Chairman Conyers, Congressman Smith, and members of the Committee, thank you for the invitation to discuss the importance of the Justice Department's United States Attorneys.

As previously noted by the Attorney General and the Deputy Attorney General in their testimony, the Department of Justice has some concern about H.R. 580, the "Preserving United States Attorneys Independence Act of 2007"; however, the Department is willing to work with the Committee in an effort to reach common ground on this important issue.

As the chief federal law-enforcement officers in their districts, our 93 U.S. Attorneys represent the Attorney General and the Department of Justice throughout the United States. U.S. Attorneys are not just prosecutors; they are government officials charged with managing and implementing the policies and priorities of the President and the Attorney General. The Attorney General has set forth key priorities for the Department of Justice, and in each of their

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districts, U.S. Attorneys lead the Department's efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families—including child pornography, obscenity, and human trafficking.

United States Attorneys serve at the pleasure of the President. Like any other high-ranking officials in the Executive Branch, they may be removed for any reason or no reason. The Department of Justice—including the office of United States Attorney—was created precisely so that the government's legal business could be effectively managed and carried out through a coherent program under the supervision of the Attorney General. Unlike judges, who are supposed to act independently of those who nominate them, U.S. Attorneys are accountable to the Attorney General, and through him, to the President—the head of the Executive Branch. This accountability ensures compliance with Department policy, and is often recognized by the Members of Congress who write to the Department to encourage various U.S. Attorneys' Offices to focus on a particular area of law enforcement.

The Attorney General and the Deputy Attorney General are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their offices effectively. It should come as no surprise to anyone that, in an organization as large as the Justice Department, U.S. Attorneys are removed or asked or encouraged to resign from time to time. However, in this Administration U.S. Attorneys are never—repeat, never—removed, or asked or encouraged to resign, in an effort to retaliate against them, or interfere with, or inappropriately influence a particular investigation, criminal prosecution, or civil case. Any

OPA000000187

suggestion to the contrary is unfounded, and it irresponsibly undermines the reputation for impartiality the Department has earned over many years and on which it depends.

Turnover in the position of U.S. Attorney is not uncommon and should be expected, particularly after a U.S. Attorney's four-year term has expired. When a presidential election results in a change of administration, every U.S. Attorney leaves and the new President nominates a successor for confirmation by the Senate. Moreover, U.S. Attorneys do not necessarily stay in place even during an administration. For example, approximately half of the U.S. Attorneys appointed at the beginning of the Bush Administration had left office by the end of 2006. Of the U.S. Attorneys whose resignations have been the subject of recent discussion, each one had served longer than four years prior to being asked to resign.

Given the reality of turnover among the United States Attorneys, our system depends heavily on the dedicated service of the career investigators and prosecutors. While a new U.S. Attorney may articulate new priorities or emphasize different types of cases, the effect of a U.S. Attorney's departure on an existing investigation is, in fact, minimal, and that is as it should be. The career civil servants who prosecute federal criminal cases are dedicated professionals and an effective U.S. Attorney relies on the professional judgment of those prosecutors.

The leadership of an office is more than the direction of individual cases. It involves managing limited resources, maintaining high morale in the office, and building relationships with federal, state, and local law enforcement partners. When a U.S. Attorney submits his or her resignation, the Department must first determine who will serve temporarily as interim U.S.

Attorney. The Department has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's Office during the period when there is not a presidentially-appointed, Senate-confirmed United States Attorney. Often, the Department looks to the First Assistant U.S. Attorney or another senior manager in the office to serve as U.S. Attorney on an interim basis. When neither the First Assistant nor another senior manager in the office is able or willing to serve as interim U.S. Attorney, or when the appointment of either would not be appropriate in the circumstances, the Department has looked to other, qualified Department employees. For example, in the District of Minnesota and the Northern District of Iowa, the First Assistant took federal retirement at or near the same time that the U.S. Attorney resigned, which required the Department to select another official to lead the office.

