

2/27

Kyle Simpson / Rich Hartling

re: House Budget re: US Atty

RH - mirrors Schumers' issue

- budget is mirror of Senate budget

- why the US Atty's asked to assist

- asked to review OIG's reports => all of them for any US Atty who left job since spring 2005 (Survey up another 15 0-20)

- will work with Moschella - doing the budget and will be w at hearing

- was at McNulty's

Budget

- Griffin / Iglesias will come up

- Kyle - will make sure Moschella

1/12/15

MM Call

Senator Ryan - called for center
- AG said he was

Article @ T.G.

→ Clamp of Kyle, if AG pulls
in as interview on AG appoint
and Patent
Inyo this is interview
(as in Act)

⇒ Concern of TG out promote play

Call to Kyle Simpson

- Mark Ryan try to play AG against MM
- AG told Senator that only gave resp. the act vs AG, just had turns
- AG told Sen. that to
o Ant TG if as AG had
Sen - how lay o that)
AG - up o duch
Sen - unch father that
AG - act lets see how his
goes ⇒ please meet of this

2/16

Monica Goody

~~George Bell 224-6621~~

Kyle thought he needed to say that AM made the call

- wanted to find just for TG

- Bud Kelly in June 2006 @ Tony

Call creating Kyle Simpson - ~~June 2006 that he would be~~
~~then told called to make some in June 2006~~

Q: Did BK have call of Kyle Simpson previously? BK was to call BK to do

→ Senate wanted to know if POWUS knew

= Not entitled to know @ internal details

→ M Goody & only of DAG was given to Senate only

This was the ~~only~~ call DOT knew @
- AM had call of Kyle Simpson w:

TG came back Ind. need find place for him
interested in US Army what deal of Bud
fine Bud - not sure if AM said to

- aspect of call was that level
had in at (accord to hotel)

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3/6

Comments of HM

BH told me that KS told him that comment

- only Q of whether possible open in 1957;
- not specific @ US AM
- KS decided it was after JSC

~~After JSC~~ - Tim was

→ KS decided comments, as HM decided

→ HM "not recall that after - J ~~comments~~ comments.

concern that Paul McNulty said AM had role in Communist departure

of HM - thought likely of TG, not - not attack 5/27

- WMC not man's face behind BC departure

* Today WST - AG quoted as saying "made as own. is Pres. No changes to be made" - how re: comm. ~~communicated~~

3/6

MM - called back
- issue that BH raised - approval
of IG to be considered for US & they

likes go to Pros. for approval

⇒ Never would have been involved in call
f. WACO to Bud Cunn

— if went to DOS in back, would
have ~~had~~ had counsel

Suggest print ① Lists of who knows who not
- email on fax
- at least one on mail
as email attach

②

Paul Kelly

Process - US Army

- Prof - advised
- when called, not told what issues were, not that involved reason
- Leigh Sampson ~~previously~~ previously referred to press
- Mike Botts made call
- Leigh stated in press that US Army should
- Dagor then engaged
- Lam gets of Feinstein - Feinstein jump
- Punahy said looked bad
- How decide on who on list? NO set #
- did not have another list of replacements
- NO transition on thought of removal for purpose of replacement
- had ble either not good or fairly could do better

Why these 7 selected

SF ① Ryan (Kevin) - major program
 - EA2 documents to mismanagement
 - need send special review team to another review -> came back bad
 - decent on POROS program
 - morale in office down
 - style was troublesome
 - Feinstein (conceded Ryan was bad)

SD ② Carol Lam - without reference of priorities
 - independent politically
 - believed not imp. to enforce incoming
 - Carol - in log ent or sub seq of ent - (sent letter complaint @ her (in direct Feinstein))
 - believed not imp to enforce incoming cases ->
 - backed AG on prior

Wash ③ John McKay - repeated bad judgment of Dept - eg. phone call w/ 8 USA Army to Leammun. DA 6 is so along of partic-type of info-sys system / technology

greater type of broad for info sharing tech.
 - McKay wrote letter to DAG, it is often among them be likely for DA 6 on board v DA 6 not was in accnt but => other US Army felt duped, misled.

Contact b/w DOT / WPT
 - Spring 2006 - contacts b/w AM and KS
 - re: Tim Griffin come back want to be USA Army can we do it?
 US - said Winn said want to focus, i. letter due

④ David Iglesias
 Repub - felt did bad job
 - late summer Domenec said he bad US Army
 pulled to DA 6 as well as AG

when discussed list of GS were a number of the cases they want on
 (FPS) with to DA 6 later took
 Schuman - want to demonstrate he is the oversight point of contact

31

(cont)

Paul McNulty

re: US Army

Issues

Albuquerque Journal article

- Absenteeism
- Insuff resources to grant case

Paul Charlton - AZ

- Strong case for ~~dep~~
- close to ~~30~~ of McNulty
- defiance / insubordinance
 - actions taken contrary to instruction
 - worked outside proper channels
- Charlton needed more prosecution at border

→ did not go thru DOJ but worked w/ Sen Kyl to do this; put pressure on DOJ to get him more #s

- also personal issue re: death penalty

- never sought death penalty
- would send cases to DOJ
- tell him to seek to advise agency
- last yr, case involve drug trafficker consid much

→ This evidence - US were not good

- DOJ involved death penalty

- Charlton letter re: AG
 author Charlton to seek death

McNulty re considered seek death penalty

Charlton ^{the latter} took ~~it~~ to district
told A ~~not~~ no decision had been made
- wanted to go back
to negotiate this position; blabber
in subord; lack of control to A

- also issued rule: A2 (Cato
perm 35) that any law enf. agency
must be videotaped
to see ~~stuff~~ against A
- controversial
- FBI always trouble

rule

- also, rule no rule @
The court that requires; may be
problematic for other districts
- Charlton said to D.A.G.
that he shouldn't tell him not to ~~do~~
say no, b/c wanted enthusiastic Charlton;
D.A.G. has now had to run pilot
program
↳ Schuman ^{thought} thought this was bad as well
- Kyle told Senate group he was
fond of Charlton, but agreed w/ D.A.G.'s/AC
decision to ~~to~~ force Charlton to resign

(Las Vegas) Dan Bogden - less serious
- not defiant or insubord
- low key - so low key that shows
no initiative/leadership

- 12 yr AUSL, 4 yr USA
 - lacks leadership, initiative, energy
 - Las Vegas light vehicle district
 - lots of control \Rightarrow no initiative
 - b/c low ~~key~~ did not keep on top of people so follow pretty to parents you come and report sentences follow guidelines
- All over 4 yr men

W.D. McKay Margaret Chrusa

- strong case for dismissal
- very fractured office traditionally
- office held special on-site visit 200
- supervisor/manager @ her in office that undermined her leadership
- \rightarrow report showed her as improving the office situation f: her predecessor

4 to testify

- ① Carol Lan
- ② ~~Paul~~ Iglesias
- ③ McKay
- ④ Cuyler

House ~~is~~ approved issuance of 4 subpoenas

2/11

Monica Goodley

353-

Tim Griffin - will be AG appointed
- will be interim USA for the rest
- NOT for WAC office &
do now

Thoughts - still need to check
w/ Andrea Looney

Scott
Jepp * discussed w/ everyone - T.G. to
be AG - applied for as interim
for remainder of time

Monica Goodby

- Tim Griffin ~~is~~ in BID
 - should be done soon
- President approached him in June
- AG did NOT recall this
 - but later recalled this call
- Concern } Ryan that T.G. goes
 - o ~~in~~ ~~the~~ ~~meeting~~ ~~with~~ ~~him~~
 - Not true, according to T.G.
 - was a contingency planning
- mtg (unrelated to USA)
- AG told Ryan that will look at it
 - ~~AG~~ - AG asked for resume
 - good experience
- AG contact w/ T.G. - will call Ryan back on Fri. and tell him he is qualified to serve

~~1/11~~ 1/12

Tim Griffin - Cal
(501) 837-

- * Meets w/ AG / DAG next week?
- * Pryor filed logs w/ Feinstein - ~~no~~ to do away w/ AG authority
- * AG ~~is~~ requested mng w/ AG/DAG - concerned he may be "shafted" = wants to make ~~sure~~ sure he has back of WH if something happens.

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

Dear Senator Reid:

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

First, the full quotation of the Attorney General's testimony at the Judiciary Committee hearing on January 18, 2007, more fairly represents his views about the appropriate reasons for asking a U.S. Attorney to resign. In full, the Attorney General stated: "I think I would never, ever make a change in a United States attorney for political reasons or *if it would in any way jeopardize an ongoing serious investigation. I just would not do it*" (emphasis added). "Political" in that context

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

Indeed, at the time Mr. Griffin was appointed interim U.S. Attorney in December 2006 he had far more federal prosecution experience (in the Criminal Division and in the U.S. Attorney's office) than Mr. Cummins did at the time he was appointed U.S. Attorney in January 2002. Mr. Cummins himself credits Mr. Griffin with the establishment of the office's successful gun crime prosecution initiative. And Mr. Griffin has substantial military prosecution experience that Mr. Cummins does not have. Anyone who knows Mr. Griffin must concede that he brings a style of leadership and level of energy that could only enhance the success of a U.S. Attorney's office. ~~It was~~, it was well-known, as early as December 2004, that Mr. Cummins intended to leave the office and seek employment in the private sector. See "The Insider Dec. 30," *Ark. Times* (Dec. 30, 2004) ("Cummins, 45, said that, with four children to put through college someday, he'll likely begin exploring career options. It wouldn't be 'shocking,' he said, for there to be a change in his office before the end of Bush's second term.").

Third, the Department does not consider the replacement of one Republican U.S. Attorney by another Republican lawyer who is well-qualified and has extensive

Cong. Boozmen

- Problem of Griffin - fairly a star
- Don't want tendency to imply just cause for job per
↳ - Bud ~~Griffin~~ ^{Griffin} ~~well~~ requested in case
↳ - ~~if~~ - 5
↳ don't want anyone says problem of Bud's perform.

Cong. Boozmen - will side of Bud
if "dined out", criticized for performance

~~Cong~~ → talked to Bob Russell on 5/10/00
that thought spoke of Bob
BR - "was that a problem of Bud
Commis. say?"
? - "we don't want to go there"

Thus TG is very well-qualified
- Cong Booz -

12/9

7

Richard L. Taylor

Griffin - approval of POTUS in June 2006

TG / Scott ramp to JSC would probably be us
pd people

- both Ryan / Lincoln said problem w/ J

- went to A. Looney / Scott ramp @ what to do

- Call BIT TG / Sen Pryor - late Aug / Sept

- NOT go well

- Considerably later, heard fr Scott that intent is
send TG to Arkansas as interim - early Sept

RH - course of M Goodly

- talked w/ A Looney

- ... B Kelly

re: Intan / Indefinite AG Appointed

- plan for TG to go down, with J

Bud Conway, The take over

- Sept

Status: Ark Senators Lincoln and Prior have objected to Tim Griffin, who was approved to move into background. DOT plan, endorsed by Scott Jennings, is to move Griffin into an AG appointed US Attorney position after a period assisting the incumbent. This has been briefed to Andrea Looney, who indicated she would seek Cond. Wolff's views on this course. The proposed course has not been raised at JSC.

- Action - Need to contact A. Looney re: Names
- Need discuss w/ S. Jennings
- Contact Monica Goodin at DOT re: BT 353-4435

- 12/11 - Speaks w/ A. Looney - not sure would get ^{add'l} names, but will check w/ Cond. in the morning
- 12/15 - Speaks w/ K. Simpson, M. Goodin, T. Griffin, HM
- 12/17 - Call w/ K. Simpson re: what representation made to Sen Pyo office re: T.G.'s Senate Nomination - said that AG told Sen Pyo that always want to have POTUS Nom / confirm, & intended and to do that one of T.G.'s Pyo felt was end mission
- 12/17 - At. with w/ policy so not put anyone to AG App w/o first full fledged background, i.e. not DOT people

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My Notes

Lam
Cummins
McKay
Iglesias

Notes re: Senate/House hearings on US Attorney firings - 3/6

SENATE

D's

- > Schumer - asked who advised as to the purge; who within WH
- > Feinstein - discussed the letter she sent to DOJ critical of Lam, and the DOJ letter in response *defending Lam*, indicating that half of Lam's resources were dedicated to immigration enforcement, and that the enforcement was "increasing sharply"; also concerned that she was not called/informed about Lam's firing prior to it happening, although she concedes someone may have called her staff
- > Leahy - read prepared statement; compared it to Watergate

R's

- > Specter - asked everyone to withhold judgment until get all facts; was particularly concerned about the Domenici, et al contacts; mentioned also a problem that not adequate justification for firings
- > Sessions - on attack, especially against Lam for failure to prosecute re-entry cases and poor prosecution of guns crimes; looked like bullying Lam after a while (according to Andrea)
- > Graham - supportive of administration generally and firings, but said DOJ could have done a better job managing this

McKay - (comment) @ HM
Issues DOJ I-v new for
of secret public court invest

What will keep this in press?

Reid today said this is not away from investigations now

CREW - called for ethics invest of Domenici, Wilson

discovery of coverage of Glad

Calls from Domenici and Wilson - mentors and friends

- o Concern to Specter; Iglesias not report until February when told the press
- o Specter read Domenici's and Wilson's statements into record - Iglesias said nothing further to add to Domenici, only added that Wilson asked about sealed indictments - took as threats

Elston call to Cummins in February, Cummins email to other US Attorneys -

- o Schumer read into the record
- o Cummins first indicated took it as threat, but later said he did not take Elston's call as an effort to obstruct, but friendly advice;
- o other US Attorneys who received Cummins email construed as DOJ threat; but Senator Whitehouse was able to get US Attorneys to say they saw as obstruction - proposed investigation of Elston communication

> Reasons for US Attorney firings: all said (except Cummins) they did not know why they were fired, leaving impression that the firings were either completely arbitrary or for some improper purpose (to impeded investigations, etc)

- o Lam's firing: Specter asked her if she thought inappropriately removed; Lam said not improper, just unusual based on past practice; later indicated she had no evidence that the Duke Cunningham prosecution or other public corruption cases had anything to do with removal

> Cummins replacement - said Griffin's political background should be a non-issue - everyone considered for this position has had one; so long as put politics at the door when approach cases

2/7

Kyle Simpson

Kyle - Cheating is fact to throw
See Kyle under bus for contact
him

→ Notion of 3d party contact to Syster
Syster to say no evid of interplay

→ Ethics rules say MOC should not contact
U.S. Atty @ pending investigation

NS - Pass more stories @ Thud

My recollection of report of 10/9/99

Feinstein

Specimen

Schuman read E-mail of: Commis
- characterizes Olston ~~as~~
- said felt like a real
a Hollywood @ "Are you threatening
me?" but I don't

- ~~that's~~
- says Olston make it
seen like ~~that~~ if we kept ~~that~~ on
to press, ~~the~~ DOT would be
forced to come out of embarrassing
details @ Yem to explain the
pos.

Egleson

- call of: Domenic: upto October
to: buy copies of compact before Nov
elec; Egleson said no - Domenic
~~sent~~ buy up

- took that as threat
- but also said
did not report it in case he felt
Domenic clump Bar prevents the
- call Wilson - felt threat
- but report W.C. Day
True fact of

Specimen read
Domenic: Don't
- not
said Domenic
access to Egleson

Wilson sent read
into record
Egleson said
- he left out
reference to
access to
sealed
rd it

From: Roebke, Heather M.
Sent: Friday, December 15, 2006 6:42 PM
To: Miers, Harriet
Cc: Isakson, Curtis M.
Subject: Message for you - this weekend

Message for this weekend:

Chris Oprison
540-882- none

Would like to provide an update on new developments on Tim Griffin. He will be available at home over the weekend.

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From: Scott Jennings
Sent: 1/6/2007 12:29:02 PM
To: Karl Rove /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=KR;
:
CC:
Subject: Re: US Attorney

Peifer is who Domenici wants.

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

From: Karl Rove
To: Rod Adair
Sent: Sat Jan 06 12:30:49 2007
Subject: Re: US Attorney

Thanks -- I'd make certain you share your views with your State's GOP Senator and Republican House Members.

From: Rod Adair
Date: Sat, 6 Jan 2007 11:56:05 -0500
To: Karl Rove <kr@georgewbush.com>
Conversation: US Attorney
Subject: US Attorney

This is a rare moment when a matter is of such importance
that I must contact you.

The Albuquerque Journal this morning reported four names
in consideration for US Attorney for New Mexico. Three
are quite acceptable, the fourth would be a disaster. (Actually
Rogers would be a fantastic choice, but it would be my hope
that he would never accept it -- which I am also certain is
the case -- in that he is simply too valuable an asset elsewhere.)

The singular wrong pick in this group would be Chuck Peifer.
He is, in shorthand, a wuss.

I have personal, direct experience with him observing him and
others when he was asked to help an independent expenditure
group which had complied with every letter of the law, yet was
being harassed by a partisan underling in the Secretary of
State's office. The facts were clear beyond question. Documentation
was full and authoritative. The matter was of trivial total value
and expenditure. He refused out of fear of what he would appear
to be by Democrats, clients, others, etc. In short, he had not
guts at all even for a situation that did not even call for a scintilla
of courage.

Subsequently, a different Republican lawyer was contacted. He
quickly approved the correspondence, affixed his name and disposed
with the matter, which was never heard of again.

If you are looking for someone who will follow the law scrupulously,
be fair, be honest, and be of service to the nation, all four, even
Peifer, would be qualified (none more than Rogers, who better not
accept it). But if you are looking for someone who will do all the above
and withstand any criticism, stand up to the Ward Churchill/Michael
Beebe bullies of the world and not worry about criticism for doing

his job, the PEIFER IS DEFINITELY NOT THE CHOICE.

He is a wuss, a cowardly wuss, who will disappoint.

My alter ego as New Mexico Demographic Research I ran six state representative campaigns this year, including three targeted races on behalf of the RPNM. For the second cycle in a row, the only pickups by the GOP in New Mexico were my clients. We defeated a 17-year incumbent and we took an open seat away that had never been in GOP hands. A client also held a GOP open seat and two incumbent clients held their seats, one of which had the lowest Average Republican Vote Strength (average of DB state races) at 47.86, of any legislator in the state. I also lost one challenger race. So I know a team player, and I know a fighter when I see one. I also know someone who thinks primarily about himself/herself. Peifer is NOT the answer.

Happy New Year!

Rod Adair
State Senator
R-Roswell
Chaves & Lincoln Counties
627-
www.rodadair.com <<http://www.rodadair.com>> <<http://www.rodadair.com>>

The first Republican I knew was my father and he is still the Republican I most admire. He joined our party because the Democrats in Jim Crow Alabama of 1952 would not register him to vote. The Republicans did. My father has never forgotten that day, and neither have I."

-Condoleezza Rice

"The Republican Party is the ship, all else is the sea."

-Frederick Douglass

"Every right that has been bestowed upon blacks was initiated by the Republican Party."

-Mary Terrell, African-American
Republican and co-founder of the NAACP

The Democrat Party: Tolerating Negroes and other minorities since 1964.
-Robert Byrd, Kluxer, 1941-48

From: Jon Seaton
nt: 1/9/2007 10:21:37 AM
cc: Hughes, Taylor A. Taylor_A._Hughes@who.eop.gov;
Bcc:
Subject: RE: Mike McKay meeting request from Seaton

Just heard from him...his best times are 12-3 next Friday (the 19th) but can be available anytime on Friday depending on KR's schedule.

Thanks.

-Jon

From: Hughes, Taylor A. [mailto:Taylor_A._Hughes@who.eop.gov]
Sent: Tuesday, January 09, 2007 9:48 AM
To: Jon Seaton
Subject: RE: Mike McKay meeting request from Seaton

oh ok. please see how long he'll be in town. thanks!

From: Jon Seaton [mailto:jseaton@gwb43.com]
Sent: Tuesday, January 09, 2007 9:46 AM
To: Hughes, Taylor A.
Subject: RE: Mike McKay meeting request from Seaton

will ask. He usually comes in once or twice a year, so it would not be for awhile.

From: Hughes, Taylor A. [mailto:Taylor_A._Hughes@who.eop.gov]
Sent: Tuesday, January 09, 2007 9:38 AM
To: Jon Seaton
Subject: RE: Mike McKay meeting request from Seaton

could you see if he's coming in town at any other time? that's so close to state of the union so i fear karl's schedule is going to be extra busy.

From: Jon Seaton [mailto:jseaton@gwb43.com]
Sent: Monday, January 08, 2007 3:23 PM
To: Hughes, Taylor A.
Subject: RE: Mike McKay meeting request from Seaton

Not exactly sure...KR sent a note saying "anytime you are in town, please come by." Probably wants to talk Washington State stuff and maybe discuss the vacant US Attorney position in western WA that he and his brother both used to occupy.

From: Hughes, Taylor A. [mailto:Taylor_A._Hughes@who.eop.gov]
Sent: Monday, January 08, 2007 3:13 PM
To: Jon Seaton
Subject: FW: Mike McKay meeting request from Seaton

What does he want to meet about? Thanks

From: Tanner, Christon R.
Sent: Monday, January 08, 2007 3:12 PM
To: Hughes, Taylor A.

Subject: Mike McKay meeting request from Seaton

1/3
3 00
16-233-

3: meeting request for PM Friday, Jan 19. He was WA BC04 state chairman

From: Scott Jennings
Sent: 1/8/2007 9:20:00 PM
To: Looney, Andrea B.; lfahrenkopf@who.eop.gov lfahrenkopf@who.eop.gov;
Cc:
Subject: FW: USA-NM

FYI - intel on USATTY in NM

From: Bell, Steve (Domenici)
Sent: Monday, January 08, 2007 3:38 PM
To: Scott Jennings; Wolff, Candida P.
Subject: USA-NM

Off the record:

Senator Bingaman would have no problem with Peifer as the United States Attorney for NM...

This means that we face little opposition on getting him done quickly...

Bell

From: Lee
Sent: 1/10/2007 6:09:16 PM
To: Scott Jennings;
:
cc:
Subject: RE: Western Washington US Atty
Attachments: image001.gif;

Let me check these names with DOJ before we formally reach out to them. Do you know where Rick White is these days?

From: Scott Jennings [mailto:SJennings@gwb43.com]
Sent: Wednesday, January 10, 2007 12:54 PM
To: Lee, Kenneth K.
Subject: FW: Western Washington US Atty

Intelligence says they both want consideration, but we haven't spoken directly. We can reach out if you'd like.

From: Lee, Kenneth K.
Sent: Wednesday, January 10, 2007 10:19 AM
To: Jennings, Jeffery S.
Subject: RE: Western Washington US Atty

Thanks.

Do we know yet if Harry Korrell and former Congressman Rick White indeed want to be considered?

From: Scott Jennings [mailto:SJennings@gwb43.com]
Sent: Wednesday, January 10, 2007 10:05 AM
To: Lee, Kenneth K.
Cc: Jennings, Jeffery S.
Subject: FW: Western Washington US Atty

Washington USATTY

From: Jon Seaton
Sent: Wednesday, January 10, 2007 9:21 AM
To: Scott Jennings
Subject: Western Washington US Atty

Scott, here is a bio and reference letter for Harry Korrell from a member of Dino Rossi's legal team. He and former Cong. Rick White are the two names who have come to my attention so far.

-Jon

From: Peter Schaeferstock
Sent: Friday, January 05, 2007 6:25 PM
To: Jon Seaton
Subject: RE: US Atty

I have pasted Harry's official firm bio below, and included a link to it.

Harry has been active in Republican politics for at least a decade (I met him in 1998 when he called to volunteer on Rick White's congressional campaign, which I was managing). He served as the state chair for the Republican National Lawyers Ass'n, and in a leadership role for the Federalist Society. He was co-chair of Washington Lawyers for Bush in 2004, and volunteered a considerable amount of time in that effort. He was the lead litigation counsel for the Dino Rossi recounts and election contest, for which he contributed hundreds of hours of work pro bono in addition to the work that was paid. He has been a strong supporter of Republican candidates, including Rob McKenna and the President, and was invited to a 2004 White House Christmas party.

In addition, Harry has served as pro bono counsel for a group of Seattle school parents challenging the city's policy of using race as a factor in assigning students to schools. He argued that case before the US Supreme Court in December (and I believe the US Solicitor General also argued in support of his position). He has also served on a number of committees and endorsement panels for Republican and conservative organizations. He is a leader (and, I think, co-founder) of the Edmund Burke Society at the University of Chicago Law School.