At no time, however, has the Administration sought to avoid the confirmation process in the Senate by appointing an interim U.S. Attorney and then refusing to move forward—in consultation with home-State Senators—on the selection, nomination, confirmation and appointment of a new U.S. Attorney. Not once. In every single case where a vacancy occurs, the Bush Administration is committed to having a United States Attorney who is confirmed by the Senate. And the Administration's actions bear this out. Every time a vacancy has arisen, the President has either made a nomination, or the Administration is working to select candidates for nomination. The appointment of U.S. Attorneys by and with the advice and consent of the Senate is unquestionably the appointment method preferred by the Senate, and it is unquestionably the appointment method preferred by the Administration.

OPA000000189

Since January 20, 2001, 124 new U.S. Attorneys have been nominated by the President and confirmed by the Senate. On March 9, 2006, the Congress amended the Attorney General's authority to appoint interim U.S. Attorneys, and 18 vacancies have occurred since that date. This amendment has not changed our commitment to nominating candidates for Senate confirmation. In fact, the Administration has nominated a total of 16 individuals for Senate consideration since the appointment authority was amended, with 12 of those nominees having been confirmed to date. Of the 18 vacancies that have occurred since the time that the law was amended, the Administration has nominated candidates to fill six of these positions, has interviewed candidates for nomination for eight more positions, and is waiting to receive names to set up interviews for the remaining positions—all in consultation with home-state Senators.

However, while that nomination process continues, the Department must have a leader in place to carry out the important work of these offices. To ensure an effective and smooth transition during U.S. Attorney vacancies, the office of the U.S. Attorney must be filled on an interim basis. To do so, the Department relies on the Vacancy Reform Act ("VRA"), 5 U.S.C. § 3345(a)(1), when the First Assistant is selected to lead the office, or the Attorney General's appointment authority in 28 U.S.C. § 546 when another Department employee is chosen. Under the VRA, the First Assistant may serve in an acting capacity for only 210 days, unless a nomination is made during that period. Under an Attorney General appointment, the interim U.S. Attorney serves until a nominee is confirmed the Senate. There is no other statutory authority for filling such a vacancy, and thus the use of the Attorney General's appointment authority, as amended last year, signals nothing other than a decision to have an interim U.S.

OPA000000190

Attorney who is not the First Assistant. It does not indicate an intention to avoid the confirmation process, as some have suggested.

H.R. 580 would supersede last year's amendment to 28 U.S.C. § 546 that authorized the Attorney General to appoint an interim U.S. Attorney to serve until a person fills the position by being confirmed by the Senate and appointed by the President. Last year's amendment was intended to ensure continuity of operations in the event of a U.S. Attorney vacancy that lasts longer than expected.

Prior to last year's amendment, the Attorney General could appoint an interim U.S. Attorney for the first 120 days after a vacancy arose; thereafter, the district court was authorized to appoint an interim U.S. Attorney. In cases in which a Senate-confirmed U.S. Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in recurring problems. Some district courts recognized the conflicts inherent in the appointment of an interim U.S. Attorney who would then have matters before the court—not to mention the oddity of one branch of government appointing officers of another—and simply refused to exercise the appointment authority. In those cases, the Attorney General was consequently required to make multiple successive 120-day interim appointments. Other district courts ignored the inherent conflicts and sought to appoint as interim U.S. Attorneys wholly unacceptable candidates who lacked the required clearances or appropriate qualifications.

Two examples demonstrate the shortcomings of the previous system and the system contemplated in H.R. 580. During President Reagan's Administration, the district court appointed in the Southern District of West Virginia an interim U.S. Attorney who was neither a Justice Department employee nor an individual who had been subject of a FBI background review. The court-appointed U.S. Attorney, who had ties to a political party, sought access to law-enforcement sensitive investigative materials related to the office's most sensitive public corruption investigation, which was targeting a state-wide leader of the same party. The problem was that the interim U.S. Attorney had no clearances or had undergone a background investigation so that the Attorney General and the Federal Bureau of Investigation could have complete confidence in the individual or his reasons for making inquiries into the case. The appointment forced the Department to remove the case files from the U.S. Attorney's office in order to protect the integrity of the investigation and prohibit the U.S. Attorney from making any additional inquiries into the case. In addition, the Department expedited a nomination for the permanent U.S. Attorney and with the extraordinary assistance of the Senate, he was confirmed to replace the court-appointed individual within a few weeks.

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OPA000000192

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

The Department's principal concern with H.R. 580 is that it would be inappropriate, and inconsistent with sound separation of powers principles, to vest federal courts with the authority to appoint a critical Executive Branch officer such as a United States Attorney. We are aware of no other agency where federal judges—members of a separate branch of government—appoint on an interim basis senior, policymaking staff of an agency. Such a judicial appointee would have authority for litigating the entire federal criminal and civil docket before the very district court to whom he or she was beholden for the appointment. This arrangement, at a minimum, gives rise to an appearance of potential conflict that undermines the performance or perceived performance of both the Executive and Judicial Branches. A judge may be inclined to select a U.S. Attorney who shares the judge's ideological or prosecutorial philosophy. Or a judge may select a prosecutor apt to settle cases and enter plea bargains, so as to preserve judicial resources. *See* Wiener, Inter-Branch Appointments After the Independent Counsel: Court Appointment of United States Attorneys, 86 Minn. L. Rev. 363, 428 (2001) (concluding that court appointment of interim U.S. Attorneys is unconstitutional).

OPA000000193

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

H.R. 580 appears to be aimed at addressing a problem that has not arisen. The Administration has repeatedly demonstrated its commitment to having a Senate-confirmed U.S. Attorney in every federal district. As noted, when a vacancy in the office of U.S. Attorney occurs, the Department typically looks first to the First Assistant or another senior manager in the office to serve as an acting or interim U.S. Attorney. Where neither the First Assistant nor another senior manager is able or willing to serve as an acting or interim U.S. Attorney, or where their service would not be appropriate under the circumstances, the Administration has looked to other Department employees to serve temporarily. No matter which way a U.S. Attorney is temporarily appointed, the Administration has consistently sought, and will continue to seek, to fill the vacancy—in consultation with home-State Senators—with a presidentially-nominated and Senate-confirmed nominee. The Department, therefore, does not believe a case has been made to repeal the current authority for appointing interim U.S. Attorneys.

OPA000000194

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

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Sent: Monday, March 05, 2007 7:58 PM
To: Sampson, Kyle; McNulty, Paul J; Elston, Michael (ODAG); Goodling, Monica; Hertling, Richard; Scolinos, Tasia; Roehrkasse, Brian
Subject: RE: Moschella Oral Testimony

In the second graph, replace "the President's and the Attorney General's priorities and the Department's policies" with "the Administration's policies and priorities".

In the last graph, I suggest replacing "taken any action" with "asked anyone to resign".

This is really good. Thanks everyone for the collaboration.

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Subject: FW: Moschella Oral Testimony
Importance: High

Gang, I just sent the below draft Moschella Oral Statement to the White House. Let me know if you have any comments (though I wouldn't mind giving the pen up at this point; let me know).

From: Sampson, Kyle
Sent: Monday, March 05, 2007 7:25 PM
To: 'Kelley, William K.'
Cc: 'Oprison, Christopher G.'
Subject: Moschella Oral Testimony
Importance: High

Bill, can you forward this on to Dana and Cathie (and whomever else in the White House you deem appropriate) for review and approval? Thanks!

<< File: Moschella Oral Statement.doc >>

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

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I agree with the first point and would leave the examples in. When a court does something stupid down the road, it will serve as an "I told you so."

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From: Scott-Finan, Nancy
Sent: Monday, March 05, 2007 7:27 PM
To: Goodling, Monica; Moschella, William; Scolinos, Tasia; Roehrkasse, Brian
Cc: Hertling, Richard; Silas, Adrien
Subject: RE: Revised testimony

<< File: DRAFT Moschella Testimony4.wpd >> This version has all of Monica's edits from Friday. Do we have any other comments? Going once, going twice??????