Peter

<http://www.dwt.com/lawdir/attorneys/KorrellHarry.cfm>

Harry J.F. Korrell
Partner- Seattle, Washington Office

Representative Employment Law Experience

Representing companies and individuals in litigation in state and federal courts over noncompetition and other agreements, duty of loyalty, and trade secret theft, including obtaining restraining orders and other injunctive relief

Defending employers in gender, age, race, disability, and harassment cases in federal and state trial courts and on appeal

Defending employers in single-plaintiff and class action wage and hour cases

Defending employers in wrongful discharge, whistleblower, and breach of contract cases, including multiple-plaintiff cases arising from large-scale layoffs, in federal and state courts across the western United States

Representing employers in collective bargaining and defending employers charged with unfair labor practices in front of the N.L.R.B. and in related litigation

Other Litigation Experience

Serving as lead trial counsel in the 2004 Washington Gubernatorial Election Contest and related litigation in state and federal trial courts and the Washington Supreme Court

Serving as Special Assistant Attorney General representing the Washington Secretary of State in mandamus action filed by the Governor to keep a referendum measure off the ballot

Representing parents challenging a school district's use of race in its student admissions plan in litigation before Western District of Washington, the Ninth Circuit (en banc), and the Washington State Supreme Court

Serving as outside counsel and litigation advisor to the Washington Chapter of Institute for Justice, a nonprofit organization defending individual rights in litigation against local government entities

Memberships and Activities

Washington State and Washington D.C. Bar Associations

ederal and state courts in Washington and the District of Columbia and Fourth and Ninth Circuit Courts of Appeal

Supreme Court

isted as a "Super Lawyer," *Washington Law & Politics*, 2004-2006

requent presentations to lawyers, industry groups and clients on labor and employment law and regarding election law and reforms

Education

J.D., University of Chicago School of Law

B.A. in Philosophy, *magna cum laude*, University of Washington, Phi Beta Kappa

From: Jon Seaton [mailto:jseaton@gwb43.com]
Sent: Friday, January 05, 2007 3:08 PM
To: Peter Schalestock
Subject: RE: US Atty

Can you send me his bio/resume plus a paragraph or two from you on his political bona fides?

Thanks man. This is starting to ramp up.

FYI Rick White's name is also in the mix.

—Jon

From: Peter Schalestock
Sent: Thursday, December 14, 2006 5:56 PM
To: Jon Seaton
Subject: US Atty

Can we get Harry Korrell considered for this?

http://seattletimes.nwsources.com/html/localnews/2003477825_webmckay14.html

Peter Schalestock
Regional Director -- Western States
Election Day Operations
Holtzman Vogel PLLC

206-669-

This e-mail contains information that is privileged and confidential. The correspondence and any attachments are intended only for the addressee.

If you have received this in error, please do not read or copy these documents. Please call 206-669- immediately and ask for the sender. Also, you are kindly requested to forward the message back to the sender and then delete it from your files.

From: Jon Seaton
Sent: 1/10/2007 4:08:56 PM
To: Jennings, Jeffery S.;
:: Scott Jennings;
cc:
Subject: RE: Western Washington US Atty
Attachments: image001.gif;

They both do want to be considered, according to folks who submitted their names. I have not spoken to them personally.

From: Steven Soper
Sent: Wednesday, January 10, 2007 11:07 AM
To: Jon Seaton
Cc: Scott Jennings
Subject: FW: Western Washington US Atty

From: Jennings, Jeffery S. [mailto:Jeffery_S._Jennings@who.eop.gov]
Sent: Wednesday, January 10, 2007 11:06 AM
To: Steven Soper
Subject: FW: Western Washington US Atty

From: Lee, Kenneth K.
Sent: Wednesday, January 10, 2007 10:19 AM
To: Jennings, Jeffery S.
Subject: RE: Western Washington US Atty

Thanks.

Do we know yet if Harry Korrell and former Congressman Rick White indeed want to be considered?

From: Scott Jennings [mailto:SJennings@gwb43.com]
Sent: Wednesday, January 10, 2007 10:05 AM
To: Lee, Kenneth K.
Cc: Jennings, Jeffery S.
Subject: FW: Western Washington US Atty

Washington USATTY

From: Jon Seaton
Sent: Wednesday, January 10, 2007 9:21 AM
To: Scott Jennings
Subject: Western Washington US Atty

Scott, here is a bio and reference letter for Harry Korrell from a member of Dino Rossi's legal team. He and former Cong. Rick White are the two names who have come to my attention so far.

-Jon

From: Peter Schalestock
Sent: Friday, January 05, 2007 6:25 PM
To: Jon Seaton
Subject: RE: US Atty

Jon,

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Harry has been active in Republican politics for at least a decade (I met him in 1998 when he called to volunteer on Rick White's congressional campaign, which I was managing). He served as the state chair for the Republican National Lawyers Ass'n, and in a leadership role for the Federalist Society. He was co-chair of Washington Lawyers for Bush in 2004, and volunteered a considerable amount of time in that effort. He was the lead litigation counsel for the Dino Rossi recounts and election contest, for which he contributed hundreds of hours of work pro bono in addition to the work that was paid. He has been a strong supporter of Republican candidates, including Rob McKenna and the President, and was invited to a 2004 White House Christmas party.

In addition, Harry has served as pro bono counsel for a group of Seattle school parents challenging the city's policy of using race as a factor in assigning students to schools. He argued that case before the US Supreme Court in December (and I believe the US Solicitor General also argued in support of his position). He has also served on a number of committees and endorsement panels for Republican and conservative organizations. He is a leader (and, I think, co-founder) of the Edmund Burke Society at the University of Chicago Law School.

Peter

<http://www.dwt.com/lawdir/attorneys/KorrellHarry.cfm>

Harry J.F. Korrell
Partner- Seattle, Washington Office

Representative Employment Law Experience

Representing companies and individuals in litigation in state and federal courts over noncompetition and other agreements, duty of loyalty, and trade secret theft, including obtaining restraining orders and other injunctive relief

Defending employers in gender, age, race, disability, and harassment cases in federal and state trial courts and on appeal

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Memberships and Activities

Washington State and Washington D.C. Bar Associations

All federal and state courts in Washington and the District of Columbia and Fourth and Ninth Circuit Courts of Appeal

U.S. Supreme Court

Listed as a "Super Lawyer," *Washington Law & Politics*, 2004-2006

Frequent presentations to lawyers, industry groups and clients on labor and employment law and regarding election law and reforms

Education

J.D., University of Chicago School of Law

B.A. in Philosophy, *magna cum laude*, University of Washington, Phi Beta Kappa

From: Jon Seaton [mailto:jseaton@gwb43.com]
Sent: Friday, January 05, 2007 3:08 PM
To: Peter Schalestock
Subject: RE: US Atty

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Thanks man. This is starting to ramp up.

I Rick White's name is also in the mix.

—Jon

From: Peter Schalestock
Sent: Thursday, December 14, 2006 5:56 PM
To: Jon Seaton
Subject: US Atty

Can we get Harry Korrell considered for this?

http://seattletimes.nwsource.com/html/localnews/2003477825_webmckay14.html

Peter Schalestock
Regional Director -- Western States
Election Day Operations
Holtzman Vogel PLLC

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From: Perkins, Paul R.
Sent: Friday, January 12, 2007 6:10 PM
To: Brosnahan, Jennifer R.
Subject: RE: Smith Nomination

We can include the US Attorney and US Marshal nominations, too.

Also, Bill just received J. Timothy Griffin's BI today, so maybe it will be ready on Tuesday, too.

From: Brosnahan, Jennifer R.
Sent: Friday, January 12, 2007 6:07 PM
To: Perkins, Paul R.
Cc: Lee, Kenneth K.; Looney, Andrea B.
Subject: RE: Smith Nomination

Checking with Harriet, but I am guessing yes.

From: Perkins, Paul R.
Sent: Friday, January 12, 2007 4:56 PM
To: Brosnahan, Jennifer R.
Subject: RE: Smith Nomination

I have the paperwork. Are we going to move forward with this on Tuesday?

From: Brosnahan, Jennifer R.
Sent: Friday, January 12, 2007 4:35 PM
To: Gibbs, Landon M.; Perkins, Paul R.; Paola, Lindsey N.
Subject: FW: Smith Nomination

FYI. Could you please retrieve the paperwork? Thanks.

From: Best, David T
Sent: Friday, January 12, 2007 4:34 PM
To: Brosnahan, Jennifer R.
Cc: Macklin, Kristi R
Subject: FW: Smith Nomination

New paperwork is ready to be picked up at my office.

From: Jon Seaton
Sent: 1/15/2007 4:31:53 PM
To: Scott Jennings;
Cc:
Bcc:
Subject: Re: Western Washington US Atty

Ok.

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

From: Scott Jennings
To: Jon Seaton
Sent: Mon Jan 15 11:31:26 2007
Subject: RE: Western Washington US Atty

Let Lee know directly.

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

From: Jon Seaton
Sent: Monday, January 15, 2007 11:30 AM
To: Scott Jennings
Subject: Re: Western Washington US Atty

I will find out and let you know.

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

From: Scott Jennings
To: Jon Seaton
Sent: Mon Jan 15 11:17:38 2007
Subject: FW: Western Washington US Atty

From: Lee, Kenneth K.
Sent: Wednesday, January 10, 2007 1:10 PM
To: Scott Jennings
Subject: RE: Western Washington US Atty

Let me check these names with DOJ before we formally reach out to them. Do you know where Rick White is these days?

From: Scott Jennings [mailto:S.Jennings@gwb43.com]
Sent: Wednesday, January 10, 2007 12:54 PM
To: Lee, Kenneth K.
Subject: FW: Western Washington US Atty

elligence says they both want consideration, but we haven't spoken directly. We can reach out if you'd like.

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Partner- Seattle, Washington Office

HJC 11598

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Peter Schalestock
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From: Jonathan Felts
sent: 1/16/2007 8:26:24 AM
To: Jane Cherry /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=JCHERRY;
cc: Scott Jennings /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=SJENNINGS ;
Bcc:
Subject: FW: WSJ: U.S. Attorney Vacancies Spark Concerns

Nice job janey...

The departure that started the uproar is that of Bud Cummins in Little Rock, Ark., whose replacement, Timothy Griffin, is a former political official in the Bush White House and the Republican National Committee. Mr. Cummins, in an interview, said a top Justice official asked for his resignation in June, saying the White House wanted to give another person the opportunity to serve.

U.S. Attorney Vacancies Spark Concerns

WALL STREET JOURNAL
By EVAN PEREZ and SCOT J. PALTROW
January 16, 2007; Page A4

WASHINGTON — As the Bush administration enters its last two years, a number of U.S. attorneys are departing, causing concern that some high-profile prosecutions may suffer.

As many as seven U.S. attorneys, including prosecutor Kevin V. Ryan, whose San Francisco office is overseeing the investigation of backdating of stock options, are leaving or being pushed out. Others include Carol Lam of San Diego, Daniel Bogden of Nevada, David Iglesias of New Mexico, Paul Charlton of Arizona and John McKay of Seattle. Ms. Lam and Messrs. Ryan and Bogden haven't officially announced their departures.

Democrats claim the administration is using a little-noticed clause in the Patriot Act to circumvent Senate confirmation for some of the interim replacements who otherwise might not be able to win confirmation. Senate Judiciary Committee Chairman Sen. Patrick Leahy (D., Vt.) and Sen. Dianne Feinstein (D., Calif.) are pushing legislation to undo a 2006 Patriot Act amendment that for the first time gave the attorney general, rather than local federal courts, authority to appoint interim U.S. attorneys. The administration said it needed to be able to do that to ensure no disruption in prosecuting terrorism suspects.

The proposed legislation would restore to the federal courts authority to make the interim appointments.

There is no fixed term for U.S. attorneys. Instead, they typically are appointed at the beginning of a new president's term, and serve throughout that term. If the president is re-elected, they continue to serve, unless of course they decide for some reason that they want to leave.

Lawmakers plan to question Attorney General Alberto Gonzales about the turnover at a Judiciary Committee hearing Thursday. Justice officials say the U.S. attorney changes are normal and that at any one time it is common to have eight to 15 vacancies. Former Justice Department officials, however, say it is unusual for such a large number of U.S. attorneys to leave at one time.

Brian Roehrkasse, a Justice Department spokesman, said that interim appointments aren't "in any way an attempt to circumvent the confirmation process." He added that the administration's record since last year's Patriot Act amendment "demonstrates we are committed to working with the Senate to nominate candidates for U.S. Attorney positions."

The Justice Department counts 11 vacancies since March 2006. The administration has nominated candidates to fill four of those and is interviewing candidates to fill seven others, officials said. Several departing prosecutors have left for new, and often higher-paying, private-sector jobs.

The departure that started the uproar is that of Bud Cummins in Little Rock, Ark., whose replacement, Timothy Griffin, is a former political official in the Bush White House and the Republican National Committee. Mr. Cummins, in an interview, said a top Justice official asked for his resignation in June, saying the White House wanted to give another person the opportunity to serve.

The departure of Mr. Ryan, who faced some internal criticism for his office operations, is less surprising. He gained a high profile because of the Balco steroids case and the options-backdating cases and in recent months began discussing stepping down.

The Justice Department's request that Ms. Lam step down was first reported last week by the San Diego Union-Tribune. A spokeswoman for Ms. Lam declined to comment on the matter. One possible reason cited for asking Ms. Lam to leave is a decline in her office's prosecutions of routine narcotics and smuggling cases. Ms. Lam instead has made white-collar criminal cases a priority and won the guilty plea in 2005 of former Republican Congressman Randy "Duke" Cunningham, who was sentenced to more than eight years in prison for soliciting \$2.4 million in bribes.

D. Foster Morss
Republican National Committee

From: Lee, Kenneth K.
Sent: Tuesday, January 16, 2007 10:07 AM
To: Brosnahan, Jennifer R.
Subject: fyi

More on USA Carol Lam (S.D. Cal):

http://www.nctimes.com/articles/2007/01/13/news/top_stories/21_44_311_12_07.txt

From: Brosnahan, Jennifer R.
Sent: Tuesday, January 16, 2007 10:35 AM
To: Lee, Kenneth K.
Subject: RE: fyi

I would send these to Bill, too.

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To: Brosnahan, Jennifer R.
Subject: fyi

More on USA Carol Lam (S.D. Cal):

http://www.nctimes.com/articles/2007/01/13/news/top_stories/21_44_311_12_07.txt

From: Looney, Andrea B.
Sent: Tuesday, January 16, 2007 6:54 PM
To: Wolff, Candida P.
Subject: FW: AP - US Attorney Story/Senate Democrats want to take back attorney general's power to replace U.S. attorneys

In case you want more background, but again, I think the AG doing a letter is good. He needs to tamp this down before his Thursday hearing.

From: White House News Update
Sent: Tuesday, January 16, 2007 5:37 PM
To: Looney, Andrea B.
Subject: AP - Senate Democrats want to take back attorney general's power to replace U.S. attorneys

Senate Democrats want to take back attorney general's power to replace U.S. attorneys

By LAURIE KELLMAN

WASHINGTON (AP) Senate Democrats want to take away Attorney General Alberto Gonzales' power to replace U.S. attorneys who fall out of favor and return that authority to federal district judges.

Democratic Sens. Dianne Feinstein of California and Mark Pryor of Arkansas complained Tuesday that the White House is using an obscure provision in the newly reauthorized USA Patriot Act to reward Republican political allies with jobs as federal prosecutors.

"The Bush administration is pushing out U.S. attorneys from across the country under the cloak of secrecy and then appointing indefinite replacements," Feinstein said.

"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," Pryor said in the joint Democratic statement.

Not true, Gonzales told The Associated Press.

"We are fully committed to ensuring that with respect to every position we have a Senate-confirmed, presidentially appointed U.S. attorney," Gonzales told editors and reporters during an interview Tuesday.

"We in no way politicize these decisions," he added.

U.S. District Court judges, Gonzales said, tend to appoint friends and others not properly qualified to be prosecutors.

Better that judges do the hiring than the White House, say Democrats, who have introduced legislation to return the appointment process to the courts.

The subject is headed for a public airing Thursday when Gonzales appears before the Senate Judiciary Committee for its first oversight hearing of his department since the Democrats took control of Congress.

At issue is whether the administration is using an obscure provision in the terrorism-fighting USA Patriot Act to oust federal prosecutors and replace them for the duration of the Bush administration with White House allies.

The intent of the law was to ensure continuity of law enforcement when federal prosecutors are lost in terrorist attacks or other crises. Under it, the attorney general would be permitted to appoint replacements, indefinitely, without Senate confirmation.

In the year since the reauthorization took effect, 11 federal prosecutors have resigned or announced their resignations some at the urging of the Bush administration, Gonzales said. He described a range of reasons for ousting sitting U.S. attorneys, from their job performance to their standing in their communities, and noted that federal prosecutors serve at the pleasure of the president.

Gonzales repeatedly cited the Patriot Act when discussing the replacements, but twice refused to say when asked whether any of the personnel changes at issue pertained to national security.

But he stressed that anyone named to replace the departing prosecutors have their jobs only temporarily, pending Senate confirmation. His comments encouraged some Democrats.

"That's good news, if that's the case," Pryor said in a telephone interview later Tuesday. But he stood by his assertion that in his state, the Justice Department improperly ousted U.S. Attorney Bud Cummins and replaced him with Tim Griffin, a protege of Bush adviser Karl Rove.

Feinstein, meanwhile, complained on the Senate floor Tuesday that U.S. Attorneys Carol Lam of San Diego and Kevin Ryan of San Francisco were ousted from their positions for political reasons. Lam prosecuted and obtained the conviction of former Rep. Randy "Duke" Cunningham, R-Calif.

You are currently subscribed to News Update (wires) as: Andrea_B.Looney@who.eop.gov.
To unsubscribe send a blank email to leave-whitehouse-news-wires-1400826W@list.whitehouse.gov

From: Taylor, Sara M.
Sent: 1/16/2007 7:13:28 PM
To: Jonathan Felts /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=JFELTS; Steven Soper /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=SSOPER;
Cc:
Bcc:
Subject: FW: U.S. Attorney Nominations

From: Perkins, Paul R.
Sent: Tuesday, January 16, 2007 4:05 PM
To: Miers, Harriet; Kelley, William K.; Goeglein, Tim; Taylor, Sara M.; Jennings, Jeffery S.; Carroll, Carlton F.; Looney, Andrea B.; Brosnahan, Jennifer R.; Oprison, Christopher G.; Sinatra, Nicholas A.; Mamo, Jeanie S.; Lawrimore, Emily A.; McCathran, William W.; Saunders, G. Timothy; 'kyle.sampson@usdoj.gov'; 'kristi.r.macklin@usdoj.gov'; 'tasia.scolinos@usdoj.gov'; 'Monica.Goodling@usdoj.gov'; 'jan.williams@usdoj.gov'; 'william.moschella@usdoj.gov'; 'michael.battle@usdoj.gov'; 'nancy.scottfinan'; 'David.T.Best'; 'John.Nowacki'; 'Fahrenkopf, Leslie'
Cc: Roebke, Heather M.; Gibbs, Landon M.; Brady, Ryan D.; Isakson, Curtis M.; Webster, Jocelyn S.; Dunne, Dianna L.; Conant, Alex
Subject: U.S. Attorney Nominations

Note: This is a preliminary internal notification, and it is not to be made public.

The following nominations is expected to be delivered to the U.S. Senate this afternoon:

John Wood, of Missouri, to be United States Attorney for the Western District of Missouri, vice Todd Peterson Graves.

REDACTED

Per our agreed upon process, prior to the nomination, EOUSA will inform: 1) the acting U.S. Attorney in the district, and 2) the candidate.

Also, per our agreed upon process, prior to the nomination, DOJ Legislative Affairs will inform: 1) the home-state Senators, and 2) Senators Specter and Leahy.

Please reply to this e-mail to confirm that these steps have been completed.

Thank you,
Paul Perkins
White House Counsel's Office
(202) 456

From: Sara Taylor
Sent: 1/17/2007 10:26:40 AM
Brad Smith /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=BSmith;
Bcc:
Subject: FW: REVISED COPY. PLEASE DELETE THE OTHER ONE.

Please add Comyn's Chief of Staff and Sessions' chief of staff to clal.

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

From: griffinj
Sent: Wednesday, January 17, 2007 10:23 AM
To: Sara Taylor
Subject: Re: REVISED COPY. PLEASE DELETE THE OTHER ONE.

Cornyn to the nyt would be awesome. Or sessions. I think they would be awesome because they are on judiciary

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

From: "Sara Taylor" <st@gwb43.com>
Date: Wed, 17 Jan 2007 10:21:38
To: "Tim Griffin"
Subject: RE: REVISED COPY. PLEASE DELETE THE OTHER ONE.

Who do you want to sign? Excellent.

From: Tim Griffin
Sent: Wednesday, January 17, 2007 12:28 AM
To: Sara Taylor
Subject: REVISED COPY. PLEASE DELETE THE OTHER ONE.
Importance: High

WHO IS TIM GRIFFIN?

On Monday, The New York Times criticized the appointment of Tim Griffin as the U.S. Attorney for the Eastern District of Arkansas and in doing so noted that Mr. Griffin "has a resume that includes working for Karl Rove and heading up opposition research for the Republican National Committee." The Times characterized Mr. Griffin's legal record with one word: "thin." Mr. Griffin's resume deserves a closer look.

First and foremost, Mr. Griffin is a lawyer, a cum laude graduate of Tulane Law School, in New Orleans. He is a member of both the Arkansas and Louisiana bars, and has a resume that lawyers from New York to California would envy.

Mr. Griffin has served as an officer—currently a major—in the U.S. Army Judge Advocate General's (JAG) Corps for over ten years. Like all JAGs, he has routinely practiced the basic legal skills that many lawyers never acquire: drafting wills, writing opinions and advising soldiers. In 2002, his supervisor wrote: "CPT Griffin has the gift of easily identifying legal issues and drafting clear, concise, and correct opinions. CPT Griffin is a born litigator."

In fact, in 2005, Mr. Griffin was serving as Special Assistant to President Bush when he was mobilized to active duty for a year. He picked up and moved to Fort Campbell, Kentucky, where he served as an Army prosecutor. At Fort Campbell, he prosecuted numerous criminal cases. One of those cases, U.S. v. Mikel, drew national interest after Private Mikel attempted to murder his platoon sergeant and fired upon his unit's early morning formation.

After the Mikel case, Mr. Griffin was allowed to fill a need for a JAG officer in Mosul, Iraq. He was assigned to the 501st Special Troops Battalion (STB), 101st Airborne Division and detailed to the 172d Stryker Brigade Combat Team (SBCT) Brigade Operational Law Team (OLT), for which he was awarded the Combat Action Badge and the Army Commendation Medal.

Mr. Griffin served the Department of Justice as Special Assistant to then-Assistant Attorney General, Criminal Division, Michael Chertoff and

on three separate occasions as a federal prosecutor, including from 2001-2002 in the Eastern District of Arkansas where he now serves. During that stint, he prosecuted a variety of federal cases with an emphasis on firearm and drug cases. He also organized the District's Project Safe Neighborhoods (PSN), the Bush Administration's initiative to reduce firearm-related violence by promoting close cooperation between state and federal law enforcement, and served as the PSN coordinator.

served from 1997-1999 as Senior Counsel to the Government Reform Committee, U.S. House of Representatives. Immediately following school, he practiced law for Jones, Walker, et al., of New Orleans, one of the largest law firms in the South.

Mr. Griffin is a cum laude graduate of Hendrix College in Conway, Arkansas, where he received his B.A., and attended graduate school in Modern European History at Pembroke College, Oxford University, in Oxford, England.

Certainly, in addition to his legal experience, Mr. Griffin has significant political experience. Imagine that—a political appointee with political experience. Mr. Griffin's political experience consists primarily of two tours at the Republican National Committee for the 2000 and 2004 presidential campaigns. And what one word characterizes both Mr. Griffin's political and legal work? Excellence.

Mr. Griffin is a fifth-generation Arkansan, son of a Baptist minister and cousin of the legendary Democrat Governor of Arkansas, Sidney S. McMath. Mr. Griffin caught Potomac Fever while interning for Democrat Senator Dale Bumpers of Arkansas, followed opportunity to Washington time and time again, but his heart remained in Arkansas. Mr. Griffin is fortunate to be back in Arkansas, and Arkansas is fortunate to have him as U.S. Attorney.