From: Goodling, Monica
Sent: Monday, March 05, 2007 7:01 PM
To: Scott-Finan, Nancy; Moschella, William; Scolinos, Tasia; Roehrkasse, Brian
Cc: Hertling, Richard; Silas, Adrien
Subject: RE: Revised testimony

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Senate. On March 9, 2006, the Congress amended the Attorney General's authority to appoint interim U.S. Attorneys, and 18 vacancies have occurred since that date. This amendment has not changed our commitment to nominating candidates for Senate confirmation. In fact, the Administration has nominated a total of 16 individuals for Senate consideration since the appointment authority was amended, with 12 of those nominees having been confirmed to date. Of the 18 vacancies that have occurred since the time that the law was amended, the Administration has nominated candidates to fill six of these positions, has interviewed candidates for nomination for eight more positions, and is waiting to receive names to set up interviews for the remaining positions—all in consultation with home-state Senators.

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Two examples demonstrate the shortcomings of the previous system and the system contemplated in H.R. 580. During President Reagan's Administration, the district court appointed in the Southern District of West Virginia an interim U.S. Attorney who was neither a Justice Department employee nor an individual who had been subject of a FBI background review. The court-appointed U.S. Attorney, who had ties to a political party, sought access to law-enforcement sensitive investigative materials related to the office's most sensitive public corruption investigation, which was targeting a state-wide leader of the same party. The problem was that the interim U.S. Attorney had no clearances or had then undergone a background investigation so that the Attorney General and the Federal Bureau of Investigation could have complete confidence in the individual or her reasons for making inquiries into the case. The appointment forced the Department to remove the case files from the U.S. Attorney's office in order to protect the integrity of the investigation and prohibit the U.S. Attorney from making any additional inquiries into the case. In addition, the Department expedited a nomination for the permanent U.S. Attorney and with the extraordinary assistance of the Senate, he was confirmed to replace the court-appointed individual within a few weeks.

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To: Moschella, William; Goodling, Monica; Scolinos, Tasia; Roehrkasse, Brian
Cc: Hertling, Richard; Silas, Adrien
Subject: Revised testimony

Attached is the revised testimony. Please get back to me with any changes or comments ASAP << File: DRAFT Moschella Testimony4.wpd >>

Scolinos, Tasia

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Sent: Monday, March 05, 2007 8:01 PM
To: Moschella, William; Scolinos, Tasia; Scott-Finan, Nancy; Goodling, Monica; Roehrkasse, Brian
Cc: Silas, Adrien; Sampson, Kyle
Subject: RE: Revised testimony

If there are no further comments, we will make Tasia's first change and retain the examples. Kyle, still awaiting your blessing. Once we get that, we will send to OMB.

From: Moschella, William
Sent: Monday, March 05, 2007 7:59 PM
To: Hertling, Richard; Scolinos, Tasia; Scott-Finan, Nancy; Goodling, Monica; Roehrkasse, Brian
Cc: Silas, Adrien; Sampson, Kyle
Subject: RE: Revised testimony

I agree with the first point and would leave the examples in. When a court does something stupid down the road, it will serve as an "I told you so."

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Sent: Monday, March 05, 2007 7:46 PM
To: Scolinos, Tasia; Scott-Finan, Nancy; Goodling, Monica; Moschella, William; Roehrkasse, Brian
Cc: Silas, Adrien; Sampson, Kyle
Subject: RE: Revised testimony

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From: Scolinos, Tasia
Sent: Monday, March 05, 2007 7:44 PM
To: Scott-Finan, Nancy; Goodling, Monica; Moschella, William; Roehrkasse, Brian
Cc: Hertling, Richard; Silas, Adrien; Sampson, Kyle
Subject: RE: Revised testimony

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OPA000000199

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To: Scott-Finan, Nancy; Moschella, William; Scolinos, Tasia; Roehrkasse, Brian
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Sent: Monday, March 05, 2007 8:06 PM
To: Moschella, William; Hertling, Richard; Scott-Finan, Nancy; Goodling, Monica; Roehrkasse, Brian
Cc: Silas, Adrien; Sampson, Kyle
Subject: Re: Revised testimony

Aren't we already on the record saying we think it is a bad idea and giving examples why? I am concerned we look a little goofy by highlighting why it is bad policy again at the same time saying we don't have the backbone to really oppose it.