From: Jon Seaton
Sent: 1/17/2007 8:21:03 AM
To: kenneth_k_lee
Cc:
Subject: Rick White Resume
Attachments: Rick White Resume.doc;

Kenneth:

Attached is a resume for Rick White, who has expressed his interest for the vacant US Attorney position in Western Washington.

Please let me know if you have any questions.

Thanks.

-Jon
X8-

RICK WHITE

LAWYER • CEO • PUBLIC POLICY LEADER

Ability to Select, Inspire, and Lead Highly Talented People. Assembled and led successful teams at law firm, political organizations, industry groups, government. Known for "best staff on Capitol Hill" while member of Congress.

Spokesman and Advocate to Media and Opinion Leaders. Extensive experience in media interviews, public policy campaigns, testimony before Congress, op-ed articles. Multiple appearances on Newshour with Jim Lehrer, CNN, Fox News, CBS MarketWatch and similar media outlets.

Excellent Contacts in Government, Venture Capital, Business. Member of 1994 class in U.S. House. Liaison between 200+ tech CEOs and White House, cabinet secretaries, leaders of Congress, state governments. Raised \$5 million from supporters in Seattle business community.

Public Reputation for Policy Expertise, Integrity, and Fairness. Profiled in 7 articles by Wall Street Journal. Named one of "25 Most Intriguing Minds of the New Economy" by Business 2.0.

PROFESSIONAL EXPERIENCE

WOODBAY GROUP CONSULTING, Poulsbo, WA
Focus on board memberships, technology policy, politics.

2005 - Present

Selected Accomplishments:

- Board of Directors, Motricity, Inc. Leading wireless content provider in United States.
- Public Advisory Group, VeriSign, Inc. Administers ".com" and ".net" names on Internet.
- Markle Foundation Task Force on National Security in the Information Age.
- Council on American Politics, George Washington University School of Political Management.
- Board of Directors, Stewardship Partners. Seattle-based environmental group.
- Active in U.S. Senate, U. S. House, and Washington state legislative campaigns.

TECHNET, Palo Alto, CA
Policy organization for CEOs and venture capitalists in technology industry.

2001 - 2005

President and CEO

Responsible for financial and policy success of group with offices in Silicon Valley, Southern California, New England, Seattle, and Texas. Reported to Executive Council consisting of CEOs of largest technology companies in U.S. Commuted to Palo Alto from Seattle area.

Challenge: Recruited to lead preeminent tech group at a time when group was disorganized, demoralized, and high-tech bubble was bursting.

Selected Accomplishments:

- Clarified mission, replaced key executives, and restructured organization, allowing it to regain momentum and influence during most difficult period in industry's history.
- Designed and managed national policy campaigns on stock options, international trade, tax legislation, immigration reform, education.
- Grew membership, reduced costs, and expanded footprint to all major U.S. tech centers. Obtained financial and policy support from leading CEOs nationwide.
- Built consensus on issues and guided CEOs through public policy process.

Rick White

Page 2

PERKINS COIE, Seattle, WA

Leading business law firm in Pacific Northwest.

1999 - 2001

Partner

- Practiced in electronic commerce, litigation, and public policy areas.
- Served on King County WA Expert Review Panel on Internet Access.
- Acted as general counsel to start up company with XML-based identity management technology.

U.S. HOUSE OF REPRESENTATIVES, Washington, D.C.

1995 - 1999

Member of Congress

Represented 1st District of Washington (Seattle suburbs) in Congress.

- Founded bipartisan, bicameral Internet Caucus.
- Negotiated key provisions of 1996 Telecommunications Act and Digital Millennium Copyright Act.
- Chief House sponsor of Securities Litigation Uniform Standards Act of 1998.
- Led efforts to promote fiscal responsibility, government reform, international trade.

PERKINS COIE, Seattle, WA

Leading business law firm in Pacific Northwest.

1983 - 1995

Partner (1988 - 1995)

Associate (1983 - 1988)

- Founded and managed firm's Chapter 11 practice.
- Successfully reorganized \$300 million public company in largest Seattle Chapter 11 case to date.
- Lead lawyer in multiple cases before U.S. Bankruptcy Courts, U.S. District Courts, 9th Circuit.

COVINGTON & BURLING, Washington, D.C.

Major D.C. law firm.

1981 - 1983

Associate Attorney

- Practiced in litigation group.

U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT, Jackson, MS

1980 - 1981

Law Clerk to the Honorable Charles Clark, Chief Judge

- Heard oral arguments, drafted opinions in criminal and civil cases.
- Assisted judge when sitting as trial judge in U.S. District Court for Southern District of Florida.

EDUCATION

J.D. Georgetown University, Washington, D.C.

A.B. Dartmouth College, Hanover, N.H.

Fluent in French

From: Kelley, William K.
Sent: Thursday, January 18, 2007 10:49 AM
To: Coffin, Shannen W.
Subject: RE: Re:

Thanks. Helpful, and makes me feel better.

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

From: Coffin, Shannen W.
Sent: Thursday, January 18, 2007 10:43 AM
To: Kelley, William K.
Subject: FW: Re:

Bill, Just thought you'd be interested in the email chain below. Keep this one close hold.

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

From: Ryan, Kevin (USACAN)
Sent: Thursday, January 18, 2007 10:38 AM
To: Coffin, Shannen W.
Cc: Ryan, Kevin (USACAN)
Subject: RE: Re:

I have been everywhere. In fact, I have been successful. I see no point in being used like this, I have stated that I have been thinking about this for a long time, and the local media has accepted my explanations. There are others who may have a different mindset, but I have not even spoken with them. When businessweek called during the holidays, our media friend delivered the same message-- been thinking about it for months, son going to college, mutually agreeable timeframe, etc. This is the last thing I want, or need.

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

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

From: Coffin, Shannen W.
Sent: Thursday, January 18, 2007 10:23 AM Eastern Standard Time
To: Ryan, Kevin (USACAN)
Subject: RE: Re:

That's the sort of thing that would be useful to reemphasize here. I think you are being used by F to advance an agenda against the AG, but I don't quite understand why or what this is all about. Reminds me of a country song: Thanks but no thanks, baby, I've already got more trouble than I need.

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

From: Ryan, Kevin (USACAN)
Sent: Thursday, January 18, 2007 10:21 AM
To: Coffin, Shannen W.
Cc: Ryan, Kevin (USACAN)
Subject: RE: Re:

Will do so. All my statements are that I have decided to move on many months ago, and that I reached a mutual agreement with doj.

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

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

From: Coffin, Shannen W.
Sent: Thursday, January 18, 2007 10:16 AM Eastern Standard Time
To: Ryan, Kevin (USACAN)

Subject: RE: Re:

I understand that, but you might look for an opportunity to put some distance between you and it publicly. Not sure how to do so. Might want to consult our media relations friend.

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

From: Ryan, Kevin (USACAN)
Sent: Thursday, January 18, 2007 10:15 AM
To: Coffin, Shannen W.
Subject: Re: Re:

I have nothing to do with it. I have not spoken to her or her staff which called last week. I never returned the call. I am as distressed by this as you are, and am simply trying to move on. Someone else has done this, and I want no part of it.

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

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

From: Coffin, Shannen W.
Sent: Thursday, January 18, 2007 09:05 AM Eastern Standard Time
To: Ryan, Kevin (USACAN)
Subject: Re: Re:

Kevin, I want you to exercise some caution in the current environment. Having Feinstein use you for political purposes is not a good place to be. It might inure to your benefit to do try to distance yourself from that. We can talk about it if you like but I don't think it is reflecting well on your image for her to be pounding your drum. I'm sure you have nothing to do with it. That isn't my point, but this may be something to try to distance yourself from.

From: Jennings
Sent: 1/22/2007 1:22:29 PM
To: Scott Jennings;
Subject: FW: Urgent US Attorney Issue

From: Rove, Karl C.
Sent: Tuesday, January 16, 2007 6:27 PM
To: Kelley, William K.; Wolff, Candida P.
Cc: Kaplan, Joel
Subject: RE: Urgent US Attorney Issue

I'm fine with it.

From: Kelley, William K.
Sent: Tuesday, January 16, 2007 6:26 PM
To: Wolff, Candida P.; Rove, Karl C.
Cc: Kaplan, Joel
Subject: Urgent US Attorney Issue

The AG is sending a letter to Sen. Leahy responding to the issues that have been raised regarding recent US Attorney departures. The basic point is that these decisions are made based on overall DOJ priorities and have nothing to do with investigations or cases that the US Attorneys have pursued. The letter will also say that the AG has not, and does not intend to, try to evade the advice and consent process by naming interim US Attorneys without the Administration's sending a permanent nominee up to the Senate; and that the Administration is committed to seeking to fill all 94 US Attorney slots with Senate confirmed folks.

The last statement on filling all 94 slots would commit the Administration to that policy, which wouldn't be a change from general practice but hasn't been announced as such. To be clear, there are always some openings and some interim US Attorneys in place, but we haven't ever just stood pat on that and have instead always worked to fill the slots in consultation with the relevant Senators. We are okay with DOJ's proposal on filling all 94 slots, but Joel would like your reactions before signing off on authorizing the AG to say it publicly.

We'd like a quick reaction, because DOJ emphasizes their need to get the letter out asap, tonight if possible.

From: Sara Taylor
Sent: 1/24/2007 7:33:28 PM
To: Trey Best /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=TBest;
Jane Cherry /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=JCherry ; Scott
Jennings /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=SJennings ;
Bcc:
Subject: RE: Pat Shea

Call her and let her know we will honor Parsky commission on this. They submit 3 names. Counsel's office chooses the best. Unclear of Pat will be considered at either level at this point. Great.

From: Trey Best
Sent: Wednesday, January 24, 2007 6:48 PM
To: Sara Taylor
Cc: Jane Cherry; Scott Jennings
Subject: RE: Pat Shea

I spoke with Ken Lee in the Counsel's office. The Parsky Commission has not recommended anyone for the San Diego area US Attorney yet. Ken said that the position just recently became vacant. If you would like I can call Natalia with that message and assure her that I will communicate with her as the process moves forward.

From: Sara Taylor
Sent: Wednesday, January 24, 2007 2:55 PM
To: Trey Best
Cc: Jane Cherry; Scott Jennings
Subject: Pat Shea

's evidently being considered for US attorney in CA? can u find out the deal?
'e Spanos' have an interest in this - let's discuss.

Ju will want to call Natalia.

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From: Miers, Harriet
Sent: Saturday, January 27, 2007 12:37 PM
To: Lee, Kenneth K.; Kelley, William K.; Brosnahan, Jennifer R.
Subject: Meeting with Gerry Parsky

Gerry came by to visit this morning as planned. He had hoped to visit with Fred at the same time, but Fred had a commitment this morning that did not make that request possible. Gerry will in due course follow up with Fred. Gerry was speaking later today with Senator Feinstein's office. He is keeping in contact with her. AS a general matter, I emphasized the need for expeditious nomination for all vacancies and continued pursuit of confirmation for pending nominations. He is anxious to provide all the help he can in both regards.

On district courts, he knows that David Casey is proceeding. He also indicated that he should proceed with ED.

I gave him the status on the others and he promised to speak to the Senator to move those that have been nominated.

He spent a lot of time of course on USAs. He repeated again how he thought the delivery of the messages in California had been done in poor fashion. I spoke to him about the Judge and I think he knows the situation in the CD. He will provide recommendations soon in the SD and ND. He says given the way things have gone with the manner of the discussions with existing USAs, he strongly recommends career interim replacements. He also said that he thought the offices needed mature guidance, not inexperience.

From: Brady, Ryan D.
Sent: Friday, February 02, 2007 4:31 PM
To: Brosnahan, Jennifer R.
Subject: RE: DAG testimony on USA firings issue

Done. Thanks.

-----Original Message-----
From: Brosnahan, Jennifer R.
Sent: Friday, February 02, 2007 4:27 PM
To: Oprison, Christopher G.
Cc: Brady, Ryan D.
Subject: RE: DAG testimony on USA firings issue

I did not get to it, so please proceed with yours.

-----Original Message-----
From: Oprison, Christopher G.
Sent: Friday, February 02, 2007 4:13 PM
To: Brosnahan, Jennifer R.
Cc: Brady, Ryan D.
Subject: RE: DAG testimony on USA firings issue

Jenny - did you have any comments? Otherwise, OMB needs Ryan to advise that my single comment represented any and all comments from the WHC.

-----Original Message-----
From: Seidel, Rebecca
Sent: Friday, February 02, 2007 3:55 PM
To: Scott-Finan, Nancy; Oprison, Christopher G.; Brosnahan, Jennifer R.; McIntosh, Brent J.
Cc: Gibbs, Landon M.
Subject: Re: DAG testimony on USA firings issue

As of 20 min ago, Angela at omb had not received anything from WH counsel.

-----Original Message-----
From: Scott-Finan, Nancy
To: 'Oprison, Christopher G.' <Christopher_G._Oprison@who.eop.gov>; Brosnahan, Jennifer R. <Jennifer_R._Brosnahan@who.eop.gov>; McIntosh, Brent J. Seidel, Rebecca
CC: Gibbs, Landon M. <Landon M. Gibbs@who.eop.gov>
Sent: Fri Feb 02 15:49:04 2007
Subject: RE: DAG testimony on USA firings issue

We have not received comments from WH Counsel through the OMB passback process; only from DPC.

-----Original Message-----
From: Oprison, Christopher G. [mailto:Christopher_G._Oprison@who.eop.gov]
Sent: Friday, February 02, 2007 3:46 PM
To: Brosnahan, Jennifer R.; McIntosh, Brent J.; Seidel, Rebecca
Cc: Scott-Finan, Nancy; Gibbs, Landon M.
Subject: RE: DAG testimony on USA firings issue

Correct - Landon forwarded them, I believe

-----Original Message-----
From: Brosnahan, Jennifer R.
Sent: Friday, February 02, 2007 3:45 PM
To: McIntosh, Brent J.; 'rebecca.seidel

Cc: 'nancy.scott-finan' ; Oprison, Christopher G.
Subject: RE: DAG testimony on USA firings issue

Chris reviewed and submitted comments, I believe...

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

From: McIntosh, Brent J.
Sent: Friday, February 02, 2007 3:23 PM
To: 'rebecca.seidel'
Cc: 'nancy.scott-finan' ; Brosnahan, Jennifer R.
Subject: Re: DAG testimony on USA firings issue

Not me. I'm on paternity leave. Ccing Jenny, who may know status.

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

From: Seidel, Rebecca
To: McIntosh, Brent J.
CC: Scott-Finan, Nancy
Sent: Fri Feb 02 15:08:16 2007
Subject: DAG testimony on USA firings issue

OMB tells us they are only waiting to hear from WH counsel's office, otherwise it is cleared. Need to give to DAG to take home for weekend.
Can u fin out who is reviewing for you guys and nudge? (Is it you ? :))

From: Sara Taylor
Sent: Sunday, February 04, 2007 10:37 AM
To: Scott Jennings
Subject: FW:
Importance: High

Let's discuss a war room on this... DOJ needs to run; but maybe something Jane helps drive or someone else.

From: Tim Griffin
Sent: Sunday, February 04, 2007 10:28 AM
To: Sara Taylor
Subject: RE:

precisely. i am finding all sorts of things in this office that should have been fixed years ago. there is a reason he doesnt have a job.

From: Sara Taylor
Sent: Sunday, February 04, 2007 9:24 AM
To: Tim Griffin
Subject: RE:

Nice of Bud to run his mouth.....i wish one of our folks would go out there and say they removed him because he was thought to be ineffective!

From: Tim Griffin
Sent: Sunday, February 04, 2007 10:20 AM
To: Sara Taylor
Subject: RE:

thank you. i am hanging.

From: Sara Taylor
Sent: Sunday, February 04, 2007 9:04 AM
To: griffinjag
Subject: FW:

I will call you today - hang in there.

From: Scott Jennings
Sent: Sunday, February 04, 2007 10:02 AM
To: Sara Taylor
Subject:

U.S. Attorney Firings Set Stage for Congressional Battle

By Dan Eggen
 Washington Post Staff Writer
 Sunday, February 4, 2007; A07

H.E. "Bud" Cummins III had served for five years as the U.S. attorney in Little Rock — a job he obtained in large part because of his credentials as a longtime GOP lawyer and avid supporter of President Bush.

So Cummins, 47, was more than a little surprised when he got a call from the Justice Department last year asking him to resign. He was told there was nothing wrong with his performance, but that officials in Washington wanted to give the job to another GOP loyalist.

"I don't think many of us were aware that the administration might want to ask someone to step aside just to give someone else an opportunity," said Cummins, who left office in December and was replaced by J. Timothy Griffin, a former aide to presidential adviser Karl Rove. "The precedent was that once you were appointed, assuming you were successful in office, you were there until there was a change in the White House."

Cummins was the first in a wave of seven U.S. attorneys to be fired by the Justice Department, a move that has prompted sharp criticism from Democrats in Congress and has set the stage for a legislative battle over the attorney general's power to appoint federal prosecutors.

Six of the prosecutors received calls notifying them of their firings on a single day shortly before Christmas, officials said, including the U.S. attorney who oversaw a prominent public corruption probe in San Diego and a prosecutor in New Mexico whose life as a military lawyer was portrayed by Tom Cruise in the movie "A Few Good Men." Most have told colleagues that they have no idea why they were shoved out, according to aides.

A little-noticed provision passed last year allows Attorney General Alberto R. Gonzales to appoint interim U.S. attorneys indefinitely without seeking approval from the Senate. Fearing an attempted end run around congressional prerogatives, both House and Senate Democrats have introduced legislation to repeal the provision. The Senate Judiciary Committee is scheduled to hold a hearing on the issue Tuesday.

"The U.S. attorneys' job is too important for there to be unnecessary disruptions, or worse, any appearance of undue influence," Sen. Dianne Feinstein (D-Calif.) said in a floor speech last month.

Gonzales and his aides say that they intend to seek Senate approval for every new U.S. attorney and that the old system, which allowed federal judges to appoint replacements, has both practical and constitutional problems. Justice Department officials also defend Gonzales's right to fire U.S. attorneys at will and have suggested that each of the recently dismissed prosecutors had performance problems.

"Every U.S. attorney, like the attorney general of the United States, serves at the pleasure of the president," Gonzales said in a recent interview with *The Washington Post*. "We can be asked to leave at any time; we can be asked to leave for any reason."

He added later: "From time to time we make an evaluation as to whether we believe we can put in people who can produce better results, who can do a better job."

But there is also evidence that broader political forces are at work. One administration official, who spoke on the condition of anonymity in discussing personnel issues, said the spate of firings was the result of "pressure from people who make personnel decisions outside of Justice who wanted to make some things happen in these places."

Several of those fired have already left, and the rest will be gone by the end of the month.

The dismissals include the heads of two of the most important U.S. attorneys' offices in the country: Carol S. Lam in San Diego and Kevin Ryan in San Francisco. The others were John McKay in Seattle; David C. Iglesias in New Mexico; Daniel G. Bogden in Nevada; and Paul K. Charlton in Arizona. All declined to comment for this story.

Ryan's departure was perhaps the least surprising because his tenure had been marked by public complaints

about plummeting morale and high staff turnover. But Lam's departure has been more controversial, prompting public complaints from the head of the local FBI field office and questions from Sen. Patrick J. Leahy (D-Vt.), Rep. John Conyers Jr. (D-Mich.) and others. Some Democrats speculated that the administration was attempting to undermine the ongoing corruption probe centered on former representative Randy "Duke" Cunningham (R-Calif.), which was overseen by Lam.

"We have people from the FBI indicating that Carol Lam has not only been a straight shooter but a very good prosecutor," Feinstein said. "Therefore, it is surprising to me to see that she would be, in effect, forced out, without cause. This would go for any other U.S. attorney among the seven who are on that list."

Justice Department officials – who discussed personnel issues on the condition of anonymity – said that Lam's record was far more mixed, noting that prosecutions of firearms offenses plunged during her tenure and that she personally oversaw a major health-care fraud case that ended in a mistrial.

Another surprise was the firing of McKay, whom Cummins described as "a rock-star U.S. attorney" and whose effort to build a law enforcement database is the template for a new nationwide program at Justice. McKay was also rebuffed for a federal judgeship at the same time.

Like President Bill Clinton before him, Bush removed nearly all the U.S. attorneys when he came into office and replaced them with his own Senate-confirmed appointments. Under previous statutes, the attorney general had the power to appoint an interim prosecutor for 120 days in the case of a vacancy, but then it was up to the local district court to make an appointment until the Senate approved a final pick.

Gonzales and many legal experts say that arrangement was a troubling intrusion on the separation of powers between the independent branches of government.

A new provision, which was quietly tucked into USA Patriot Act reauthorization legislation last year, allows Gonzales to appoint interim prosecutors indefinitely. Not counting the recent dismissals, there have been 11 vacancies since the measure was enacted, and Justice Department officials said they will provide nominations to the Senate for each position.

Feinstein and other Democrats fear the provision would allow an attorney general to avoid Senate confirmation of U.S. attorneys altogether and are proposing a return to the previous system.

B. Mahlon Brown III, a former U.S. attorney for Nevada who now heads the National Association of Former United States Attorneys, said most members of the group are in "shock and awe" over the wave of firings. "It goes against all tradition, and it's very troubling to a lot of us," Brown said.

But Dennis W. Boyd, executive director of the National Association of Assistant U.S. Attorneys, which represents currently employed federal prosecutors, said many of the group's members "do not see it as particularly unusual." Seven firings among 93 U.S. attorneys offices are not that many, Boyd added.

Cummins said "the political aspect of it shouldn't really be a shock to anybody," noting his own status as an active Republican lawyer who served as one of Arkansas's electors committed to Bush in 2000.

"Every U.S. attorney knows they serve at the pleasure of the president," he said.

From: Jane Cherry
Sent: 2/4/2007 3:28:45 PM
To: Scott Jennings;
Cc:
Subject: Re:

I wish we knew who they were. Griffin and Davis probably vetted their appointments.

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

From: Scott Jennings
To: Jane Cherry
Sent: Sun Feb 04 10:24:30 2007
Subject: RE:

I have read every article on this topic - not one time has anyone ever said anything about the problems in these offices.

From: Jane Cherry
Sent: Sun 2/4/2007 10:23 AM
To: Scott Jennings
Subject: Re:

ah. They shouldn't do that unless they are going to defend the process. its always possible they did but it didn't make it into the article, right?

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

From: Scott Jennings
To: Jane Cherry
Sent: Sun Feb 04 10:21:02 2007
Subject: RE:

In all seriousness...you know what pisses me off about this thing is all these DoJ people speaking anonymously on the process. And not one of them lays out the case for dismissal in any of these offices.

From: Jane Cherry
Sent: Sun 2/4/2007 10:20 AM
To: Scott Jennings
Subject: Re:

do I have the least motive? Tim Griffin made my life absolutely miserable for 5 months. Plus, my mother was Bud's first assistant. He was a good family friend. I think I could argue I was pushing to keep him around but you were the one who wanted him out. Heheh.

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

From: Scott Jennings
To: Jane Cherry
Sent: Sun Feb 04 10:11:51 2007
Subject: RE:

shut up. these things always roll down hill. you are the one in the office iwth the most motive to help Griffin, so i'm guessing you are going down.

From: Jane Cherry
Sent: Sun 2/4/2007 10:10 AM
To: Scott Jennings
Subject: Re:

Isn't that what the Nazis claimed?

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

From: Scott Jennings
To: Jane Cherry
Sent: Sun Feb 04 10:09:28 2007
Subject: RE:

Followed orders.

From: Jane Cherry
Sent: Sun 2/4/2007 10:06 AM
To: Scott Jennings
Subject: Re:

Good lord. What have you done?

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

From: Scott Jennings
To: Jane Cherry
Sent: Sun Feb 04 10:03:44 2007
Subject:

U.S. Attorney Firings Set Stage for Congressional Battle

By Dan Eggen
Washington Post Staff Writer
Sunday, February 4, 2007; A07

... E. "Bud" Cummins III had served for five years as the U.S. attorney in Little Rock -- a job he obtained in large part because of his credentials as a longtime GOP lawyer and avid supporter of President Bush.

So Cummins, 47, was more than a little surprised when he got a call from the Justice Department last year asking him to resign. He was told there was nothing wrong with his performance, but that officials in Washington wanted to give the job to another GOP loyalist.

"I don't think many of us were aware that the administration might want to ask someone to step aside just to give someone else an opportunity," said Cummins, who left office in December and was replaced by J. Timothy Griffin, a former aide to presidential adviser Karl Rove. "The precedent was that once you were appointed, assuming you were successful in office, you were there until there was a change in the White House."