-----Original Message-----
From: Moschella, William
To: Hertling, Richard; Scolinos, Tasia; Scott-Finan, Nancy; Goodling, Monica; Roehrkasse, Brian
CC: Silas, Adrien; Sampson, Kyle
Sent: Mon Mar 05 19:59:27 2007
Subject: RE: Revised testimony

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Scolinos, Tasia

From: Moschella, William
Sent: Tuesday, March 06, 2007 9:48 AM
To: 'Oprison, Christopher G.'
Cc: Sampson, Kyle; Kelley, William K.; Scudder, Michael Y.; Fielding, Fred F.; Gibbs, Landon M.; Scolinos, Tasia; McNulty, Paul J; Elston, Michael (ODAG); Goodling, Monica
Subject: RE: Moschella Oral Testimony
Attachments: moschellafinal.2.doc; moschellafinal.1.doc

All, attached is the final document. We accepted all of Chris's proposed changes. I have made some other small minor tweaks and those are tracked so that you can see them in "moschellafinal.1.doc" and the clean version is "moschellafinal.2.doc".

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Sent: Monday, March 05, 2007 9:33 PM
To: Moschella, William
Cc: Sampson, Kyle; Kelley, William K.; Scudder, Michael Y.; Fielding, Fred F.; Gibbs, Landon M.
Subject: RE: Moschella Oral Testimony

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Chris

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Monday, March 05, 2007 8:43 PM
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Sent: Monday, March 05, 2007 8:40 PM
To: Sampson, Kyle
Subject: RE: Moschella Oral Testimony

we are gathering comments and should have this back to you shortly

---

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Monday, March 05, 2007 7:25 PM
To: Kelley, William K.
Cc: Oprison, Christopher G.
Subject: Moschella Oral Testimony
Importance: High

Bill, can you forward this on to Dana and Cathie (and whomever else in the White House you deem appropriate) for review and approval? Thanks!

<<Moschella Oral Statement.doc>>

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

William E. Moschella
Opening Statement

Madam Chairman, Mr. Cannon, and Members of the Subcommittee, I appreciate the opportunity to testify today.

Let me begin by stating clearly that the Department of Justice appreciates the public service that was rendered by the seven U.S. Attorneys who were asked to resign last December. Each is a talented lawyer who served as U.S. Attorney for more than four years, and we have no doubt they will achieve success in their future endeavors – just like the 40 or so other U.S. Attorneys who have resigned for various reasons over the last six years.

Let me also stress that one of the Attorney General's most important responsibilities is to manage the Department of Justice. Part of managing the Department is ensuring that the Administration's priorities and policies are carried out consistently and uniformly. Individuals who have the high privilege of serving as presidential appointees have an obligation to carry out the Administration's priorities and policies.

U.S. Attorneys in the field (as well as Assistant Attorneys General here in Washington) are duty bound not only to make prosecutorial decisions, but also to implement and further the Administration and Department's priorities and policy decisions. In carrying out these responsibilities they serve at the pleasure of the President and report to the Attorney General. If a judgment is made that they are not executing their responsibilities in a manner that furthers the management and policy goals of departmental leadership, then it is appropriate that they be asked to resign so that they can be replaced by other individuals who will.

To be clear, it was for reasons related to policy, priorities and management – what has been referred to broadly as "performance-related" reasons – that these U.S. Attorneys were asked to resign. I want to emphasize that the Department – out of respect for the U.S. Attorneys at issue – would have preferred not to talk at all about those reasons, but disclosures in the press and requests for information from Congress altered those best laid plans. In hindsight, perhaps this situation could have been handled better. These U.S. Attorneys could have been informed at the time they were asked to resign about the reasons for the decision. Unfortunately, our failure to provide reasons to these individual U.S. Attorneys has only served to fuel wild and inaccurate speculation about our motives, and that is unfortunate because faith and confidence in our justice system is more important than any one individual.