Cummins was the first in a wave of seven U.S. attorneys to be fired by the Justice Department, a move that has prompted sharp criticism from Democrats in Congress and has set the stage for a legislative battle over the attorney general's power to appoint federal prosecutors.

Six of the prosecutors received calls notifying them of their firings on a single day shortly before Christmas, officials said, including the U.S. attorney who oversaw a prominent public corruption probe in San Diego and a prosecutor in New Mexico whose life as a military lawyer was portrayed by Tom Cruise in the movie "A Few Good Men." Most have told colleagues that they have no idea why they were shoved out, according to aides.

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"The U.S. attorneys' job is too important for there to be unnecessary disruptions, or worse, any appearance of undue influence," Sen. Dianne Feinstein <<http://projects.washingtonpost.com/congress/members/f000062/>> (D-Calif.) said in a floor speech last month.

Gonzales and his aides say that they intend to seek Senate approval for every new U.S. attorney and that the old system, which allowed federal judges to appoint replacements, has both practical and constitutional problems. Justice Department officials also defend Gonzales's right to fire U.S. attorneys at will and have suggested that each of the recently dismissed prosecutors had performance problems.

"Every U.S. attorney, like the attorney general of the United States, serves at the pleasure of the president," Gonzales said in a recent interview with The Washington Post. "We can be asked to leave at any time; we can be asked to leave for any reason."

He added later: "From time to time we make an evaluation as to whether we believe we can put in people who can produce better results, who can do a better job."

But there is also evidence that broader political forces are at work. One administration official, who spoke on the condition of anonymity in discussing personnel issues, said the spate of firings was the result of "pressure from people who make personnel decisions outside of Justice who wanted to make some things happen in these places."

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"Every U.S. attorney knows they serve at the pleasure of the president," he said.

From: Jane Cherry
Sent: 2/4/2007 5:08:36 PM
Jonathan Felts /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=JFELTS;
Bcc:
Subject: Re: Bud Cummins

Oh my God. Yes.

-----Original Message-----
From: Jonathan Felts
To: Jane Cherry
Sent: Sun Feb 04 17:07:36 2007
Subject: RE: Bud Cummins

Ah yes - I recall.
Good ole TG - the one man more self-involved than myself?

-----Original Message-----
From: Jane Cherry
Sent: Sunday, February 04, 2007 4:04 PM
To: Jonathan Felts
Subject: Re: Bud Cummins

My mom was really fretting about this a lot - just the guilt of knowing about it and being angry with Tim for talking to her about it - and I told her repeatedly not to worry. I do feel bad for that.

-----Original Message-----
From: Jonathan Felts
To: Jane Cherry
Sent: Sun Feb 04 16:00:04 2007
Subject: RE: Bud Cummins

Well, we will have to blame someone.

-----Original Message-----
From: Jane Cherry
Sent: Sunday, February 04, 2007 3:54 PM
To: Jonathan Felts
Subject: Re: Bud Cummins

Haha. Yeah Scott sent this to me this morning and then tried to blame me for the whole thing.

-----Original Message-----
From: Jonathan Felts
To: Jane Cherry
Sent: Sun Feb 04 14:24:30 2007
Subject: Bud Cummins

You already see this I assume?

Methinks that TG hurt himself pretty bad with how he handled things with Bud.

I think Bud is not being much of a team player, but, I'm not shocked that his dislike for TG is more than his like for POTUS.

U.S. Attorney Firings Set Stage for Congressional Battle

By Dan Eggen
Washington Post Staff Writer
Sunday, February 4, 2007; A07

"Bud" Cummins III had served for five years as the U.S. attorney in Little Rock -- a job he obtained in large part because of his credentials as a longtime GOP lawyer and avid supporter of President Bush.

So Cummins, 47, was more than a little surprised when he got a call from the Justice Department last year asking him to resign. He was told there was nothing wrong with his performance, but that officials in Washington wanted to give the job to another GOP loyalist.

"I don't think many of us were aware that the administration might want to ask someone to step aside just to give someone else an opportunity," said Cummins, who left office in December and was replaced by J. Timothy Griffin, a former aide to presidential adviser Karl Rove. "The precedent was that once you were appointed, assuming you were successful in office, you were there until there was a change in the White House."

Cummins was the first in a wave of seven U.S. attorneys to be fired by the Justice Department, a move that has prompted sharp criticism from Democrats in Congress and has set the stage for a legislative battle over the attorney general's power to appoint federal prosecutors.

Six of the prosecutors received calls notifying them of their firings on a single day shortly before Christmas, officials said, including the U.S. attorney who oversaw a prominent public corruption probe in San Diego and a prosecutor in New Mexico whose life as a military lawyer was portrayed by Tom Cruise in the movie "A Few Good Men." Most have told colleagues that they have no idea why they were shoved out, according to aides.

A little-noticed provision passed last year allows Attorney General Alberto R. Gonzales to appoint interim U.S. attorneys indefinitely without seeking approval from the Senate. Fearing an attempted end run around congressional prerogatives, both House and Senate Democrats have introduced legislation to repeal the provision. The Senate Judiciary Committee is scheduled to hold a hearing on the issue Tuesday.

"The U.S. attorneys' job is too important for there to be unnecessary disruptions, or worse, any appearance of undue influence," Sen. Dianne Feinstein <<http://projects.washingtonpost.com/congress/members/f000062/>> (D-Calif.) said in a floor speech last month.

Gonzales and his aides say that they intend to seek Senate approval for every new U.S. attorney and that the old system, which allowed federal judges to appoint replacements, has both practical and constitutional problems. Justice Department officials also defend Gonzales's right to fire U.S. attorneys at will and have suggested that each of the recently dismissed prosecutors had performance problems.

"The U.S. attorney, like the attorney general of the United States, serves at the pleasure of the president," Gonzales said in a recent interview with *The Washington Post*. "We can be asked to leave at any time; we can be asked to leave for any reason."

He added later: "From time to time we make an evaluation as to whether we believe we can put in people who can produce better results, who can do a better job."

But there is also evidence that broader political forces are at work. One administration official, who spoke on the condition of anonymity in discussing personnel issues, said the spate of firings was the result of "pressure from people who make personnel decisions outside of Justice who wanted to make some things happen in these places."

Several of those fired have already left, and the rest will be gone by the end of the month.

The dismissals include the heads of two of the most important U.S. attorneys' offices in the country: Carol S. Lam in San Diego and Kevin Ryan in San Francisco. The others were John McKay in Seattle; David C. Iglesias in New Mexico; Daniel G. Bogden in Nevada; and Paul K. Charlton in Arizona. All declined to comment for this story.

Ryan's departure was perhaps the least surprising because his tenure had been marked by public complaints about plummeting morale and high staff turnover. But Lam's departure has been more controversial, prompting public complaints from the head of the local FBI field office and questions from Sen. Patrick J. Leahy <<http://projects.washingtonpost.com/congress/members/1000174/>> (D-Vt.), Rep. John Conyers <<http://projects.washingtonpost.com/congress/members/c000714/>> Jr. (D-Mich.) and others. Some Democrats speculated that the administration was attempting to undermine the ongoing corruption probe centered on former representative Randy "Duke" Cunningham (R-Calif.), which was overseen by Lam.

"We have people from the FBI indicating that Carol Lam has not only been a straight shooter but a very good prosecutor," Feinstein said. "Therefore, it is surprising to me to see that she would be, in effect, forced out, without cause. This would go for any other U.S. attorney among the seven who are on that list."

Justice Department officials -- who discussed personnel issues on the condition of anonymity -- said that Lam's record was far more mixed, noting that prosecutions of firearms offenses plunged during her tenure and that she personally oversaw a major health-care fraud case that ended in a mistrial.

Another surprise was the firing of McKay, whom Cummins described as "a rock-star U.S. attorney" and whose effort to build a law enforcement database is the template for a new nationwide program at Justice. McKay was also rebuffed for a federal judgeship at the same

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Like President Bill Clinton before him, Bush removed nearly all the U.S. attorneys when he came into office and replaced them with his own Senate-confirmed appointments. Under previous statutes, the attorney general had the power to appoint an interim prosecutor for 120 days in case of a vacancy, but then it was up to the local district court to make an appointment until the Senate approved a final pick.

Gonzales and many legal experts say that arrangement was a troubling intrusion on the separation of powers between the independent branches of government.

A new provision, which was quietly tucked into USA Patriot Act reauthorization legislation last year, allows Gonzales to appoint interim prosecutors indefinitely. Not counting the recent dismissals, there have been 11 vacancies since the measure was enacted, and Justice Department officials said they will provide nominations to the Senate for each position.

Feinstein and other Democrats fear the provision would allow an attorney general to avoid Senate confirmation of U.S. attorneys altogether and are proposing a return to the previous system.

B. Mahlon Brown III, a former U.S. attorney for Nevada who now heads the National Association of Former United States Attorneys, said most members of the group are in "shock and awe" over the wave of firings. "It goes against all tradition, and it's very troubling to a lot of us," Brown said.

But Dennis W. Boyd, executive director of the National Association of Assistant U.S. Attorneys, which represents currently employed federal prosecutors, said many of the group's members "do not see it as particularly unusual." Seven firings among 93 U.S. attorneys offices are not that many, Boyd added.

Cummins said "the political aspect of it shouldn't really be a shock to anybody," noting his own status as an active Republican lawyer who served as one of Arkansas's electors committed to Bush in 2000.

"Every U.S. attorney knows they serve at the pleasure of the president," he said.

From: Sara Taylor
Date: 2/4/2007 10:15:18 AM
Subject: Scott Jennings /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=SJENNINGS;
Bcc:
Subject: RE:

Totally agree. Cummins was lazy, which is why they were willing to put Griffin there.

From: Scott Jennings
Sent: Sunday, February 04, 2007 10:10 AM
To: Sara Taylor
Subject: RE:

In every case except Cummins, there were performance issues with these US Attorney people. And my understanding is Cummins was no rock star. If all of these people at DoJ are willing to speak anonymously on this process, why doesn't one of them lay out the case for change in each office? I mean - Pete Domenici in New Mexico has been BEGGING us to dump Iglesias, and he has failed to prosecute any voter fraud cases and he royally screwed up the state's largest ever corruption investigation.

From: Sara Taylor
Sent: Sun 2/4/2007 10:07 AM
To: Scott Jennings
Subject: RE:

Also - Karl commented on the research you did Friday. Very helpful and the President used it.

From: Scott Jennings
Sent: Sunday, February 04, 2007 10:02 AM
To: Sara Taylor
Subject:

U.S. Attorney Firings Set Stage for Congressional Battle

By Dan Eggen
Washington Post Staff Writer
Sunday, February 4, 2007; A07

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"The U.S. attorneys' job is too important for there to be unnecessary disruptions, or worse, any appearance of undue influence," Sen. Dianne Feinstein (D-Calif.) said in a floor speech last month.

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"Every U.S. attorney, like the attorney general of the United States, serves at the pleasure of the president," Gonzales said in a recent interview with The Washington Post. "We can be asked to leave at any time; we can be asked to leave for any reason."

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"Every U.S. attorney knows they serve at the pleasure of the president," he said.

From:
sent: 1/1/4501
Karl Rove /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=KR;
Taylor_A._Hughes@who.eop.gov Taylor_A._Hughes@who.eop.gov;
Cc:
Bcc:
Subject: FW: McNulty Testimony 2-6-07

Relevant portions marked:

Testimony of Paul J. McNulty (Deputy Attorney General, U.S. Department of Justice) to the Committee on the Judiciary, United States Senate
“Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys?”
February 6, 2007

Chairman Leahy, Senator Specter, and Members of the Committee, thank you for the invitation to discuss the importance of the Justice Department’s United States Attorneys. As a former United States Attorney, I particularly appreciate this opportunity to address the critical role U.S. Attorneys play in enforcing our Nation’s laws and carrying out the priorities of the Department of Justice.

I have often said that being a United States Attorney is one of the greatest jobs you can ever have. It is a privilege and a challenge—one that carries a great responsibility. As former Attorney General Griffin Bell said, U.S. Attorneys are “the front-line troops charged with carrying out the Executive’s constitutional mandate to execute faithfully the laws in every federal judicial district.” As the chief federal law-enforcement officers in their districts, U.S. Attorneys represent the Attorney General before Americans who may not otherwise have contact with the Department of Justice. They lead their efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families—including child pornography, obscenity, and human trafficking.

U.S. Attorneys are not only prosecutors; they are government officials charged with managing and implementing the policies and priorities of the Executive Branch. United States Attorneys serve at the pleasure of the President. Like any other high-ranking officials in the Executive Branch, they may be removed for any reason or no reason. The Department of Justice—including the office of United States Attorney—was created precisely so that the government’s legal business could be effectively managed and carried out through a coherent program under the supervision of the Attorney General. And unlike judges, who are supposed to act independently of those who nominate them, U.S. Attorneys are accountable to the Attorney General, and through him, to the President—the head of the Executive Branch. For these reasons, the Department is committed to having the best person possible discharging the responsibilities of that office at all times and in every district.

The Attorney General and I are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their offices effectively. It should come as no surprise to anyone that, in an organization as large as the Justice Department, U.S. Attorneys are removed or asked or encouraged to resign from time to time. However, in this Administration U.S. Attorneys are never—repeat, never— removed, or asked or encouraged to resign, in an effort to retaliate against them, or interfere with, or inappropriately influence a particular investigation, criminal prosecution, or civil case. Any suggestion to the contrary is unfounded, and it irresponsibly undermines the reputation for impartiality the Department has earned over many years and on which it depends.

Turnover in the position of U.S. Attorney is not uncommon. When a presidential election results in a change of administration, every U.S. Attorney leaves and the new President nominates a successor for confirmation by the Senate. Moreover, U.S. Attorneys do not necessarily stay in place even during an administration. For example, approximately half of the U.S. Attorneys appointed at the beginning of the Bush Administration had left office by the end of 2006. Given this reality, career investigators and prosecutors exercise direct responsibility for nearly all investigations and cases handled by a U.S. Attorney’s Office. While a new U.S. Attorney may articulate new priorities or emphasize different types of cases, the effect of a U.S. Attorney’s departure on an existing investigation is, in fact, minimal, and

that is as it should be. The career civil servants who prosecute federal criminal cases are dedicated professionals, and an effective U.S. Attorney relies on the professional judgment of those prosecutors.

The leadership of an office is more than the direction of individual cases. It involves managing limited resources, maintaining high morale in the office, and building relationships with federal, state and local law enforcement partners. When a U.S. Attorney submits his or her resignation, the Department must first determine who will serve temporarily as interim U.S. Attorney. The Department has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's Office during the period when there is not a presidentially-appointed, Senate-confirmed United States Attorney. Often, the Department looks to the First Assistant U.S. Attorney or another senior manager in the office to serve as U.S. Attorney on an interim basis. When neither the First Assistant nor another senior manager in the office is able or willing to serve as interim U.S. Attorney, or when the appointment of either would not be appropriate in the circumstances, the Department has looked to other, qualified Department employees.

At no time, however, has the Administration sought to avoid the Senate confirmation process by appointing an interim U.S. Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination, confirmation and appointment of a new U.S. Attorney. The appointment of U.S. Attorneys by and with the advice and consent of the Senate is unquestionably the appointment method preferred by both the Senate and the Administration.

In every single case where a vacancy occurs, the Bush Administration is committed to having a United States Attorney who is confirmed by the Senate. And the Administration's actions bear this out. Every time a vacancy has arisen, the President has either made a nomination, or the Administration is working—in consultation with home-state Senators—to select candidates for nomination. Let me be perfectly clear—at no time has the Administration sought to avoid the Senate confirmation process by appointing an interim United States Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination and confirmation of a new United States Attorney. Not once.

Since January 20, 2001, 125 new U.S. Attorneys have been nominated by the President and confirmed by the Senate. On March 9, 2006, the Congress amended the Attorney General's authority to appoint interim U.S. Attorneys, and 13 vacancies have occurred since that date. This amendment has not changed our commitment to nominating candidates for Senate confirmation. In fact, the Administration has nominated a total of 15 individuals for Senate consideration since the appointment authority was amended, with 12 of those nominees having been confirmed to date. Of the 13 vacancies that have occurred since the time that the law was amended, the Administration has nominated candidates to fill five of these positions, has interviewed candidates for nomination for seven more positions, and is waiting to receive names to set up interviews for the final position—all in consultation with home-state Senators.

However, while that nomination process continues, the Department must have a leader in place to carry out the important work of these offices. To ensure an effective and smooth transition during U.S. Attorney vacancies, the office of the U.S. Attorney must be filled on an interim basis. To do so, the Department relies on the Vacancy Reform Act ("VRA"), 5 U.S.C. § 3345(a)(1), when the First Assistant is selected to lead the office, or the Attorney General's appointment authority in 28 U.S.C. § 546 when another Department employee is chosen. Under the VRA, the First Assistant may serve in an acting capacity for only 210 days, unless a nomination is made during that period. Under an Attorney General appointment, the interim U.S. Attorney serves until a nominee is confirmed by the Senate. There is no other statutory authority for filling such a vacancy, and thus the use of the Attorney General's appointment authority, as amended last year, signals nothing other than a decision to have an interim U.S. Attorney who is not the First Assistant. It does not indicate an intention to avoid the confirmation process, as some have suggested.

No change in these statutory appointment authorities is necessary, and thus the Department of Justice strongly opposes S. 214, which would radically change the way in which U.S. Attorney vacancies are temporarily filled. S. 214 would deprive the Attorney General of the authority to appoint his chief law enforcement officials in the field when a vacancy occurs, assigning it instead to another branch of government.

As you know, before last year's amendment of 28 U.S.C. § 546, the Attorney General could appoint an interim U.S. Attorney for the first 120 days after a vacancy arose; thereafter, the district court was authorized to appoint an interim U.S. Attorney. In cases where a Senate-confirmed U.S. Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in recurring problems. Some district courts recognized the

conflicts inherent in the appointment of an interim U.S. Attorney who would then have matters before the court—not to mention the oddity of one branch of government appointing officers of another—and simply refused to exercise the appointment authority. In those cases, the Attorney General was consequently required to make multiple successive 90-day interim appointments. Other district courts ignored the inherent conflicts and sought to appoint as interim U.S. Attorneys wholly unacceptable candidates who lacked the required clearances or appropriate qualifications.

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

S. 214 would not merely reverse the 2006 amendment; it would exacerbate the problems experienced under the prior version of the statute by making judicial appointment the only means of temporarily filling a vacancy—a step inconsistent with sound separation-of-powers principles. We are aware of no other agency where federal judges—members of a separate branch of government—appoint the interim staff of an agency. Such a judicial appointee would have authority for litigating the entire federal criminal and civil docket before the very district court to whom he or she was beholden for the appointment. This arrangement, at a minimum, gives rise to an appearance of potential conflict that undermines the performance or perceived performance of both the Executive and Judicial Branches. A judge may be inclined to select a U.S. Attorney who shares the judge's ideological or prosecutorial philosophy. Or a judge may select a prosecutor apt to settle cases and enter plea bargains, so as to preserve judicial resources. See Wiener, *Inter-Branch Appointments After the Independent Counsel: Court Appointment of United States Attorneys*, 86 Minn. L. Rev. 363, 428 (2001) (concluding that court appointment of interim U.S. Attorneys is unconstitutional).

Prosecutorial authority should be exercised by the Executive Branch in a unified manner, consistent with the application of criminal enforcement policy under the Attorney General. S. 214 would undermine the effort to achieve a unified and consistent approach to prosecutions and federal law enforcement. Court-appointed U.S. Attorneys would be at least as accountable to the chief judge of the district court as to the Attorney General, which could, in some circumstances become untenable. In no context is accountability more important to our society than on the front lines of law enforcement and the exercise of prosecutorial discretion, and the Department contends that the chief prosecutor should be accountable to the Attorney General, the President, and ultimately the people.

Finally, S. 214 seems to be aimed at solving a problem that does not exist. As noted, when a vacancy in the office of U.S. Attorney occurs, the Department typically looks first to the First Assistant or another senior manager in the office to serve as an Acting or interim U.S. Attorney. Where neither the First Assistant nor another senior manager is able or willing to serve as an Acting or interim U.S. Attorney, or where their service would not be appropriate under the circumstances, the Administration has looked to other Department employees to serve temporarily. No matter which way a U.S. Attorney is temporarily appointed, the Administration has consistently sought, and will continue to seek, to fill the vacancy—in consultation with home-State Senators—with a presidentially-nominated and Senate-confirmed nominee.

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

From: Jennings, Jeffery S.
Sent: Wednesday, February 07, 2007 9:12 AM
To: Lawrimore, Emily A.; Perino, Dana M.
Subject: RE: USAT - Prosecutor fired so ex-Rove aide could get his job
Attachments: TG Editorial.doc; Griffin, Tim Bio.doc; Griffin, Tim Military Bio.doc; Griffin, Tim Resume.doc

Documents on Tim Griffin attached.

I think these points are valuable:

- People who are appointed U.S. Attorney know they serve at the Pleasure of the President. These are politically appointed, executive branch positions. Just like Attorney General, or Deputy Attorney General, or thousands of other positions in the White House and through the federal government.
- People take these jobs understanding they serve at the Pleasure of the President.
- Tim Griffin is extremely qualified to serve (see attached documents).
 1. Previous experience at DoJ; served in Iraq; served as a Commissioned Officer at the White House, etc.

From: Lawrimore, Emily A.
Sent: Wednesday, February 07, 2007 8:55 AM
To: Jennings, Jeffery S.
Subject: RE: USAT - Prosecutor fired so ex-Rove aide could get his job

Can we talk or can you email me information?

Thanks,

Emily

From: Kubena, Korinne A.
Sent: Wednesday, February 07, 2007 8:53 AM
To: Lawrimore, Emily A.; Cherry, Jane W.
Subject: RE: USAT - Prosecutor fired so ex-Rove aide could get his job

Just got the background from Jane and Scott. You'll want to reach out to Scott Jennings directly on this.

Thanks.

From: Lawrimore, Emily A.
Sent: Wednesday, February 07, 2007 8:42 AM
To: Kubena, Korinne A.; Cherry, Jane W.
Subject: FW: USAT - Prosecutor fired so ex-Rove aide could get his job

I am looking for background information on Tim Griffin - I believe Karl told Dana Perino that your office has information on his qualifications to serve as a U.S. Attorney.

Thanks,

Emily

From: White House News Update
Sent: Wednesday, February 07, 2007 6:38 AM
To: Lawrimore, Emily A.
Subject: USAT - Prosecutor fired so ex-Rove aide could get his job

Prosecutor fired so ex-Rove aide could get his job

By Kevin Johnson, USA TODAY

WASHINGTON — The Justice Department acknowledged Tuesday that it fired the U.S. government's chief prosecutor in Little Rock for no reason except to replace him with a lawyer who had been an aide to Karl Rove, the Bush administration's chief political strategist.

However, in an appearance before the Senate Judiciary Committee, Deputy Attorney General Paul McNulty rejected criticism that the forced resignations of Bud Cummins and six other U.S. attorneys last year were politically inspired, or amounted to retaliation for the attorneys' involvement in controversial investigations and prosecutions.

McNulty's testimony before the panel, which is investigating the firings of the prosecutors, was part of an exchange with Sen. Charles Schumer, D-N.Y. Schumer said the White House's appointment process for prosecutors was "corrupted with political, rather than prudent, considerations."

"What happened here doesn't sound like business as usual; it appears more reminiscent of a different sort of Saturday night massacre," Schumer said, referring to Watergate-era firings at Justice that were ordered by President Nixon.

"When I hear you talk about a politicization of the (Justice) Department, it is like a knife in my back," McNulty responded.

Schumer and other committee members have questioned the department's action, suggesting the administration was taking advantage of a section of the USA Patriot Act that allows the appointment of interim U.S. attorneys for indefinite periods. The process, Schumer and other critics in Congress have said, could allow federal prosecutors to be appointed without having to face confirmation by the Senate.

McNulty said the administration has no plan to circumvent the confirmation process and will send the Senate nominations for permanent replacements for the prosecutors. He said the six prosecutors dismissed besides Cummins — including San Diego U.S. Attorney Carol Lam, who oversaw the corruption prosecution of former congressman Randy "Duke" Cunningham, R-Calif. — were let go for performance-related reasons.

Much of Tuesday's hearing focused on Cummins and Lam.

McNulty acknowledged that Cummins had had a successful tenure in Arkansas and that he was asked to step aside last year to allow former White House aide Tim Griffin to take the job.