That said, the Department stands by the decisions. It is clear that after closed door briefings with House and Senate members and staff, some agree with the reasons that form the basis for our decisions and some disagree – such is the nature of subjective judgments. Just because you might disagree with a decision, does not mean it was made for improper political reasons – there were appropriate reasons for each decision.

One troubling allegation is that certain of these U.S. Attorneys were asked to resign because of actions they took or didn't take relating to public corruption cases. These charges are dangerous, baseless and irresponsible. This Administration has never removed a U.S. Attorney

to retaliate against them or interfere with or inappropriately influence a public corruption case. Not once.

The Attorney General and the Director of the FBI have made public corruption a high priority. Integrity in government and trust in our public officials and institutions is paramount. Without question, the Department's record is one of great accomplishment that is unmatched in recent memory. The Department has not pulled any punches or shown any political favoritism. Public corruption investigations are neither rushed nor delayed for improper purposes.

Some, particularly in the other body, claim that the Department's reasons for asking these U.S. Attorneys to resign was to make way for preselected Republican lawyers to be appointed and circumvent Senate confirmation. The facts, however, prove otherwise. After the seven U.S. Attorneys were asked to resign last December, the Administration immediately began consulting with home-state Senators and other home-state political leaders about possible candidates for nomination. Indeed, the facts are that since March 9, 2006, the date the Attorney General's new appointment authority went into effect, the Administration has nominated 16 individuals to serve as U.S. Attorney and 12 have been confirmed. Furthermore, 18 vacancies have arisen since March 9, 2006. Of those 18 vacancies, the Administration (1) has nominated candidates for six of them (and of those six, the Senate has confirmed three); (2) has interviewed candidates for eight of them; and (3) is working to identify candidates for the remaining four of them. Let me repeat what has been said many times before and what the record reflects: the Administration is committed to having a Senate-confirmed U.S. Attorney in every single federal district.

In conclusion, let me make three points: First, although the Department stands by the decision to ask these U.S. Attorneys to resign, it would have been much better to have addressed the relevant issues up front with each of them. Second, the Department has not asked anyone to resign to influence any public corruption case – and would never do so. Third, the Administration at no time intended to circumvent the confirmation process.

I would be happy to take your questions.

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Deleted:

Scolinos, Tasia

From: Scolinos, Tasia
Sent: Tuesday, March 06, 2007 10:33 AM
To: 'Martin, Catherine'
Cc: Perino, Dana M.
Subject: RE: Post editorial on us attys

We are tracking. I just placed a call to the DAG to reiterate the point that Will needs to hit a homerun with this. He needs to be clear, strong and articulate on the details. I am concerned that the format of this dribbling out in questions may muddy things a bit. The DAG said that they are actively working with the members to tee the right questions up but I am a bit concerned on this same point and am pushing Will to be aware of this when he is up there.

-----Original Message-----
From: Martin, Catherine [mailto:Catherine_Martin@who.eop.gov]
Sent: Tuesday, March 06, 2007 9:58 AM
To: Scolinos, Tasia
Cc: Perino, Dana M.
Subject: Post editorial on us attys

Makes Will's testimony today all the more important....He has got to find a way to work in the specifics into the questioning....

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From: Scolinos, Tasia
Sent: Tuesday, March 06, 2007 10:49 AM
To: Moschella, William
Cc: Roehrkasse, Brian
Subject: RE: Moschella Oral Testimony

can you send me the talking points on each of the US Attorneys that you are going to use? thanks

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From: Moschella, William
Sent: Tuesday, March 06, 2007 9:48 AM
To: 'Oprison, Christopher G.'
Cc: Sampson, Kyle; Kelley, William K.; Scudder, Michael Y.; Fielding, Fred F.; Gibbs, Landon M.; Scolinos, Tasia; McNulty, Paul J; Elston, Michael (ODAG); Goodling, Monica
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(202) 305-5289 cell
kyle.sampson@usdoj.gov

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From: Hertling, Richard
Sent: Tuesday, March 06, 2007 1:38 PM
To: Sampson, Kyle; Goodling, Monica; Roehrkasse, Brian; Scolinos, Tasia
Subject: FW: Cummins email for WEM review