McNulty said that aside from his political work, Griffin had more prosecutorial experience than

Cummins did when he first took the Little Rock job five years ago. The deputy attorney general said Griffin's experience included a stint in Iraq as a military prosecutor.

Before his call to active duty in 2005, Griffin was an aide to Rove at the White House. Griffin's résumé says he "organized and coordinated support for the president's agenda, including the nomination of Judge John Roberts" to be U.S. chief justice.

In Lam's case, McNulty said, the Justice Department considered the political impact of removing her in light of her involvement in the prosecution of Cunningham, who was sentenced to eight years in federal prison last year after pleading guilty to accepting \$2.4 million in bribes.

McNulty declined to publicly detail the reasons for her dismissal. But Sen. Jeff Sessions, R-Ala., cited letters to the Justice Department and Lam from members of Congress who complained about Lam's alleged inattention to prosecuting smugglers of illegal immigrants.

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From: Jennings, Jeffery S.
Sent: Wednesday, February 07, 2007 9:16 AM
To: Kubena, Korinne A.
Subject: RE: USAT - Prosecutor fired so ex-Rove aide could get his job

Already done.

From: Kubena, Korinne A.
Sent: Wednesday, February 07, 2007 9:15 AM
To: Jennings, Jeffery S.
Subject: FW: USAT - Prosecutor fired so ex-Rove aide could get his job

Emily Lawrimore is going to give you a call on this.

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Subject: USAT - Prosecutor fired so ex-Rove aide could get his job

Prosecutor fired so ex-Rove aide could get his job

By Kevin Johnson, USA TODAY

WASHINGTON — The Justice Department acknowledged Tuesday that it fired the U.S. government's chief prosecutor in Little Rock for no reason except to replace him with a lawyer who had been an aide to Karl Rove, the Bush administration's chief political strategist.

However, in an appearance before the Senate Judiciary Committee, Deputy Attorney General Paul McNulty rejected criticism that the forced resignations of Bud Cummins and six other U.S. attorneys last year were politically inspired, or amounted to retaliation for the attorneys' involvement in controversial investigations and prosecutions.

McNulty's testimony before the panel, which is investigating the firings of the prosecutors, was part of an exchange with Sen. Charles Schumer, D-N.Y. Schumer said the White House's appointment process for prosecutors was "corrupted with political, rather than prudent, considerations."

"What happened here doesn't sound like business as usual; it appears more reminiscent of a different sort of Saturday night massacre," Schumer said, referring to Watergate-era firings at Justice that were ordered by President Nixon.

"When I hear you talk about a politicization of the (Justice) Department, it is like a knife in my back," McNulty responded.

Schumer and other committee members have questioned the department's action, suggesting the administration was taking advantage of a section of the USA Patriot Act that allows the appointment of interim U.S. attorneys for indefinite periods. The process, Schumer and other critics in Congress have said, could allow federal prosecutors to be appointed without having to face confirmation by the Senate.

McNulty said the administration has no plan to circumvent the confirmation process and will send the Senate nominations for permanent replacements for the prosecutors. He said the six prosecutors dismissed besides Cummins — including San Diego U.S. Attorney Carol Lam, who oversaw the corruption prosecution of former congressman Randy "Duke" Cunningham, R-Calif. — were let go for performance-related reasons.

Much of Tuesday's hearing focused on Cummins and Lam.

McNulty acknowledged that Cummins had had a successful tenure in Arkansas and that he was asked to step aside last year to allow former White House aide Tim Griffin to take the job.

McNulty said that aside from his political work, Griffin had more prosecutorial experience than Cummins did when he first took the Little Rock job five years ago. The deputy attorney general said Griffin's experience included a stint in Iraq as a military prosecutor.

Before his call to active duty in 2005, Griffin was an aide to Rove at the White House. Griffin's résumé says he "organized and coordinated support for the president's agenda, including the nomination of Judge John Roberts" to be U.S. chief justice.

In Lam's case, McNulty said, the Justice Department considered the political impact of removing her in light of her involvement in the prosecution of Cunningham, who was sentenced to eight years in federal prison last year after pleading guilty to accepting \$2.4 million in bribes.

McNulty declined to publicly detail the reasons for her dismissal. But Sen. Jeff Sessions, R-Ala., cited letters to the Justice Department and Lam from members of Congress who complained about Lam's alleged inattention to prosecuting smugglers of illegal immigrants.

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To unsubscribe send a blank email to leave-whitehouse-news-wires-1404218Q@list.whitehouse.gov

From: Jennings, Jeffery S.
Sent: Wednesday, February 07, 2007 4:55 PM
To: Perino, Dana M.
Subject: RE: The latest front page installment, with picture

Getting better in AR than we are getting here.

From: Perino, Dana M.
Sent: Wednesday, February 07, 2007 1:51 PM
To: Mamo, Jeanie S.; Jennings, Jeffery S.
Subject: FW: The latest front page installment, with picture

From: Karl Rove [mailto:KR@georgewbush.com]
Sent: Wednesday, February 07, 2007 1:39 PM
To: Perino, Dana M.
Subject: Fw: The latest front page installment, with picture

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

From: Tim Griffin
To: Karl Rove; Sara Taylor; Scott Jennings; Jane Cherry
Sent: Wed Feb 07 11:58:24 2007
Subject: The latest front page installment, with picture

Some good news: A very positive article today. Front page of the Arkansas Democrat Gazette. With large file pic.

Pals: U.S. attorney has right stuff

Griffin, an Army Reserve major, has prosecuted military cases
BY PAUL BARTON ARKANSAS DEMOCRAT-GAZETTE

Ask friends of new U.S. Attorney Tim Griffin to describe the 38-year-old prosecutor, and they gush adjectives. They call him "driven," "conscientious," "highly intelligent" and fiercely loyal to his home state of Arkansas.

Rep. John Boozman, the lone Republican in the Arkansas delegation, is typical: "He's a very smart guy and very hard worker. He's done great no matter where he has been."

But outside the circle of Griffin's friends and many of the state's prominent conservatives, Griffin remains something of a mystery.

"I don't know many people who know anything about him," veteran Little Rock attorney Scott Trotter said. When Griffin, a Magnolia native, was appointed U.S. attorney for the Eastern District of Arkansas in December, "we just sort of scratched our heads."

Said Arkansas' senior senator, Democrat Blanche Lincoln, "I really didn't know much about him, aside from what I read about him in the newspaper and what I found on Google."

Griffin's political resume — key player in both of President Bush's campaigns, deputy to White House political guru Karl Rove — is better known than his legal resume. Many saw his appointment as forcing out the popular Bud Cummins in order to reward a campaign operative.

Cummins was not among them.

He, too, was a loyal Republican and Bush backer when he was appointed in 2001. To replace him with Griffin, Cummins has

said, was "entirely within the prerogative of the White House."

Deputy U.S. Attorney General Paul McNulty voiced similar sentiment during testimony before the Senate Judiciary Committee on Tuesday.

"A lot of U.S. attorneys bring political experience to the job," he said.

McNulty acknowledged that Griffin's file as a prosecutor was "not the thickest" but argued that Griffin has more experience in that role than Cummins had in 2001.

According to Griffin's Justice Department biography, most of his prosecutorial experience is in military courts. Griffin has served 10 years in the Judge Advocate General's (JAG) Corps of the U.S. Army Reserve. A graduate of Hendrix College and Tulane Law School, he holds the rank of major.

Called to active duty in September 2005, he served as an Army prosecutor at Fort Campbell, Ky., home of the 101st Airborne Division. His Justice Department biography says he prosecuted 40 cases and cites one, U.S. v. Mikel.

On his 21st birthday, Pvt. Nicholas Mikel opened fire on his fellow soldiers during morning exercises. He later admitted that he was trying to kill his platoon sergeant and was sentenced to 25 years in prison in a plea bargain.

In May 2006, Griffin was assigned to the 101st Airborne Division and sent to Iraq. He spent four months as judge advocate general in Mosul.

EARNED CUMMINS' PRAISE

Griffin has a long history as a political operative.

In 1997, he went to work for Indiana's Republican Rep. Dan Burton's Government Reform Committee, which spent the better part of three years investigating foreign contributions to the 1996 Clinton-Gore campaign.

Griffin moved to the Republican National Committee for the 2000 presidential campaign, serving as deputy research director, then as legal advisor to the Bush-Cheney recount team in Florida.

He was rewarded with an appointment as special assistant to Michael Chertoff, then the assistant attorney general. In the summer of 2001, Chertoff sent him to Little Rock, where Griffin served a year as a special assistant to the U.S. attorney. Half that time was under Cummins, who offered high praise in a send-off letter. "You performed at the highest level of excellence during your time here," Cummins wrote.

In Little Rock, Griffin prosecuted firearms and drug cases and organized the Eastern District's Project Safe Neighborhoods, the Bush administration's attempt to reduce firearms-related violence.

"Overall, you served the office extremely well," Cummins wrote.

"I believe you indicted more people during your time here than any other [assistant U.S. attorney]. You were a real workhorse, and the quality of your work was excellent."

ASSISTANT TO ROVE

As research director for the Republican National Committee in the 2004 presidential campaign, Griffin's job was to dig up things to use against Democratic candidate John Kerry.

Three months after Bush began his second term, Griffin was named special assistant to the president and deputy director of political affairs — No. 3 to Rove.

Jim Dyke, a Charleston, S.C., communications consultant, worked with Griffin at the White House.

He said last week that Griffin's general abilities and intelligence were unmistakable, and that Griffin has a real concern about crime and the other publicpolicy challenges that confront Arkansas.

"He has a real passion for the law," Dyke said.

Arkansas' Republican Sen. Tim Hutchinson felt much the same about Cummins when he recommended Cummins to be U.S. attorney in 2001. "Bud is a talented, aggressive attorney with a diverse professional backg round," Hutchinson said when Bush endorsed his choice.

Cummins, 41, was then in private practice with a focus on business litigation, and was the state director of the National Federation of Independent Business, working as a lobbyist for the small-business group.

He had previously been a law clerk for U.S. District Judge Stephen Reasoner, now deceased, and for U.S. Magistrate Judge John Forster Jr.

From 1997-98, Cummins was chief legal counsel to Gov. Mike Huckabee. Huckabee also had appointed Cummins to serve as a special associate justice of the Arkansas Supreme Court on five occasions.

Less than two months before Hutchinson offered his name, on Dec. 18, 2000, Cummins cast one of Arkansas' six Electoral College votes for George W. Bush.

In an interview last week with The Washington Post, Cummins reiterated that "the political aspect of it shouldn't really be a shock to anybody."

He added: "Every U.S. attorney knows they serve at the pleasure of the president."

Information for this article was contributed by Linda Satter and A
Daniels of the Arkansas Democrat-Gazette.

lex

<<Picture (Metafile)>>

Arkansas Democrat-Gazette/ BENJAMIN KRAIN

Tim Griffin was appointed U.S. attorney for the E

astern District of

Arkansa

s in December.

<
(Metafile)>>

<Picture (Metafile)>>

<<Picture (Metafile)>>

<<Picture

From: Lawrimore, Emily A.
Sent: Thursday, February 08, 2007 7:03 AM
To: Jennings, Jeffery S.
Subject: RE: Who is Tim Griffin.doc

thanks for your help yesterday - not sure if i told you!

Emily

From: Jennings, Jeffery S.
Sent: Wednesday, February 07, 2007 9:13 AM
To: Lawrimore, Emily A.; Perino, Dana M.
Subject: Who is Tim Griffin.doc

and here is some narrative info on Griffin

From: Jon Seaton
Sent: 2/8/2007 1:55:52 PM
To: Mike Britt /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=Mbritt;
Bcc:
Subject: FW: John McKay

Let's discuss when you get back.

From: Partoyan, Connie
Sent: Thursday, February 08, 2007 1:52 PM
To: Mike Britt; Jon Seaton
Subject: John McKay

Guys,

Cathy went to the WA Delegation breakfast (first of the year) this morning. Everyone was there. She said Patty Murray mentioned the concern over the departure of John McKay as WWA US Attorney - and is starting to look into whether he was asked to leave, and seems to think that John would be willing to come before the Senate and testify that he was asked to leave.

Just wanted to give you guys a heads up on it....

Connie Partoyan

Chief of Staff

Congresswoman Cathy McMorris Rodgers

202/225-

www.mcmorrisrodgers.house.gov

From: Mike Britt
nt: 2/8/2007 2:39:27 PM
Jon Seaton /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=JSeaton;
Bcc:
Subject: RE: John McKay

FYI: Reichert's office formed a panel to submit its recommendations on who should be the next US attorney for the Western District. John's bother, John McKay is a member of this panel, which is chaired by Norm Maleng.

This panel should help deflect Democrat criticism over the next appointed US Attorney for the Western District of WA.

A good point of contact in all this would be Rep. Reichert, Mike Shields and possibly Bruce Boram.

Reichert to submit candidates to succeed U.S. Attorney McKay

By David Bowermaster
Seattle Times staff reporter

Rep. Dave Reichert, R-Auburn, is working with local lawyers and law-enforcement officials to identify candidates to succeed John McKay as U.S. Attorney for the Western District of Washington.

McKay is stepping down today after five years as the region's top law-enforcement official. He announced Thursday he will join the faculty of Seattle University Law School.

U.S. Attorney General Alberto Gonzales is expected to name an interim replacement for McKay today, to avoid disruptions to prosecutions. But it could take weeks to choose a permanent successor.

U.S. attorneys are White House appointees subject to Senate confirmation.

It is traditional for the senior member of the state's congressional delegation, who is from the same party as the president, to work with the White House to select U.S. attorney candidates.

Rep. Doc Hastings is the longest-serving Washington Republican. But because Hastings is from Eastern Washington, he asked Reichert to pick candidates to succeed McKay.

Mike Shields, Reichert's chief of staff, said the congressman will submit a list of finalists to the White House. However, the final decision rests with the administration.

Reichert is not obligated to consult with members of the opposite party.

Sen. Patty Murray, D-Wash, has not been contacted by Reichert's office about the U.S. attorney vacancy, said Alex Glass, a spokeswoman for Murray.

"Congressman Reichert is involved in looking at candidates and will seek to work in a bipartisan way in putting that name forward," Shields said.

Reichert tapped Norm Maleng, King County prosecutor, to head a panel that is reviewing candidates, said Dan Donohoe, a spokesman for Maleng.

Charles Mandigo, a former longtime FBI agent in Seattle, and Mike McKay, John's older brother and a former U.S. Attorney, are assisting Maleng, according to legal sources.

McKay announced his plans to resign Dec. 14.

His departure became the subject of speculation after a spate of reports earlier this month suggested that the White House had pushed several U.S. attorneys out of their jobs. The White House denied it had orchestrated a purge, but declined to comment on whether McKay had been asked to leave.

McKay said last month he stepped down to return to the private sector. Emily Langlie, a spokeswoman for the U.S. Attorney's Office, said McKay stood by that statement and would not comment further.

From: Jon Seaton
Sent: Thursday, February 08, 2007 1:56 PM
To: Mike Britt
Subject: FW: John McKay

discuss when you get back.

From: Partoyan, Connie
Sent: Thursday, February 08, 2007 1:52 PM
To: Mike Britt; Jon Seaton
Subject: John McKay

Guys,

Cathy went to the WA Delegation breakfast (first of the year) this morning. Everyone was there. She said Patty Murray mentioned the concern over the departure of John McKay as WWA US Attorney - and is starting to look into whether he was asked to leave, and seems to think that John would be willing to come before the Senate and testify that he was asked to leave.

Just wanted to give you guys a heads up on it....

Connie Partoyan

Chief of Staff

Congresswoman Cathy McMorris Rodgers

202/225-

www.mcmorrisrodgers.house.gov

From: Looney, Andrea B.
Sent: Thursday, February 08, 2007 3:06 PM
To: Perino, Dana M.
Subject: RE: CQ - U.S. Attorney's Question

Here is a good report . . . note we lost 3 Republicans, Specter, Grassley and Hatch on the bill to change the legislation back. Frankly, I have let DOJ take the lead on this because we have had concerns from the beginning about the impact of these terminations. DOJ has not commented in any of the stories I have seen, but I would recommend you call over there to see how they are responding.

JUDICIARY

Senate Judiciary Panel Revises Rule For U.S. Attorneys

Reacting to Democratic allegations the Bush administration fired several U.S. attorneys possibly for politically connected replacements, the Senate Judiciary Committee today revised rules for filling U.S. attorney vacancies. On a 13-6 vote, the committee adopted a compromise measure from **Senate Judiciary Chairman Leahy**, ranking member **Arlen Specter, R-Pa.**, and Sen. **Dianne Feinstein, D-Calif.** Their plan restricts the authority of the U.S. attorney general from filling prosecutor vacancies for an unlimited time without Senate confirmation. The committee held a hearing Tuesday on the firings of at least seven U.S. attorneys. Deputy Attorney General Paul McNulty said six of the U.S. attorneys were dismissed for "performance related" matters. A seventh, former U.S. Attorney Ed Cummins of Little Rock, Ark., was let go last year to be replaced by J. Timothy Griffin, a former aide to presidential adviser Karl Rove, McNulty acknowledged. But McNulty denied Democratic charges that the dismissals were politicized to reward Republicans and avoid the Senate confirmation process.

One of those fired was former U.S. Attorney Carol Lam of San Diego, who prosecuted former Rep. **Randy (Duke) Cunningham, R-Calif.** Cunningham pleaded guilty to accepting about \$2.4 million in bribes. The Justice Department has denied Lam was fired because of the Cunningham case, which was praised by McNulty as "a very good thing for the American people." However, he did not give a reason for Lam's dismissal. Under the USA PATRIOT Act reauthorization last year, a provision was inserted that eliminated a century-long rule that limited the attorney general to making interim appointments to fill vacancies for no more than 120 days. Under the old rule, if a U.S. attorney vacancy was not filled within 120 days, the U.S. District Court could fill the vacancy.

-- by *Michael Posner*

From: Perino, Dana M.
Sent: Thursday, February 08, 2007 3:02 PM
To: Looney, Andrea B.
Subject: FW: CQ - U.S. Attorney's Question

What happened, do you know?

From: Seat, Peter A.
Sent: Thursday, February 08, 2007 3:02 PM
To: Perino, Dana M.
Subject: CQ - U.S. Attorney's Question

Dana -- Seth Stern with CQ just called (3 p.m.) looking for comment on the Senate Judiciary's action today on

replacing U.S. Attorney's.

236-

Pete Seat
Press Assistant
Office of the Press Secretary
The White House

From: Jonathan Felts
: 2/11/2007 2:40:33 PM
Scott Jennings /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=SJennings;

Bcc:
Subject: Re: fyi

I wonder if he can appreciate the irony of the situation?

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

From: Scott Jennings
To: Jonathan Felts
Sent: Sun Feb 11 13:29:16 2007
Subject: Re: fyi

If he doesn't, he's retarded

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

From: Jonathan Felts
To: Scott Jennings
Sent: Sun Feb 11 13:17:33 2007
Subject: Re: fyi

Does he know that?

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

From: Scott Jennings
Jonathan Felts
Sent: Sun Feb 11 12:54:02 2007
Subject: Re: fyi

He will never be nominated

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

From: Jonathan Felts
To: Scott Jennings
Sent: Sun Feb 11 12:29:40 2007
Subject: Re: fyi

Dude - I think he's toast
I don't see how he survives this.

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

From: Scott Jennings
To: Jonathan Felts
Sent: Sat Feb 10 20:51:33 2007
Subject: Fw: fyi

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

From: Tim Griffin
Scott Jennings
Sent: Sat Feb 10 17:49:51 2007
Subject: fyi

From the also not helpful department: Testifying Tuesday before the Senate Judiciary Committee, Deputy Attorney General Paul McNulty acknowledged Cummins was removed to make way for Griffin.

Morning News

Local News for Northwest Arkansas

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U.S. attorney flap escalates

By Steve Tetreault
THE MORNING NEWS

WASHINGTON -- Conflict between Democrats and the Justice Department intensified Thursday when the agency was accused of "cronyism" in the firing of at least seven U.S. attorneys, including Bud Cummins of Arkansas.

Senate Democratic leaders likened the housecleaning to the "Saturday Night Massacre," when President Nixon fired Watergate prosecutors in October 1973.

They said they would try to force the Justice Department to turn over job reviews of departing officials after a senior Justice official this week said most of the dismissals stemmed from "performance-related" problems.

Majority leader Harry Reid, D-Nev., made Cummins' departure a major topic of a news conference.

Reid said he will bring to the Senate floor next week a bill that would curb the Justice Department's power to appoint long-term replacements for departing prosecutors. Instead, federal judges would appoint temporary replacements while new prosecutors undergo Senate confirmation.

A measure passed the Senate Judiciary Committee on Thursday by a 13-6 vote that included support from senior Republicans Orrin Hatch of Utah, Arlen Specter of Pennsylvania and Charles Grassley of Iowa.

It was prompted by the forced departure of Cummins as U.S. attorney in the Eastern District of Arkansas. He was replaced by Tim Griffin, whose career has included posts at the Republican National Committee and as a deputy to White House political adviser Karl Rove as well as time spent as an assistant U.S. attorney.

"It is wrong that what has taken place here is Cronygate without any question," Reid said. "It's pretty obvious in Arkansas what is going on. One of Karl Rove's cronies is now the U.S. attorney."

Testifying Tuesday before the Senate Judiciary Committee, Deputy Attorney General Paul McNulty acknowledged Cummins was removed to make way for Griffin.

On Thursday, Reid and other members of the Senate leadership demanded to know when the decision was made to appoint Griffin.

In a letter to Attorney General Alberto Gonzales, the Democrats also said they wanted to know who may have lobbied on behalf of Griffin's appointment, and in particular what role Rove may have played.

"We look forward to a fuller explanation of why a concededly well-performing prosecutor was terminated in favor of such a partisan figure," the Democrats said in the letter.

Sen. Mark Pryor, D-Ark., said Thursday the uproar over the appointment probably dooms Griffin if he were to be nominated and face Senate hearings.

"Unfortunately for Mr. Griffin, I think his appointment and the way this whole situation has been handled has tainted him," he said. "I don't even blame him for that. I think it's been handled in a way from the White House and the Justice Department that's put a big blemish on his record."

Pryor on Tuesday told Senate colleagues that he would not support Griffin if he was nominated. He has concerns about his legal experience and Arkansas and said other Republican lawyers in the state would have been better choices.

"At best in my view, the fact that Tim Griffin worked for Karl Rove is completely secondary, or the fact that he's held political positions, that's completely secondary," he said.

The panel's vote Thursday signals the Senate is united in wanting U.S. attorneys to go through the confirmation process, Pryor said.

"To me, this really does go to the Constitution," he said. "It's a very important issue to me. It just so happens that we have a situation in Arkansas."

Blanche Lincoln, D-Ark., co-sponsored the measure to change the Patriot Act.

"It is unfortunate that the Bush Administration used this provision against its original intent and denied the people of Arkansas a transparent nominating process," she said. "I am pleased by the steps made today to rebuild the American people's trust in their public servants."

The Morning News' Aaron Sadler contributed to this report.

From: Jane Cherry
Sent: 2/13/2007 3:25:55 PM
To: Jonathan Felts; Scott Jennings;
Cc:
Bcc:
Subject: RE: Michigan

Of course.

From: Jonathan Felts
Sent: Tuesday, February 13, 2007 10:24 AM
To: Jane Cherry; Scott Jennings
Subject: RE: Michigan

But, we should discuss with Scott before giving her any of those names.

From: Jane Cherry
Sent: Tuesday, February 13, 2007 8:10 AM
To: Scott Jennings; Jonathan Felts
Subject: Michigan

Monica Goodling at DOJ wants to know for some meeting over there this morning who would be the recommender for USAs in Michigan with no Senators or Governor to consult.

From: Jonathan Felts
Sent: 2/13/2007 10:24:17 AM
To: Jane Cherry /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=JCherry; Scott Jennings /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=SJennings;
Cc:
Bcc:
Subject: RE: Michigan

John Engler is still a good PoC.
Saul Anuzius, the MI GOP Chair, gives a pretty good read.
Jim Brandell with Dave Camp's office.

From: Jane Cherry
Sent: Tuesday, February 13, 2007 8:10 AM
To: Scott Jennings; Jonathan Felts
Subject: Michigan

Monica Goodling at DOJ wants to know for some meeting over there this morning who would be the recommender for USAs in Michigan with no Senators or Governor to consult.