Attachments: Cummins Email.pdf

-----Original Message-----
From: Wade, Jill C
Sent: Tuesday, March 06, 2007 12:32 PM
To: Hertling, Richard
Subject: Fw: Cummins email for WEM review

Sorry thought I cc'd you

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

-----Original Message-----
From: Wade, Jill C
To: Moschella, William; Scott-Finan, Nancy
CC: Seidel, Rebecca
Sent: Tue Mar 06 11:50:08 2007
Subject: Cummins email for WEM review

I would not be surprised if this email is raised at WEM hearing today. See attached. (I faxed to catalina just now bc I am on Hill). I will have a summary from this SJC hearing on us atty resignations asap. Hearing is still going strong.

J

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

Cummins Email.pdf
(57 KB)

-----Ori inal Message-----
From: Cabral, Catalina
To: Wade, Jill C; Scott-Finan, Nancy
Sent: Tue Mar 06 11:30:50 2007
Subject:

<<Cummins Email.pdf>>

Catalina Cabral
U.S. DEPARTMENT OF JUSTICE

Office of Legislative Affairs
Catalina.Cabral@USDOJ.gov
(202) 514-4828

From: H.E. Cummins [
Sent: Tue 2/20/2007 5:06 PM
To: Dan Bogden; Paul K. Charlton; David Iglesias; Carol Lam; McKay, John (Law Adjunct)
Subject: on another note

Mike Elston from the DAG's office called me today. The call was amiable enough, but clearly spurred by the Sunday Post article. The essence of his message was that they feel like they are taking unnecessary flak to avoid trashing each of us specifically or further, but if they feel like any of us intend to continue to offer quotes to the press, or organize behind the scenes congressional pressure, then they would feel forced to somehow pull their gloves off and offer public criticisms to defend their actions more fully. I can't offer any specific quotes, but that was clearly the message. I was tempted to challenge him and say something movie-like such as "are you threatening ME???", but instead I kind of shrugged it off and said I didn't sense that anyone was intending to perpetuate this. He mentioned my quote on Sunday and I didn't apologize for it, told him it was true and that everyone involved should agree with the truth of my statement, and pointed out to him that I stopped short of calling them liars and merely said that IF they were doing as alleged they should retract. I also made it a point to tell him that all of us have turned down multiple invitations to testify. He reacted quite a bit to the idea of anyone voluntarily testifying and it seemed clear that they would see that as a major escalation of the conflict meriting some kind of unspecified form of retaliation.

I don't personally see this as any big deal and it sounded like the threat of retaliation amounts to a threat that they would make their recent behind doors senate presentation public. I didn't tell him that I had heard about the details in that presentation and found it to be a pretty weak threat since everyone that heard it apparently thought it was weak

I don't want to stir you up conflict or overstate the threatening undercurrent in the call, but the message was clearly there and you should be aware before you speak to the press again if you choose to do that. I don't feel like I am betraying him by reporting this to you because I think that is probably what he wanted me to do. Of course, I would appreciate maximum opsec regarding this email and ask that you not forward it or let others read it.

Bud

Scolinos, Tasia

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

OPA000000215

March 06, 2007

Tuesday

March 2007						
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April 2007						
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12 pm

1 00

2 00 — Hearing on US Attorney Removal (2141 Rayburn)

3 00

4 00

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6 00

TaskPad

TaskPad

Notes

OPA000000216

Scolinos, Tasia

From: Scolinos, Tasia
Sent: Thursday, March 08, 2007 1:00 PM
To: Sampson, Kyle; Elston, Michael (ODAG)
Subject: FW: Margaret Chiara / 616-808-2199

Fyi. Has anyone spoken with her recently?

From: Block, Jonathan
Sent: Thursday, March 08, 2007 11:32 AM
To: Scolinos, Tasia
Cc: Roehrkasse, Brian; Smith, Kimberly A
Subject: Margaret Chiara / 616-808-2199

Tasia,

Margaret's assistant called and said that Margaret would like to chat with you today, if you have a moment.