From: Scott Jennings
Sent: 2/14/2007 7:08:50 PM
Brad Smith /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=BSMITH;
Bcc:
Subject: Re: McNulty Testimony 2-6-07

I got from doj

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

From: Brad Smith
To: Scott Jennings
CC: Jane Cherry
Sent: Wed Feb 14 16:15:32 2007
Subject: RE: McNulty Testimony 2-6-07

No, it will be about a week before that is transcribed. There is streaming video available of the entire hearing at <http://judiciary.senate.gov/hearing.cfm?id=2516>.

From: Scott Jennings
Sent: Wednesday, February 14, 2007 4:09 PM
To: Brad Smith
Cc: Jane Cherry
Subject: RE: McNulty Testimony 2-6-07

Do we have the transcript of the q and a?

From: Brad Smith
Sent: Wednesday, February 14, 2007 4:01 PM
To: Scott Jennings
Cc: Jane Cherry
Subject: McNulty Testimony 2-6-07

Testimony of Paul J. McNulty (Deputy Attorney General, U.S. Department of Justice) to the Committee on the Judiciary, United States Senate

"Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys?"
February 6, 2007

Chairman Leahy, Senator Specter, and Members of the Committee, thank you for the invitation to discuss the importance of the Justice Department's United States Attorneys. As a former United States Attorney, I particularly appreciate this opportunity to address the critical role U.S. Attorneys play in enforcing our Nation's laws and carrying out the priorities of the Department of Justice.

I have often said that being a United States Attorney is one of the greatest jobs you can ever have. It is a privilege and a challenge—one that carries a great responsibility. As former Attorney General Griffin Bell said, U.S. Attorneys are "the front-line troops charged with carrying out the Executive's constitutional mandate to execute faithfully the laws in every federal judicial district." As the chief federal law-enforcement officers in their districts, U.S. Attorneys represent the Attorney General before Americans who may not otherwise have contact with the Department of Justice. They lead our efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, preserve the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families—including child pornography, obscenity, and human trafficking.

U.S. Attorneys are not only prosecutors; they are government officials charged with managing and implementing the policies and priorities of the Executive Branch. United States Attorneys serve at the pleasure of the President. Like any other high-ranking officials in the Executive Branch, they may be removed for any reason or no reason. The Department of Justice—including the office of United States Attorney—was created precisely so that the government's legal business could be effectively managed and carried out through a coherent program under the supervision of the Attorney General. And unlike judges, who are supposed to act independently of those who nominate them, U.S. Attorneys are accountable to the Attorney General, and through him, to the President—the head of the Executive Branch. For these reasons, the Department is committed to having the best person possible discharging the responsibilities of that office at all times and in every district.

The Attorney General and I are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their offices effectively. It should come as no surprise to anyone that, in an organization as large as the Justice Department, U.S. Attorneys are removed or asked or encouraged to resign from time to time. However, in this Administration U.S. Attorneys are never—repeat, never—removed, or asked or encouraged to resign, in an effort to retaliate against them, or interfere with, or inappropriately influence a particular investigation, criminal prosecution, or civil case. Any suggestion to the contrary is unfounded, and it irresponsibly undermines the reputation for impartiality the Department has earned over many years and on which it depends.

Turnover in the position of U.S. Attorney is not uncommon. When a presidential election results in a change of administration, every U.S. Attorney leaves and the new President nominates a successor for confirmation by the Senate. Moreover, U.S. Attorneys do not necessarily stay in place even during an administration. For example, approximately half of the U.S. Attorneys appointed at the beginning of the Bush Administration had left office by the end of 2006. Given this reality, career investigators and prosecutors exercise direct responsibility for nearly all investigations and cases handled by a U.S. Attorney's Office. While a new U.S. Attorney may articulate new priorities or emphasize different types of cases, the effect of a U.S. Attorney's departure on an existing investigation is, in fact, minimal, and that is as it should be. The career civil servants who prosecute federal criminal cases are dedicated professionals, and an effective U.S. Attorney relies on the professional judgment of those prosecutors.

The leadership of an office is more than the direction of individual cases. It involves managing limited resources, maintaining high morale in the office, and building relationships with federal, state and local law enforcement partners. When a U.S. Attorney submits his or her resignation, the Department must first determine who will serve temporarily as interim U.S. Attorney. The Department has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's Office during the period when there is not a presidentially-appointed, Senate-confirmed United States Attorney. Often, the Department looks to the First Assistant U.S. Attorney or another senior manager in the office to serve as U.S. Attorney on an interim basis. When neither the First Assistant nor another senior manager in the office is able or willing to serve as interim U.S. Attorney, or when the appointment of either would not be appropriate in the circumstances, the Department has looked to other, qualified Department employees.

no time, however, has the Administration sought to avoid the Senate confirmation process by appointing an interim U.S. Attorney and then trying to move forward, in consultation with home-State Senators, on the selection, nomination, confirmation and appointment of a new U.S. Attorney. The appointment of U.S. Attorneys by and with the advice and consent of the Senate is unquestionably the appointment method preferred by both the Senate and the Administration.

In every single case where a vacancy occurs, the Bush Administration is committed to having a United States Attorney who is confirmed by the Senate. And the Administration's actions bear this out. Every time a vacancy has arisen, the President has either made a nomination, or the Administration is working—in consultation with home-state Senators—to select candidates for nomination. Let me be perfectly clear—at no time has the Administration sought to avoid the Senate confirmation process by appointing an interim United States Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination and confirmation of a new United States Attorney. Not once.

Since January 20, 2001, 125 new U.S. Attorneys have been nominated by the President and confirmed by the Senate. On March 9, 2006, the Congress amended the Attorney General's authority to appoint interim U.S. Attorneys, and 13 vacancies have occurred since that date. This amendment has not changed our commitment to nominating candidates for Senate confirmation. In fact, the Administration has nominated a total of 15 individuals for Senate consideration since the appointment authority was amended, with 12 of those nominees having been confirmed to date. Of the 13 vacancies that have occurred since the time that the law was amended, the Administration has nominated candidates to fill five of these positions, has interviewed candidates for nomination for seven more positions, and is waiting to receive names to set up interviews for the final position—all in consultation with home-state Senators.

However, while that nomination process continues, the Department must have a leader in place to carry out the important work of these offices. To ensure an effective and smooth transition during U.S. Attorney vacancies, the office of the U.S. Attorney must be filled on an interim basis. To do so, the Department relies on the Vacancy Reform Act ("VRA"), 5 U.S.C. § 3345(a)(1), when the First Assistant is selected to lead the office, or the Attorney General's appointment authority in 28 U.S.C. § 546 when another Department employee is chosen. Under the VRA, the First Assistant may serve in an acting capacity for only 210 days, unless a nomination is made during that period. Under an Attorney General appointment, the interim U.S. Attorney serves until a nominee is confirmed the Senate. There is no other statutory authority for filling such a vacancy, and thus the use of the Attorney General's appointment authority, as amended last year, signals nothing other than a decision to have an interim U.S. Attorney who is not the First Assistant. It does not indicate an intention to avoid the confirmation process, as some have suggested.

change in these statutory appointment authorities is necessary, and thus the Department of Justice strongly opposes S. 214, which would partially change the way in which U.S. Attorney vacancies are temporarily filled. S. 214 would deprive the Attorney General of the authority to put his chief law enforcement officials in the field when a vacancy occurs, assigning it instead to another branch of government.

As you know, before last year's amendment of 28 U.S.C. § 546, the Attorney General could appoint an interim U.S. Attorney for the first 120 days after a vacancy arose; thereafter, the district court was authorized to appoint an interim U.S. Attorney. In cases where a Senate-confirmed U.S. Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in recurring problems. Some district courts recognized the conflicts inherent in the appointment of an interim U.S. Attorney who would then have matters before the court—not to mention the oddity of one branch of government appointing officers of another—and simply refused to exercise the appointment authority. In those cases, the Attorney General was consequently required to make multiple successive 120-day interim appointments. Other district courts ignored the inherent conflicts and sought to appoint as interim U.S. Attorneys wholly unacceptable candidates who lacked the required clearances or appropriate qualifications.

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

S. 214 would not merely reverse the 2006 amendment; it would exacerbate the problems experienced under the prior version of the statute by making judicial appointment the only means of temporarily filling a vacancy—a step inconsistent with sound separation-of-powers principles. We are aware of no other agency where federal judges—members of a separate branch of government—appoint the interim staff of an agency. Such a judicial appointee would have authority for litigating the entire federal criminal and civil docket before the very district court to whom he or she was beholden for the appointment. This arrangement, at a minimum, gives rise to an appearance of potential conflict that undermines the performance or perceived performance of both the Executive and Judicial Branches. A judge may be inclined to select a U.S. Attorney who shares the judge's ideological or prosecutorial philosophy. Or a judge may select a prosecutor apt to settle cases and enter plea bargains, so as to preserve judicial resources. See Wiener, *Inter-Branch Appointments After the Independent Counsel: Court Appointment of United States Attorneys*, 86 Minn. L. Rev. 363, 428 (2001) (concluding that court appointment of interim U.S. Attorneys is unconstitutional).

Prosecutorial authority should be exercised by the Executive Branch in a unified manner, consistent with the application of criminal enforcement policy under the Attorney General. S. 214 would undermine the effort to achieve a unified and consistent approach to prosecutions and federal law enforcement. Court-appointed U.S. Attorneys would be at least as accountable to the chief judge of the district court as to the Attorney General, which could, in some circumstances become untenable. In no context is accountability more important to our society than on the front lines of law enforcement and the exercise of prosecutorial discretion, and the Department contends that the chief prosecutor should be accountable to the Attorney General, the President, and ultimately the people.

Finally, S. 214 seems to be aimed at solving a problem that does not exist. As noted, when a vacancy in the office of U.S. Attorney occurs, the Department typically looks first to the First Assistant or another senior manager in the office to serve as an Acting or interim U.S. Attorney. Where neither the First Assistant nor another senior manager is able or willing to serve as an Acting or interim U.S. Attorney, or where their vice would not be appropriate under the circumstances, the Administration has looked to other Department employees to serve temporarily. In either matter which way a U.S. Attorney is temporarily appointed, the Administration has consistently sought, and will continue to seek, to fill the vacancy—in consultation with home-State Senators—with a presidentially-nominated and Senate-confirmed nominee.

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

From: Scott Jennings
Sent: 2/14/2007 6:34:46 PM
To: Karl Rove kr@georgewbush.com;
taylor_a._hughes@who.eop.gov taylor_a._hughes@who.eop.gov ;
Bcc:
Subject: 02-06-07 McNulty Transcript re US Attorneys
Attachments: 02-06-07 McNulty Transcript re US Attorneys.doc;

I have obtained this DRAFT transcript of the McNulty Q and A.

The q and a begins on page 13. I have highlighted and underlined the passage (pages 19-20) that appears to have prompted the news reports -- where McNulty says we did not replace Cummins for performance reasons. the media seized on this as an admission that we terminated him for political patronage reasons. I have also highlighted a relevant passage on page 32.

there is quite alot of interesting back and forth in this q and a. I do think the media has failed to adequately report that these positions "serve at the pleasure of the president."

HEARING OF THE SENATE JUDICIARY COMMITTEE SUBJECT: PRESERVING PROSECUTORIAL INDEPENDENCE: IS THE DEPARTMENT OF JUSTICE POLITICIZING THE HIRING AND FIRING OF U.S. ATTORNEYS? CHAIRED BY: SENATOR CHARLES SCHUMER (D-NY) WITNESSES: SENATOR MARK PRYOR (D-AR); DEPUTY ATTORNEY GENERAL PAUL J. MCNULTY; MARY JO WHITE, ATTORNEY; LAURIE L. LEVENSON, PROFESSOR OF LAW, LOYOLA LAW SCHOOL, LOS ANGELES, CA; STUART M. GERSON, ATTORNEY LOCATION: ROOM 226 DIRKSEN SENATE OFFICE BUILDING, WASHINGTON, D.C. TIME: 9:30 A.M. EST DATE: TUESDAY, FEBRUARY 6, 2007

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SEN. SCHUMER: (Sounds gavel.) Good morning and welcome to the first hearing of our Administrative Law and Court Subcommittee. And we --

STAFF: (Off mike.) SEN. SCHUMER: -- oh. And this is a full-committee hearing, I am just informed -- power has already gone to his head. (Laughter.) Reminds you of that old Woody Allen movie, remember? Anyway, we'll save that for another time.

Anyway, I will give an opening statement, then Senator Specter will, and any others who wish to give opening statements are welcome to do so.

Well, we are holding this hearing because many members of this committee, including Chairman Leahy -- who had hoped to be here, but is speaking on the floor at this time -- have become increasingly concerned about the administration of justice and the rule of law in this country. I have observed with increasing alarm how politicized the Department of Justice has become. I have watched with growing worry as the department has increasingly based hiring on political affiliation, ignored the recommendations of career attorneys, focused on the promotion of political agendas and failed to retain legions of talented career attorneys.

I have sat on this committee for eight years, and before that on the House Judiciary Committee for 16. During those combined 24 years of oversight over the Department of Justice, through seven presidential terms -- including three Republican presidents -- I have never seen the department more politicized and pushed further away from its mission as an apolitical enforcer of the rule of law. And now it appears even the hiring and firing of our top federal prosecutors has become infused and corrupted with political rather than prudent considerations -- or at least there is a very strong appearance that this is so.

For six years there has been little or no oversight of the Department of Justice on matters like these. Those days are now over. There are many questions surrounding the firing of a slew of U.S. attorneys. I am committed to getting to the bottom of those questions. If we do not get the documentary information that we seek, I will consider moving to subpoena that material, including performance evaluations and other documents. If we do not get

forthright answers to our questions, I will consider moving to subpoena one or more of the fired U.S. attorneys so that the record is clear.

So with that in mind, let me turn to the issue at the center of today's hearing. Once appointed, U.S. attorneys, perhaps more than any other public servant, must be above politics and beyond reproach. They must be seen to enforce the rule of law without fear or favor. They have enormous discretionary power. And any doubt as to their impartiality and their duty to enforce the rule of law puts seeds of poison in our democracy.

When politics unduly infects the appointment and removal of U.S. attorneys, what happens? Cases suffer. Confidence plummets. And corruption has a chance to take root. And what has happened here over the last seven weeks is nothing short of breathtaking. Less than two months ago, seven or more U.S. attorneys reportedly received an unwelcome Christmas present. As The Washington Post reports, those top federal prosecutors were called and terminated on the same day. The Attorney General and others have sought to deflect criticism by suggesting that these officials all had it coming because of poor performance; that U.S. attorneys are routinely removed from office; and that this was only business as usual.

But what happened here doesn't sound like an orderly and natural replacement of underperforming prosecutors; it sounds more like a purge. What happened here doesn't sound like business as usual; it appears more reminiscent of a different sort of Saturday night massacre.

Here's what the record shows: Several U.S. attorneys were apparently fired with no real explanation; several were seemingly removed merely to make way for political up-and-comers; one was fired in the midst of a successful and continuing investigation of lawmakers; another was replaced with a pure partisan of limited prosecutorial experience, without Senate confirmation; and all of this, coincidentally, followed a legal change -- slipped into the Patriot Act in the dead of night -- which for first time in our history gave the Attorney General the power to make indefinite interim appointments and to bypass the Senate altogether.

We have heard from prominent attorneys -- including many Republicans -- who confirm that these actions are unprecedented, unnerving, and unnecessary. Let me quote a few. The former San Diego U.S. Attorney, Peter Nunez, who served under Reagan said, quote, "This is like nothing I've ever seen before in 35-plus years," unquote. He went on to say that while the president has the authority to fire a U.S. attorney for any reason, it is, quote, "extremely rare unless there is an allegation of misconduct."

Another former U.S. attorney and head of the National Association of Former United States Attorneys said members of his group were in "shock" over the purge, which, quote, "goes against all tradition."

The Attorney General, for his part, has flatly denied that politics has played any part in the firings. At a Judiciary Committee hearing last month, he testified that, quote, "I would never, ever make a change in a U.S. attorney position for political reasons." Unquote.

And yet, the recent purge of top federal prosecutors reeks of politics. An honest look at the record reveals that something is rotten in Denmark: In Nevada, where U.S. Attorney Daniel Bogden was reportedly fired, a Republican source told the press that, quote, "the decision to remove U.S. attorneys was

part of a plan to give somebody else that experience" -- this is a quote -- "to build up the back bench of Republicans by giving them high-profile jobs," unquote. That was in The Las Vegas Review-Journal on January 18th. In New Mexico, where U.S. Attorney David Iglesias was reportedly fired, he has publicly stated that when he asked why he was asked to resign, he, quote, "wasn't given any answers," unquote.

In San Diego, where U.S. Attorney Carol Lam was reportedly fired, the top-ranking FBI official in San Diego said, quote, "I guarantee politics is involved," unquote. And the former U.S. attorney under President Reagan said, quote, "It really is outrageous," unquote. Ms. Lam, of course, was in the midst of a sweeping public corruption investigation of "Duke" Cunningham and his co-conspirators, and her office has outstanding subpoenas to three House Committees. Was her firing a political retaliation? There's no way to know, but the Department of Justice should go out of its way to avoid even the appearance of impropriety. That is not too much to ask, and as I've said, the appearance here -- given all the circumstances -- is plain awful.

Finally, in Arkansas, where U.S. Attorney Bud Cummins was forced out, there is not a scintilla of evidence that he had any blemish on his record. In fact, he was well-respected on both sides of the aisle, and was in the middle of a number of important investigations. His sin -- occupying a high-profile position that was being eyed by an ambitious acolyte of Karl Rove, who had minimal federal prosecution experience, but was highly skilled at opposition research and partisan attacks for the Republican National Committee.

Among other things, I look forward to hearing the Deputy Attorney General explain to us this morning how and why a well-performing prosecutor in Arkansas was axed in favor of such a partisan warrior. What strings were pulled? What influence was brought to bear?

In June of 2006, when Karl Rove was himself still being investigated by a U.S. attorney, was he brazenly leading the charge to oust a sitting U.S. attorney and install his own former aide? We don't know, but maybe we can find out.

Now, I ask, is this really how we should be replacing U.S. Attorneys in the middle of a presidential term? No one doubts the president has the legal authority to do it, but can this build confidence in the Justice Department? Can this build confidence in the administration of justice?

I yield to my colleague from Pennsylvania.

SEN. ARLEN SPECTER (R-PA): I concur with Senator Schumer that the prosecuting attorney is obligated to function in a nonpolitical way. The prosecuting attorney is a quasi-judicial official. He's part judge and part advocate. And have the power of investigation and indictment and prosecution in the criminal courts is a tremendous power. And I know it very well, because I was the district attorney of a big tough city for eight years and an assistant district attorney for four years before that. And the phrase in Philadelphia, perhaps generally, was that the district attorney had the keys to the jail in his pocket.

Well, if he had the keys to the jail, that's a lot of power.

But let us focus on the facts as opposed to generalizations. And I and my colleagues on the Republican side of the aisle will cooperate in finding the

facts if the facts are present, but let's be cautious about the generalizations, which we heard a great many of in the chairman's opening remarks.

If the U.S. attorney was fired in retaliation for what was done on the prosecution of former Congressman Cunningham, that's wrong. And that's wrong even though the president has the power to terminate U.S. attorneys. But the U.S. attorneys can't function if they're going to be afraid of the consequences of a vigorous prosecution.

When Senator Schumer says that the provision was inserted into the Patriot Act in the dead of night, he's wrong. That provision was in the conference report, which was available for examination for some three months.

The first I found out about the change in the Patriot Act occurred a few weeks ago when Senator Feinstein approached me on the floor and made a comment about two U.S. attorneys who were replaced under the authority of the change in law in the Patriot Act which altered the way U.S. attorneys are replaced.

Prior to the Patriot Act, U.S. attorneys were replaced by the attorney general for 120 days, and then appointments by the court or the first assistant succeeded to the position of U.S. attorney. And the Patriot Act gave broader powers to the attorney general to appoint replacement U.S. attorneys.

I then contacted my very able chief counsel, Michael O'Neill, to find out exactly what had happened. And Mr. O'Neill advised me that the requested change had come from the Department of Justice, that it had been handled by Brett Tolman, who is now the U.S. attorney for Utah, and that the change had been requested by the Department of Justice because there had been difficulty with the replacement of a U.S. attorney in South Dakota, where the court made a replacement which was not in accordance with the statute; hadn't been a prior federal employee and did not qualify.

And there was also concern because, in a number of districts, the courts had questioned the propriety of their appointing power because of separation of powers. And as Mr. Tolman explained it to Mr. O'Neill, those were the reasons, and the provision was added to the Patriot Act, and as I say, was open for public inspection for more than three months while the conference report was not acted on.

If you'll recall, Senator Schumer came to the floor on December 16th and said he had been disposed to vote for the Patriot Act, but had changed his mind when The New York Times disclosed the secret wiretap program, electronic surveillance. May the record show that Senator Schumer is nodding in the affirmative. There's something we can agree on. In fact, we agree sometimes in addition.

Well, the conference report wasn't acted on for months, and at that time, this provision was subject to review. Now, I read in the newspaper that the chairman of the Judiciary Committee, Arlen Specter, "slipped it in." And I take umbrage and offense to that. I did not slip it in and I do not slip things in. That is not my practice. If there is some item which I have any idea is controversial, I tell everybody about it. That's what I do. So I found it offensive to have the report of my slipping it in. That's how it got into the bill.

Now, I've talked about the matter with Senator Feinstein, and I do agree that we ought to change it back to where it was before. She and I, I think, will be able to agree on the executive session on Thursday.

And let's be candid about it. The atmosphere in Washington, D.C. is one of high-level suspicion. There's a lot of suspicion about the executive branch because of what's happened with signing statements, because of what's happened with the surveillance program.

And there is no doubt, because it has been explicitly articulated -- maybe "articulate" is a bad word these days -- expressly stated by ranking Department of Justice officials that they want to increase -- executive branch officials -- they want to increase executive power.

So we live in an atmosphere of high-level suspicion. And I want to see this inquiry pursued on the items that Senator Schumer has mentioned. I don't want to see a hearing and then go on to other business. I want to see it pursued in each one of these cases and see what actually went on, because there are very serious accusations that are made. And if they're true, there ought to be very, very substantial action taken in our oversight function. But if they're false, then the accused ought to be exonerated.

But the purpose of the hearing, which can be accomplished, I think, in short order, is to change the Patriot Act so that this item is not possible for abuse. And in that, I concur with Senator Feinstein and Senator Leahy and Senator Schumer. And a pursuit of political use of the department is something that I also will cooperate in eliminating if, in fact, it is true.

Thank you, Mr. Chairman. SEN. SCHUMER: Thank you, Senator Specter.

Senator Feingold.

SEN. RUSSELL FEINGOLD (D-WI): Thank you, Mr. Chairman, for holding the hearing.

I have to chair a subcommittee, the Africa Subcommittee of the Foreign Relations Committee, at 10:00. And I was hoping to give an opening statement. But I'm very pleased not only with your statement but, frankly, with Senator Specter's statement, because it sounds to me like there's going to be a bipartisan effort to fix this.

I also have strong feelings about what was done here, but it sounds like there's a genuine desire to resolve this in that spirit. And in light of the fact I have to go anyway, Mr. Chairman, I'm just going to ask that my statement be put in the record.

SEN. SCHUMER: Without objection.

Senator Hatch.

SEN. ORRIN HATCH (R-UT): Thank you, Mr. Chairman. I appreciate it.

I've appreciated both of your statements, too. I don't agree fully with either statement. First of all, the U.S. attorneys serve at the pleasure of the president, whoever the president may be, whether it's a Democrat or a Republican. You know, the Department of Justice has repeatedly and adamantly

stated that U.S. attorneys are never removed or encouraged to resign in an effort to retaliate against them or interfere with investigations.

Now, this comes from a department whose mission is to enforce the law and defend the interests of the United States. Now, are we supposed to believe and trust their efforts when it comes to outstanding criminal cases and investigations which have made our country a safer place but then claim that they are lying when they tell us about their commitment to appoint proper U.S. attorneys? I personally believe that type of insinuation is completely reckless.

Now, if, in fact, there has been untoward political effort here, then I'd want to find it out just like Senators Schumer and Specter have indicated here. As has been said many times, U.S. attorneys serve at the pleasure of the president. I remember when President Clinton became president, he dismissed 93 U.S. attorneys, if I recall it correctly, in one day. That was very upsetting to some of my colleagues on our side. But he had a right to do it.

And frankly, I don't think anybody should have said he did it purely for political reasons, although I don't think you can ever remove all politics from actions that the president takes. The president can remove them for any reason or no reason whatsoever. That's the law, and it's very clear.

U.S. Code says that, quote, "Each United States attorney is subject to removal by the president," unquote. It doesn't say that the president has to give explanations, it doesn't say that the president has to get permission from Congress and it doesn't say that the president needs to grant media interviews giving full analysis of his personal decisions. Perhaps critics should seek to amend the federal court and require these types of restrictions on the president's authority, but I would be against that.

Finally, I want to point out that the legislation that we are talking about applies to whatever political party is in office. The law does not say that George Bush is the only president who can remove U.S. attorneys. And the law does not say that attorneys general appointed by a Republican president have interim appointment authority. The statutes apply to whoever is in office, no matter what political party.

Now, I remember, with regard to interim U.S. attorneys, that an interim appointed during the Clinton administration served for eight years in Puerto Rico and was not removed. Now, you know, I, for one, do not want judges appointing U.S. attorneys before whom they have to appear. That's why we have the executive branch of government.

Now, I would be interested if there is any evidence that impropriety has occurred or that politics has caused the removal of otherwise decent, honorable people. And I'm talking about pure politics, because let's face it, whoever's president certainly is going to be -- at least so far -- either a Democrat or Republican in these later years of our republic. So, these are important issues that are being raised here. But as I understand, we're talking about seven to nine U.S. attorneys, some of whom -- we'll just have to see what people have to say about it, but I'm going to be very interested in the comments of everybody here today. It should be a very, very interesting hearing.

But I would caution people to reserve your judgment. If there is an untoward impropriety here, my gosh, we should come down very hard against it.

But this is not abnormal for presidents to remove U.S. attorneys and replace them with interims. And there are all kinds of problems, even with that system as it has worked, because sometimes we in the Judiciary Committee don't move the confirmations like we should as well, either. So, there are lots of things that you could find faults with, but let's be very, very careful before we start dumping this in the hands of federal judges, most of whom I really admire, regardless of their prior political beliefs.

Thank you, Mr. Chairman.

SEN. SCHUMER: Thank you, Senator Hatch.

And Senator Cardin had to leave.

Senator Whitehouse, do you want to make an opening statement? No? Okay, thank you for coming,

And our first witness -- and I know he has a tight schedule, I appreciate him being here at this time -- is our hardworking friend from Arkansas, Senator Mark Pryor.

Senator Pryor.

SEN. MARK PRYOR (D-AR): Mr. Chairman, thank you.

And I also want to thank all the members of the committee.

I've come here today to talk about events that occurred regarding the appointment of the interim U.S. attorney for the eastern district of Arkansas which I believe -- SEN. SCHUMER: Senator, if you could just pull the mike a little closer.

SEN. PRYOR: -- raised serious concerns over the administration's encroachment on the Senate's constitutional responsibilities. I'm not only concerned about this matter as a member of the Senate but as a former practicing lawyer in Arkansas and former attorney general in my state. I know the Arkansas bar well, and all appointments that impact the legal and judicial arena in Arkansas are especially important to me.

Moreover, due to the events of the past Congress, I've given much thought as to what my role as a senator should be regarding executive and judicial nominations. I believe the confirmation process is as serious as anything that we do in government. You know my record. I've supported almost all of the president's nominations. On occasion, I have felt they were unfairly criticized for political purposes, for when I consider a nominee, I use a three-part test. First, is the nominee qualified?; second, does the nominee possess the proper temperament?; third, will the nominee be fair and impartial -- in other words, can they check their political views at the door?

Executive branch nominees are different from judicial nominees in many ways, but U.S. attorneys should be held to a high standard of independence. In other words, they're not inferior officers as defined by the U.S. Supreme Court. All U.S. attorneys must pursue justice. Wherever a case takes them, they should protect our republic by seeing that justice is done. Politics has no place in the pursuit of justice. This was my motivation in helping form the Gang of 14. I've tried very hard to be objective in my dealings with the president's nominations, including his nominations to the U.S. Supreme Court. I want the

process to work in the best traditions of the Senate and in the best traditions of our democracy. In fact, I've been accused on more than one occasion of being overly fair to the president's nominations.

It is with this background that I state my belief that recent events relating to U.S. attorney dismissals and replacements are unacceptable and should be unacceptable to all of us.

Now, I would like to speak specifically about the facts that occurred regarding the U.S. attorney replacement for the Eastern District of Arkansas. In the summer of 2006, my office was told by reliable sources in the Arkansas legal and political community that then-U.S. Attorney Bud Cummins was resigning and the White House would nominate Mr. Tim Griffin as his replacement. I asked the reasons for Mr. Cummins' leaving and was informed that he was doing so to pursue other opportunities.

My office was later told by the administration that he was leaving on his own initiative and that Mr. Tim Griffin would be nominated. I did not know Mr. Griffin, but I spoke to him by telephone in August 2006 about his potential nomination. I told him that I know many lawyers in the state but I knew very little about his legal background. In other words, I did not know if he was qualified or if he had the right temperament or if he could be fair and impartial. I informed him that I would have trouble supporting him until the Judiciary Committee had reviewed these issues. I told him if he were to be nominated that I would evaluate my concerns in light of the committee process.

It should be noted that around this time, it was becoming clear that Mr. Cummins was being forced out, contrary to what my office had been told by the administration.

Sometime after the interview with Mr. Griffin, I learned that there were newspaper accounts regarding his work on behalf of the Republican National Committee about efforts that had been categorized as "caging African-American votes." This arises from allegations that Mr. Griffin and others in the RNC were targeting African-Americans in Florida for voter challenges during the 2004 presidential campaign.

I specifically addressed this issue to Mr. Griffin in a subsequent meeting. When I questioned him about this, he provided an account that was very different from the allegation. However, I informed him that due to the seriousness of the issue, this is precisely the reason why the nomination and confirmation process is in place. I told him I would not be comfortable until this committee had thoroughly examined his background. Given my concerns over this potential nominee, I as well as others protested, and Mr. Cummins was allowed to stay until the end of the year.

Rumors began to circulate in October of 2006 that the White House was going to make a recess appointment which, of course, I found troubling. This rumor was persistent in the Arkansas legal and political community. I called the White House on December 13, 2006 to express my concerns about a recess appointment and spoke to then-White House Counsel Harriet Myers. She told me that she would get back to me on this matter. I also called Attorney General Gonzales expressing my reservations. And he informed me that he would get back to me as well.

Despite expressing my concerns about a recess appointment to the White House and to the attorney general, two days later, on December 15, 2006, Ms.

Myers informed me that Mr. Griffin was their choice. Also on that same day, General Gonzales confirmed that he was going to appoint Mr. Griffin as an interim U.S. attorney. Subsequently, my office inquired about the legal authority for the appointment and was informed it was pursuant to the amended statute in the Patriot Act.

Before I say any more, I need to tell the committee that I respect and like General Gonzales. I supported his confirmation to be attorney general. I have always found him to be a straight shooter. And even though I disagree with him on this decision, it has not changed my view of him. I suspect he is only doing what he has been told to do. On December 20, 2006, Mr. Cummins' tenure as U.S. attorney was over. On that same day, Mr. Griffin was appointed interim U.S. attorney for the eastern district of Arkansas. The timing was controlled by the administration. On January 11, 2007, I wrote a letter to General Gonzales outlining my objections with regard to this appointment. First, I made clear my concern as to how Mr. Cummins was summarily dismissed. Second, I outlined my amazement as to the excuse given as the reason for the interim appointment which was due to the first assistant being on maternity leave. Third, I objected to the circumventing of the Senate confirmation process.

The attorney general's office responded on January 31, 2007 denying any discrimination or wrongdoing. I will address these issues now.

As more light was shed on the situation in Arkansas, it became clear that Bud Cummins was asked to resign without cause so that the White House could reward the Arkansas post to Mr. Griffin. Mr. Cummins confirmed this on January 13, 2007 in an article in the Arkansas Democrat-Gazette newspaper wherein he said he had been asked to step down so the White House could appoint another person. By all accounts, Mr. Cummins' performance has been fair, balanced, professional and just. Lawyers on both sides of the political spectrum have nothing but positive things to say about Mr. Cummins' performance. During his tenure, he established a highly successful anti-terrorism advisory council that brought together law enforcement at all levels for terrorism training. In the area of drug prosecutions, he continued at historic levels of quality, complex and significant Organized Crime Drug Enforcement Task Force drug prosecutions. He also increased federal firearm prosecutions, pursued public corruption and cyber crime investigations and led to lengthy prison sentences for those convicted.

In addition, I understand that his performance evaluations were always exceptional. On this last point, I would ask the committee to try to gather the service evaluations of Mr. Cummins and the other dismissed U.S. attorneys to determine how they were perceived by the Justice Department as having performed their jobs.

The reason I'm reciting Mr. Cummins' performance record is that it stands in stark contrast to General Gonzales' testimony before this committee when he stated, quote, "Some people should view it as a sign of good management. What we do is make an evaluation about the performance of individuals, and I have a responsibility to the people in your districts that we have the best possible people in these positions.

And that's the reason why changes sometimes have to be made. Although there are a number of reasons why changes get made and why people leave on their own, I think I would never, ever make a change in the United States attorney position for political reasons, or if it would in any way jeopardize an ongoing serious investigation. I just would not do it." End quote.

The attorney general then refused to say why Mr. Cummins was told to leave. However, it is my understanding that in other cases around the country, Justice Department officials have disclosed their reasoning for firing other U.S. attorneys. The failure to acknowledge that Bud Cummins was told to leave for a purely political reason is a great disservice to someone who has been loyal to the administration and who performed his work admirably. I have discussed in detail the events surrounding Mr. Cummins' dismissal. Now I would like to discuss the very troubling pretense for Mr. Griffin's appointment to interim U.S. attorney over the first assistant U.S. attorney in the Little Rock office.

The Justice Department advised me that normally, the first assistant U.S. attorney is selected for the acting appointment while the White House sends their nominee through the Senate confirmation process. This is based on 5 U.S.C., Section 3345A1. However, in this case the Justice Department confirmed that the first assistant was passed over because she was on maternity leave. This was the reason given to my chief of staff, as well as comments by the Justice Department spokesman Brian Rorchast (sp) -- and I'm not sure if I pronounced that name correctly -- wherein he was quoted in newspapers as saying, "When the U.S. attorney resigns, there is a need for someone to fill that position." He noted that often the first assistant U.S. attorney in the affected district will serve as the acting U.S. attorney until the formal nomination process begins for the replacement. "But in this case, the first assistant is on maternity leave." That's what he said.

In addition, this reason was given to me specifically by a Justice Department liaison at a meeting in my office. In my letter to the attorney general, I stated that while this may or may not be actionable in a public employment setting, it clearly would be in a private employment setting. Of all the agencies in the federal government, the Justice Department should not hold this view of pregnancy and motherhood in the workplace. I call this a pretense because it has become clear that Mr. Griffin was always the choice to replace Mr. Cummins. Before I close, let me address the circumvention of the Senate's confirmation process. General Gonzales has said that it is his intention to nominate all U.S. attorneys, and -- but that does not water in Arkansas. For seven months now, the administration has known of the departure of Mr. Cummins. Remember, they created his departure. It has now been 49 days since Bud Cummins was ousted without cause. If they were serious about the confirmation process, I cannot believe that it would have taken so long to nominate someone.

Now to be fair, in my most recent telephone call with General Gonzales, he asked me whether I would support Tim Griffin as my nominee for this position. I thought long and hard about this, and the answer is I cannot. If nominated, I would do everything I could to make sure he has an opportunity to tell his side of the story regarding all allegations and concerns to the committee, and I would ask the committee to give Mr. Griffin a vote as quickly as possible. It is impossible for me to say that I would never support his nomination because I do not know all the facts. That is why we have a process in the Senate. I know I would never consider him as my nominee because I just know too many other lawyers who are more qualified, more experienced and more respected by the Arkansas bar. I will advise General Gonzales about this decision shortly.

Regardless of the situation in Arkansas, I am convinced that this should not happen again. I'm also convinced that the administration and maybe future administrations will try to bypass the Senate unless we change this law. I do not say this lightly. Already a challenge has been made to the appointment

of Mr. Griffin in Arkansas as violating the U.S. Constitution because it bypassed Senate confirmation. While I have not reviewed the pleadings filed in this case -- I believe it's a capital murder case, I don't know all the situation there -- but I have not reviewed the pleadings there, I have read a recent article in the Arkansas Democratic Gazette that concerns me.

It is reported that, quote, "because United States attorneys are inferior officers, the appointment clause of the Constitution expressly permits Congress to vest their appointments in the Attorney General and does not require the advice and consent of the Senate before they're appointed," end quote. Please do not miss this point. The Justice Department has now pleaded in court that U.S. attorneys, as a matter of constitutional law, are not subject to the advice and consent of the United States Senate.

After a thorough review by this committee, I hope that you will reach the same conclusion I have, which is this. No administration should be able to appoint U.S. attorneys without proper checks and balances. This is larger than party affiliation or any single appointment. This touches our solemn responsibility as senators. I hope this committee will address it by voting for S.214, which I join in offering along with Senators Feinstein and Leahy. Thank you, Mr. Chairman.

SEN. SCHUMER: Thank you very much, Senator Pryor, for your really outstanding testimony. And we will pursue many of the things you bring up. I know that you have a busy schedule, and I would ask the indulgence of the committee that if we have questions of Senator Pryor, we submit them in writing. Would that be okay?

SEN. LEAHY: Well, Mr. Chairman, may I just ask one or two questions?

SEN. SCHUMER: Sure.

SEN. LEAHY: Thank you. (Cross talk.)

Senator Pryor, do you think that Mr. Griffin is not qualified for the job?

SEN. PRYOR: It's hard for me to say whether he is or isn't because I just know so little about his background. When I met with him, we talked about this, and I told him that it was my sincere hope that they nominate him so he could go through the process here. But it's impossible for me to say whether he is or isn't because I know so little about him. And just by the way of background on him, and this is probably more detail than the committee wants, is that he went to college in Arkansas, and then he went off to Tulane Law School in Louisiana. And then, more or less, he didn't come back to the state, I think he did maybe a year of practice in the U.S. attorney's office at some point, but basically he's -- his professional life has been mostly outside the state. So he's come back in, and the legal community just doesn't know him.

SEN. LEAHY: Well, fair enough. Do you think it ought to be a matter for the committee? I think that's the traditional way.

SEN. PRYOR: Certainly.

SEN. LEAHY: Do you think that his having worked for the Republican National Committee -- RNC -- or that he may be a protege' of Karl Rove is relevant in any way as to his qualifications?

SEN. PRYOR: To me, it I not relevant. I think we all come to these various positions with different backgrounds, and certainly if someone works for a political committee or a politician or an administration -- that doesn't concern me. Some of the activities that he may have been involved in do raise concerns. However, when I talked to him about that, he offered an explanation, like I said, that was very different than the press accounts of what he did. And here again, that takes me back to the process. That's why we have a process. Let him go through the committee, let you all and your staffs look at it, let him -- let everybody evaluate that and see what the true facts are.

SEN. LEAHY: Well, fair enough. The activities may bear. His conduct bears on his qualifications, but just the fact of working for the Republican National Committee and for Karl Rove is not a disqualifier.

SEN. PRYOR: No, not in my mind it's not.

SEN. LEAHY: Thank you very much for coming in, Senator Pryor. We know how busy you are, and you've made a very comprehensive analysis, and it's very helpful to have a senator appear substantively --

SEN. PRYOR: Thank you.

SEN. LEAHY: -- so thank you.

SEN. PRYOR: Thank you.

SEN. SCHUMER: Thank you, Senator Pryor. Any further questions?

Thank you so much.

Okay, our next witness is the honorable Paul J. McNulty. He's the deputy attorney general of the United States. He has spent almost his entire career as a public servant, with more than two decades of experience in government at both the state and federal levels. Just personally, Paul and I have known each other. When he served in the House, I knew him well. We worked together on the House Judiciary Committee. He's a man of great integrity. I have a great deal of faith in him and his personality, and who he is and what he does. From 2001 to 2006, of course, he served as U.S. attorney for the Eastern District of Virginia.

(The witness is sworn in.)

MR. MCNULTY: Thank you, Mr. Chairman, and thank you for your kindness.

I appreciate the opportunity to be here this morning and attempt to clear up the misunderstandings and misperceptions about the recent resignations of some U.S. attorneys, and to testify in strong opposition to S. 214, a bill which would strip the Attorney General of the authority to make interim appointments to fill vacant U.S. attorney positions.

As you know and as you've said, Mr. Chairman, I had the privilege of serving as United States Attorney for four and a half years. It was the best job I ever had. That's something you hear a lot from former United States attorneys -- "best job I ever had." In my case, Mr. Chairman, it was even better than serving as counsel under your leadership with the Subcommittee on Crime. Now why is it -- being U.S. Attorney -- the best job? Why is it such a great job? There are a variety of reasons, but I think it boils down to this.

The United States attorneys are the president's chief legal representatives in the 94 federal judicial districts. In my former district of Eastern Virginia, Supreme Court Chief Justice John Marshall was the first United States attorney. Being the president's chief legal representative means you are the face of the Department of Justice in your district. Every police chief you support, every victim you comfort, every citizen you inspire or encourage, and yes, every criminal who is prosecuted in your name communicates to all of these people something significant about the priorities and values of both the president and the Attorney General.

At his inauguration, the president raises his right hand and solemnly swears to faithfully execute the office of the president of the United States. He fulfills this promise in no small measure through the men and women he appoints as United States attorneys. If the president and the attorney general want to crack down on gun crimes -- if they want to go after child pornographers and pedophiles as this president and attorney general have ordered federal prosecutors to do, it's the United States attorneys who have the privilege of making such priorities a reality. That's why it's the best job a lawyer can ever have. It's an incredible honor.

And this is why, Mr. Chairman, judges should not appoint United States attorneys as S. 214 proposes. What could be clearer executive branch responsibilities than the attorney general's authority to temporarily appoint, and the president's opportunity to nominate for Senate confirmation, those who will execute the president's duties of office? S. 214 doesn't even allow the attorney general to make any interim appointments, contrary to the law prior to the most recent amendment.

The indisputable fact is that United States attorneys serve at the pleasure of the president. They come and they go for lots of reasons. Of the United States attorneys in my class at the beginning of this administration, more than half are now gone. Turnover is not unusual, and it rarely causes a problem because even though the job of United States attorney is extremely important, the greatest assets of any successful United States attorney are the career men and women who serve as assistant United States attorneys. Victim witness coordinators, paralegals, legal assistants, and administrative personnel -- their experience and professionalism ensures smooth continuity as the job of U.S. attorney transitions from one person to another.

Mr. Chairman, I conclude with these three promises to this committee and the American people on behalf of the attorney general and myself. First, we have -- we never have and never will seek to remove a United States attorney to interfere with an ongoing investigation or prosecution or in retaliation for prosecution. Such an act is contrary to the most basic values of our system of justice, the proud legacy of the Department of Justice and our integrity as public servants.

Second, in every single case where a United States attorney position is vacant, the administration is committed to fulfilling -- to filling that position with a United States attorney who is confirmed by the Senate. The attorney general's appointment authority has not and will not be used to circumvent the confirmation process. All accusations in this regard are contrary to the clear factual record. The statistics are laid out in my written statement. And third, through temporary appointments and nominations for Senate confirmation, the administration will continue to fill U.S. attorney vacancies with men and women who are well qualified to assume the important duties of this office. Mr. Chairman, if I thought the concerns you outlined in

your opening statement were true, I would be disturbed too. But these concerns are not based on facts. And the selection process we will discuss today I think will shed a great deal of light on that.

Finally, I have a lot of respect for you, Mr. Chairman, as you know. And when I hear you talk about the politicizing of the Department of Justice, it's like a knife in my heart. The AG and I love the department, and it's an honor to serve, and we love its mission. And your perspective is completely contrary to my daily experience, and I would love the opportunity -- not just today but in the weeks and months ahead -- to dispel you of the opinion that you hold.

I appreciate your friendship and courtesy, and I am happy to respond to the committee's questions.

SEN. SCHUMER: Well, thank you, Deputy Attorney General, and very much appreciate your heartfelt comments.

I can just tell you -- and it's certainly not just me but speaking for myself -- what I have seen happen in the Justice Department is a knife to my heart as somebody who's followed and overseen the Justice Department for many, many years. And perhaps there are other explanations, but on issue after issue after issue after issue -- I think Senator Specter alluded to it to some extent -- the view that executive authority is paramount. To the extent that many of us feel congressional prerogatives written in law are either ignored or ways are found around them, I have never seen anything like it. And there are many fine public servants in the Justice Department. I had great respect for your predecessor, Mr. Comey. I have great respect for you. But you have to judge the performance of the Justice Department by what it does, not the quality or how much you like the people in it. And so my comment is not directed at you in particular, but it is directed at a Justice Department that seems to me to be far more politically harnessed than previous Justice Departments, whether they be under Democrat or -- Democratic or Republican administrations.

There are a lot of questions, but I know some of my colleagues -- I know my colleague from Rhode Island wants to ask questions and has other places to go so I'm going to limit the first round to five minutes for each of us, and then we'll -- in the second round we'll go to more unlimited time if it's just reasonable, if that's okay with you, Mr. Chairman, okay?

First, I just -- you say in your testimony that a United States attorney may be removed for any reason or no reason, that's your quote. So my first question is do you believe that U.S. attorneys can be fired on simply a whim? Somehow the president (sneeze) or the attorney general -- bless you -- wakes up one morning and says, "I don't like him -- let's fire him." What's the reason? "I just don't like him." Would that be okay?

MR. MCNULTY: Well, Mr. --

SEN. SCHUMER: Well, let me say, is that legally allowed?

MR. MCNULTY: Well, if we're using just a very narrow question of can in a legal sense, I think the law is clear that "serve at the pleasure" would mean that there needs to be no specific basis.

SEN. SCHUMER: Right. But I think you would agree that that would not be a good idea.

MR. MCNULTY: I would agree.

SEN. SCHUMER: Okay. Now let me ask you this. You do agree that a United States attorney can't be removed for a discriminatory reason -- because that person is a woman or black or -- do you agree with that?

MR. MCNULTY: Sure. I --

SEN. SCHUMER: So there are some limits here?

MR. MCNULTY: Well, of course, and there would certainly be moral limits and -- I don't know the law in the area of removal and relates to those special categories, but I certainly know that as a -- an appropriate thing to do -- would be completely inappropriate.

SEN. SCHUMER: Okay. And you do believe, of course, that a U.S. attorney could be removed for a corrupt reason --

MR. MCNULTY: Right.

SEN. SCHUMER: -- in return for a bribe or a favor? Okay. Now let me ask you this. Do you think it is good for public confidence and respect of the Justice Department for the president to exercise his power to remove a U.S. attorney simply to give somebody else a chance at the job? Let's just assume for the sake of argument that that's the reason. Mr. X, you're doing a very, very fine job but we'd prefer -- and you're in the middle of your term -- no one objects to what you've done -- but we prefer that Mr. Y take over. Would that be a good idea? Would that practice be wise?

MR. MCNULTY: I think that if it was done on a large scale, it could raise substantial issues and concerns. But I don't have the same perhaps alarm that you might have about whether or not that is a bad practice. If at the end of the first four-year term -- and of course all of our confirmation certificates say that we serve for a four-year term -- at the end of that four-year term, if there was an effort to identify and nominate new individuals to step in -- to take on a second term, for example, I'm not so sure that would be contrary to the best interest of the Department of Justice. It's not something that's been done -- it's not something that's being contemplated to do. But the turnover has already been essentially like that. We've already switched out more than half of the U.S. attorneys that served in the first term, so change is not something that slows down or debilitates the work of the Department of Justice.

SEN. SCHUMER: Right. But -- and all of these, these seven that we are talking about, they had completed their four-year terms, every one of them, but then had been in some length of holdover period.

MR. MCNULTY: Right.

SEN. SCHUMER: They weren't all told immediately at the end, or right before the end of their four-year term, to leave. Is that right?

MR. MCNULTY: That's correct.

SEN. SCHUMER: Okay. I still have a few minutes left, but I now have a whole new round of questioning and I don't want to break it in the middle, so I'm going to call on Senator Specter for his five minutes.

SEN. SPECTER: (Audio break) -- Chairman.

Mr. McNulty, were you ever an assistant U.S. attorney?

MR. MCNULTY: No, I wasn't.

SEN. SPECTER: Well, I was interested in your comment that the best job you had was U.S. attorney, and that's probably because you were never an assistant U.S. attorney -- (laughter) -- because I was an assistant district attorney, and that's a much better job than district attorney.

MR. MCNULTY: I've heard that from a lot of assistants. That's true.

SEN. SPECTER: The assistants just get to go into court and try cases and cross-examine witnesses and talk to juries and have a much higher level of sport than administrators who are U.S. attorneys or district attorneys.

Mr. McNulty, what about Carol Lam? I think we ought to get specific with the accusations that are made. Why was she terminated?

MR. MCNULTY: Senator, I came here today to be as forthcoming as I possibly can, and I will continue to work with the committee to provide information. But one thing that I do not want to do is, in a public setting, as the attorney general declined to do, to discuss specific issues regarding people. I think that it's -- it is unfair to individuals to have a discussion like that in this setting, in a public way, and I just have to respectfully decline going into specific reasons about any individual.

SEN. SPECTER: Well, Mr. McNulty, I can understand your reluctance to do so, but when we have confirmation hearings, which is the converse of inquiries into termination, we go into very difficult matters. Now, maybe somebody who's up for confirmation has more of an expectation of having critical comments made than someone who is terminated, and I'm not going to press you as to a public matter. But I think the committee needs to know why she was terminated, and if we can both find that out and have sufficient public assurance that the termination was justified, I'm delighted -- I'm willing to do it that way.

I'm not sure that these attorneys who were terminated wouldn't prefer to have it in a public setting, but we have the same thing as to Mr. Cummins and we have the same thing as to going into the qualifications of the people you've appointed. But to find out whether or not what Senator Schumer has had to say is right or wrong, we need to be specific.

MR. MCNULTY: Can I make two comments on -- first on the question of confirmation process. If you want to talk about me, and I'm here to have an opportunity to respond to everything I've ever done, that's one thing. I just am reluctant to talk about somebody who's not here and has the right to respond. And I don't -- I just don't want to unfairly prejudice any --

SEN. SPECTER: But Mr. McNulty, we are talking about you when we ask the question about why did you fire X or why did you fire Y. We're talking about what you did.

MR. MCNULTY: And I will have to be -- try to work with the committee to give them as much information as possible, but I also want to say something else.

Essentially, we're here to stipulate to the fact that if the committee is seeking information, our position basically is that -- that there is going to be a range of reasons and we don't believe that we have an obligation to set forth a certain standard or reason or a cause when it comes to removal.

SEN. SPECTER: Are you saying that aside from not wanting to have comments about these individuals in a public setting which, again, I say I'm not pressing, that the Department of Justice is taking the position that you will not tell the committee in our oversight capacity why you terminated these people?

MR. MCNULTY: No. No, I'm not saying that. I'm saying something a little more complicated than that. What I'm saying is that in searching through any document you might seek from the Department, such as an -- every three years we do an evaluation of an office. Those are called "EARS" reports. You may or may not see an EAR report what would be of concern to the leadership of a department, because that's just one way of measuring someone's performance. And much of this is subjective, and won't be apparent in the form of some report that was done two or three years ago by a group of individuals that looked at an office.

SEN. SPECTER: Well, my time is up, but we're going to go beyond reports. We're going to go to what the reasons were.

MR. MCNULTY: Sure.

SEN. SPECTER: -- subjective reasons are understandable.

MR. MCNULTY: I understand -- (cross talk) --

SEN. SPECTER: I like -- I like to observe that red signal, but you don't have to. You're the witness. Go ahead.

MR. MCNULTY: No, I just -- the senator opened, the chairman opened with a reference to documentation, and I just wanted to make it clear that there really may or may not be documentation as you think of it, because there aren't objective standards necessary in these matters when it comes to managing the department and thinking through what is best for the future of the department in terms of leadership of offices. In some places we may have some information that you can read; in others, we'll have to just explain our thinking.

SEN. SPECTER: Well, we can understand oral testimony and subjective evaluations.

MR. MCNULTY: Thank you, Senator.

SEN. SPECTER: We don't function solely on documents.

SEN. SCHUMER: Especially those of us who've been assistant district attorneys.

SEN. SPECTER: That's the standard, Mr. McNulty. So your qualifications are being challenged here. You haven't been an assistant U.S. attorney. (Laughter.)

SEN. SCHUMER: The senator from Rhode Island.

SEN. SHELDON WHITEHOUSE (D-RI): Thank you, Mr. Chairman.

Mr. McNulty, welcome. You're clearly a very wonderful and impressive man. But it strikes me that your suggestion that there is a clear factual record about what happened and that this was just turnover are both just plain wrong.

I start on the clear factual record part with the suggestion that has been made to The Washington Post, that the attorney general also made to us, and I'm quoting from the Post article on Sunday: "Each of the recently dismissed prosecutors had performance problems," which does not jibe with the statement of Mr. Cummins from Arkansas that he was told there was nothing wrong with his performance, but that officials in Washington wanted to give the job to another GOP loyalist. So right from the very get-go we start with something that is clearly not a clear factual record of what took place; in fact, there's -- on the very basic question of what the motivation was for these, we're getting two very distinct and irreconcilable stories.

MR. MCNULTY: Senator --

SEN. WHITEHOUSE: And I don't think that, if it's true, that as The Washington Post reported, six of the prosecutors received calls notifying them of their firings on a single day. The suggestion that this is just ordinary turnover doesn't seem to pass the last test, really. Could you respond to those two observations?

MR. MCNULTY: Yes, sir. Thank you.

Senator, first of all, with regard to Arkansas and what happened there and any other efforts to seek the resignation of U.S. attorneys, these have been lumped together, but they really ought not to be. And we'll talk about the Arkansas situation, as Senator Pryor has laid it out.

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

With regard to the other positions, however --

SEN. WHITEHOUSE: But why would you need a fresh start if the first person was doing a perfectly good job?

MR. McNULTY: Well, again, in the discretion of the department, individuals in the position of U.S. attorneys serve at the pleasure of the president. And because turnover -- and that's the only way of going to your second question I was referring to turnover -- because turnover is a common thing in U.S. attorneys offices --

SEN. WHITEHOUSE: I know. I turned over myself as a U.S. attorney.

MR. McNULTY: -- bringing in someone does not create a disruption that is going to be hazardous to the office. And it does, again, provide some benefits.

In the case of Arkansas, which this is really what we're talking about, the individual who was brought in had a significant prosecution experience -- he actually had more experience than Mr. Cummins did when he started the job -- and so there was every reason to believe that he could be a good interim until his nomination or someone else's nomination for that position went forward and there was a confirmed person in the job.

SEN. WHITEHOUSE: Mr. McNulty, what value does it bring to the U.S. attorneys office in Arkansas to have the incoming U.S. attorney have served as an aide to Karl Rove and to have served on the Republican National Committee?

MR. McNULTY: With all --

SEN. WHITEHOUSE: Do you find anything useful there to be an U.S. attorney?

MR. McNULTY: Well, I don't know. All I know is that a lot of U.S. attorneys have political backgrounds. Mr. Cummins ran for Congress as a Republican candidate. Mr. Cummins served in the Bush-Cheney campaign. I don't know if those experiences were useful for him to be a successful U.S. attorney, because he was.

I think a lot of U.S. attorneys bring political experience to the job. It might help them in some intangible way. But in the case of Mr. Griffin, he actually was in that district for a period of time serving as an assistant United States attorney, started their gun enforcement program, did many cases as a JAG prosecutor, went to Iraq, served his country there and came back. So there are a lot of things about him that make him a credible and well-qualified person to be a U.S. attorney.

SEN. WHITEHOUSE: Having run public corruption cases, and having firsthand experience of how difficult it is to get people to be willing to testify and come forward, it is not an easy thing to do. You put your career,

you put your relations, everything on the line to come in and be a witness. If somebody in Arkansas were a witness to Republican political corruption, do you think it would have any affect on their willingness to come forward to have the new U.S. attorney be somebody who assisted Karl Rove and worked for the Republican National Committee? Do you think it would give any reasonable hesitation or cause for concern on their part that maybe they should keep this one to themselves until the air cleared?

MR. MCNULTY: Well, again, U.S. attorneys over a period of long history have had political backgrounds, and yet they've still been successful in doing public corruption cases. I think it says a lot about what U.S. attorneys do when they get into office.

One thing, Senator, as you know as well as I do, public corruption cases are handled by career agents and career assistant United States attorneys. U.S. attorneys play an important role, but there is a team that's involved in these cases. And that's a nice check on one person's opportunity to perhaps do something that might not be in the best interest of the case.

So my experience is that the political backgrounds of people create unpredictable situations. We've had plenty of Republicans prosecute Republicans in this administration, and we've had Democrats prosecute Democrats. Because once you put that hat on to be the chief prosecutor in the district, it transforms the way you look at the world. It certainly --

SEN. WHITEHOUSE: We hope.

MR. MCNULTY: -- yes.

SEN. SCHUMER: Senator --

SEN. WHITEHOUSE: Mr. Chairman, is it clear that we will be receiving the EARs evaluations for these individuals?

SEN. SCHUMER: We will get them one way or another, yes. SEN. WHITEHOUSE: Thank you.

SEN. SCHUMER: Senator Hatch.

SEN. HATCH: Well, first of all, Mr. McNulty, thanks for your testimony. I also concur with the chairman that you're a great guy and you've served this country very, very well in a variety of positions --

MR. MCNULTY: Thank you, Senator.

SEN. HATCH: -- and we all have great respect for you, having served up here in the Congress.

Are these really called "firings" down at the Department of Justice?

MR. MCNULTY: No.

SEN. HATCH: Were the people removed?

MR. MCNULTY: The terminology that's been assigned to these -- firings, purges and so forth -- it's, I think, unfair.

Certainly the effort was made to encourage and --

SEN. HATCH: Well, basically, my point is, they're not being fired. You're replacing them with other people who may have the opportunity as well.

MR. MCNULTY: Correct. And Senator, one other thing I wanted to say to Senator Whitehouse --

SEN. HATCH: And that's been done by both -- by Democrats and Republican administrations, right?

MR. MCNULTY: Absolutely.

SEN. HATCH: Is this the only administration that has replaced close to 50 percent of the U.S. attorneys in its six years in office?

MR. MCNULTY: I haven't done an analysis of the --

SEN. HATCH: But others have as well, haven't they?

MR. MCNULTY: Well, it's a routine thing to see U.S. attorneys come and go, as I said. And --

SEN. HATCH: Well, I pointed out at the beginning of this that President Clinton came in and requested the resignation of all 93 U.S. attorneys. Are you aware of that? MR. MCNULTY: Yes, I am. I was, in fact --

SEN. HATCH: I didn't find any fault with that. That was his right.

MR. MCNULTY: Right.

SEN. HATCH: Because they serve at the pleasure of the president, right?

MR. MCNULTY: Right.

SEN. HATCH: Well, does the president always -- or does the department always have to have a reason for replacing a U.S. attorney?

MR. MCNULTY: They don't have to have cause. I think in responding to Senator Schumer's question earlier --

SEN. HATCH: They don't even have to have a reason. If they want to replace them, they have a right to do so. Is that right or is that wrong?

MR. MCNULTY: They do not have to have one, no.

SEN. HATCH: Well, that's my point. In other words, to try and imply that there's something wrong here because certain U.S. attorneys have been replaced is wrong, unless you can show that there's been some real impropriety. If there's real impropriety, I'd be the first to want to correct it.

Let me just ask you this: the primary reason given for last year's amendment of 28 USC 546 was the recurring -- happened to be from the recurring problems that resulted from the 120-day limitation on attorney general appointments. Now, can you explain some of these programs and address the

concerns of the district courts that recognize the conflict in appointing an interim U.S. attorney?

MR. MCNULTY: Senator, just prior to that change being made -- as Senator Specter set forth in his opening statement -- we had a serious situation arise in South Dakota. And that situation illustrates what can happen when you have two authorities seeking to appoint a U.S. attorney. In that case in South Dakota, the Public Defenders Officer actually challenged an indictment brought by the interim U.S. attorney, claiming that he didn't have the authority to indict someone because the judge there had appointed someone else to be the U.S. attorney at about the same time.

The individual that the judge appointed was somebody outside the Department of Justice, hadn't gone through a background check. We couldn't even communicate with that individual on classified information until a background check would have been done. And so it was a rather serious problem that we faced and lasted for a month or more. There have been other problems like that over the history of the department where someone comes in, perhaps, and has access to public corruption information who's completely outside of the Department of Justice --

SEN. HATCH: Would you be willing to make a list of these types of problems?

MR. MCNULTY: Well, we've been asked to do that in the questions that were submitted for the record --

SEN. HATCH: Okay. I figured that. So if you'll get that list to us so that we understand that these are not simple matters. And that, you know, in your testimony you mentioned with great emphasis that the administration has at no time sought to avoid the Senate confirmation process by appointing an interim United States attorney, and then refuse to move forward in consultation with home-state senators on the selection, nomination and confirmation of a new United States attorney.

Can you explain the role of the home-state senator in this process, and confirm that it has been done for the vacancies that have arisen since this law was amended?

MR. MCNULTY: Thank you, Senator.

We've had 15 nominations made since the law was amended. All 15 of those nominations could have been held back if we wanted to abuse this authority and just go ahead and put interims in. We've had 13 vacancies. All told, there have been about 23 situations where a nomination is necessary to go forward. Fifteen nominations have gone forward, and the eight where they haven't, we're currently in the process of consulting with the home-state senators to send someone here.

And one thing, Senator, I have to say -- because Senator Whitehouse referred to it -- in the case of individuals who were called and asked to resign, not one situation have we had an interim yet appointed who is -- falls into some category of a Washington person or an insider or something. The -- in the cases where an interim has been appointed in those most recent situations, they've both been career persons from the office who are the interims, and we are working with the home-state senators to identify the nominee who will be sent to this committee for confirmation.

SEN. HATCH: Thank you, Mr. Chairman.

SEN. SCHUMER: Senator Feinstein.

SEN. DIANNE FEINSTEIN (D-CA): Thank you very much, Mr. Chairman, and thank you for holding these hearings.

Mr. McNulty, I believe it was in the 2006 reauthorization of the Patriot Act when this amendment was slipped into the law, too. And it was slipped into the law in a way that I do not believe anyone on this committee knew that it was in the law. At least to my knowledge, no one has come forward and said, "Yes, we discussed this. I knew it was in the law." No Republican, no Democrat. I'd like to ask this question. Did you or any Justice staff make a series of phone calls in December to at least six United States attorneys telling them they were to resign in January?

MR. MCNULTY: I think I can say yes to that because I don't want to be -- talk about specific numbers. But phone calls were made in December asking U.S. attorneys to resign. That's correct.

SEN. FEINSTEIN: And how many U.S. attorneys were asked to resign?

MR. MCNULTY: Because of the privacy of individuals, I'll say less than 10.

SEN. FEINSTEIN: Okay, less than 10. And who were they?

MR. MCNULTY: Senator, I would, following the Attorney General's response to this question at his committee, in a public setting, I don't want to mention the names of individuals -- not all names have necessarily been stated, or if they have, they've not been confirmed by the department of Justice. And information like that can be provided to the committee in a private setting. But in the public setting, I wish to not mention specific names.

SEN. FEINSTEIN: And in a private session, you would be willing to give us the names of the people that were called in December?

MR. MCNULTY: Yes.

SEN. FEINSTEIN: Thank you very much.

Mr. Chairman, I think just by way of -- my own view is that the Patriot Act should not have been amended to change, and I know Senator Specter felt -- I know Senator Specter feels that we should simply return the language to the way it was prior to the reauthorization in 2006. And I am agreeable to this. So I think we have found a solution that, in essence, would give the United States attorney an opportunity to make a truly temporary appointment for a limited period of time, after which point if there -- no nominee has come up for confirmation or been confirmed, it would go to a judge. And I believe that -- we'll mark that up tomorrow and hopefully that would settle the matter.

In my heart of hearts, Mr. McNulty, I do believe -- I could not prove in a court of law -- but I do believe, based on what I was -- heard, is there was an effort made to essentially put in interim U.S. attorneys to give, as one person has said, bright young people of our party to put them in a position where they might be able to shine. That, in itself, I don't have an objection

to; I think you're entitled to do that. But I think to use the U.S. attorney spot for this is not the right things to do, and that's why I think we need to put the law back the way it is.

Let me just ask just one --

MR. MCNULTY: Senator, may I respond real briefly?

SEN. FEINSTEIN: Sure, sure.

MR. MCNULTY: And I respect your position on that. But I don't want it -- to just want to make it clear that that premise has to be looked at in light of the process we go through to select the new U.S. attorneys because if that were the case, that we were doing this just to give a sort of a group that had been pre-identified or something an opportunity to serve, it would not square with the process that exists in virtually every state in one way or another to work with the home-state senators to come up with the list of names of individuals.

In California, for example -- you know well because you've led the way -- in which the system we've set up to identify qualified people, and that's been a bipartisan process. It's worked very well. It's -- we respect that process. We will follow that process for vacancies that occur in California. So there won't be any way -- any effort to try to force certain individuals into these positions since we go through a pre-established nomination, identification and then confirmation process.

SEN. FEINSTEIN: I appreciate that.

Could I ask a question? There -- one last question? There are currently 13 vacancies, and this number does not include the recent additional seven vacancies like the ones in my state that have developed. Now there are only two nominees pending before the United States Senate at this time. When do you intend to have the other nominees sent to us?

MR. MCNULTY: I think we're higher than two out of the current vacancies that you know of. Well --

SEN. FEINSTEIN: No.

MR. MCNULTY: Okay, I will -- I'll defer to your numbers on it.

MR. : (Off mike.)

What's that? (Off mike.) Two is right, sorry. We will make every effort possible to identify nominees to submit for your consideration here in the committee. Sometimes the process takes a little longer because there is something going on in this home state for a selection process. We move quickly when we receive names to have interviews. So we don't -- the process doesn't get delayed there. But it is a complicated process to develop a final list in consultation and get them up here. But we're committed to doing that as quickly as possible for every vacancy we have.

SEN. SCHUMER: Thank you.

Senator Specter wanted to say a brief word before Senator Feinstein left, and then we'll go to Senator Sessions.

SEN. SPECTER: Well, I just wanted to comment to Senator Feinstein that I thank her for her work on this issue. I had said before you arrived in my opening statement that I did not know of the change in the Patriot Act until you called it to my attention on the floor. And I said to you at that time, "This is news to me, but I'll check it out." And then checked it out with Mike O'Neill (sp), who advised that Brett Tolman (ph), a senior staff member, had gotten the request from the department of Justice because of a situation in South Dakota where a judge made an appointment which was not in accordance with the statute. And there -- got an issue arising with other courts questioning the separation of powers. But when you and I have discussed it further and -- continuously, including yesterday, we came to the conclusion that we would send it back to the former statute, which I think will accommodate the purpose of this.

SEN. FEINSTEIN: Thank you very much. Thank you. SEN. SCHUMER: Senator Sessions.

SEN. JEFF SESSIONS (R-AL): Thank you.

And Senator Feinstein, I am troubled by the mushiness of our separation of powers and the constitutional concepts of executive branch and confirmation in your proposal. I think it goes too far. I think the administration's -- the proposal that passed last time may need some reform. I would be inclined to suggest, Mr. Chairman, that the reform needed may be to some sort of expedited or ensured confirmation -- submission and confirmation by the Senate rather than having the executive branch, which constitutionally has not been ever considered a part of this process, to be appointing U.S. attorneys. But whatever.

You know, I don't know how I got to be United States attorney. I see Senator Whitehouse. Maybe they thought he would be a bright young star one day if they appointed him United States attorney. I recall Rudy Giuliani -- there was a dispute over his successor when he was United States attorney in Manhattan, and he said he thought it would be nice if he ever were appointed -- was able to contribute to the discussion every now and then. We do have U.S. attorneys to preside over a lot of important discussions, and they generally put their name on the indictments of important cases -- at least they're responsible whether they sign the indictment or not -- so it's a very significant position, and it's difficult sometimes to anticipate who would be good at it and who would not. Some people without much experience do pretty well. Some with experience don't do very well at all.

We had a situation in Alabama that wasn't going very well, and Department of Justice recently made a change in the office and was reported as being for performance reasons. You filled the interim appointment with now Assistant United -- U.S. Attorney Debra Rhodes, a professional from San Diego -- professional prosecutor who'd been in the Department of Justice. She was sent in to bring the office together -- did a good job of it. Senator Shelby and I recommended she be made -- be a permanent United States attorney and we did that.

My personal view is that the Department of Justice is far too reticent in removing United States attorneys that do not perform. United States attorneys

are part of the executive branch. They have very important responsibilities. I recall seeing an article recently about wonderful Secretary of Labor Elaine Chao -- she's the last member of the Cabinet standing was part of the article. I mean, Cabinet members turn over. They're appointed and confirmed by the Senate at the pleasure of the president, and I think the Department of Justice has a responsibility of your 92 United States attorneys to see that they perform to high standards, and if they do not so perform, to move them.

I don't see anything wrong with taking -- giving an opportunity to somebody who's got a lot of drive and energy and ability, and letting them be a United States attorney and seeing how they perform. But they ought to have certain basic skills in my view that indicate they're going to be successful at it, and otherwise you as the president gets judged on ineffectual appointments and failing to be effective in law enforcement and related issues. I just wanted to say that.

Seven out of 92 to be asked to step down is not that big a deal to me. I knew when I took the job that I was subject to being removed at any time without cause, just like a secretary of State who doesn't have the confidence of the president, or the secretary of Transportation. If somebody had called and said, "Jeff, we'd like you gone," you say, "Yes, sir," and move on I think than be whining about it. You took the job with full knowledge of what it's all about.

With regard to one of -- I know you don't want to comment about these individual United States attorneys and what complaints or performance problems or personal problems or morale problems within the office may have existed. I would just note that one has been fairly public, and Carol Lamb has been subject to quite a number of complaints. Have you received complaints from members of Congress about the performance of United States Attorney Carol Lamb in San Diego on the California border?

MR. MCNULTY: Well, we've received letters from members of Congress. I don't want to go into the substance of them although the members can speak for them. But I -- again, I want to be very careful about what I say concerning any particular person.

SEN. SESSIONS: Well, on July 30th, 14 House members expressed concerns with the Department of Justice current policy of not prosecuting alien smugglers -- I don't mean people that come across the border -- I mean those who smuggle groups of them across the border -- specifically mentioning that Lamb's office to -- had declined to prosecute one key smuggler. Are you familiar with that -- June 30th, 2004?

MR. MCNULTY: I'm familiar with the letter.

SEN. SESSIONS: On September 30th -- 23rd, 2004, 19 House members described the need for the prosecution of illegal alien smugglers -- these are coyotes -- in the border U.S. Attorney offices, and they specifically mentioned the United States attorney in San Diego. Quote -- this is what they said -- quote, "Illustrating the problem, the United States Attorney's office in San

Diego stated that it is forced to limit prosecution to only the worst coyote offenders, leaving countless bad actors to go free," closed quote. Isn't that a letter you received that said that?

MR. MCNULTY: I'm familiar with the letter.

SEN. SESSIONS: On October 13th of 2005, Congressman Darryl Issa wrote to U.S. Attorney Lamb complaining about her, saying this: "Your office has established an appalling record of refusal to prosecute even the worst criminal alien offenders," closed quote. And then on October 20th, '05, 19 House members wrote, quote -- to the Attorney General Gonzalez, to express their frustration, saying, quote, "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 -- two felonies in the District," closed quote, before they would even prosecute, and do you see a concern there? Is that something that the attorney general and the president has to consider when they decide who their U.S. attorneys are?

MR. MCNULTY: Well, anytime the members of Congress, senators, House members, write letters to us we take them seriously and would give them the consideration that's appropriate.

SEN. SCHUMER: Thank you, Mr. McNulty. We'll have a second round if you want to pursue with Senator Sessions. Okay. I'm going to go into my second round, and I want to go back to Bud Cummins. First, Bud Cummings has said that he was told he had done nothing wrong and he was simply being asked to resign to let someone else have the job. Does he have it right?

MR. MCNULTY: I accept that as being accurate as best I know the facts.

SEN. SCHUMER: Okay. So in other words, Bud Cummins was fired for no reason. There was no cause --

MR. MCNULTY: No cause provided in his case as I'm aware of.

SEN. SCHUMER: None at all. And was there anything materially negative in his evaluations? In his EARS reports or anything like that? From the reports that everyone has received, he had done an outstanding job -- had gotten good evaluations. Do you believe that to be true?

MR. MCNULTY: I don't know of anything that's negative, and I haven't seen his reports or one that -- probably only one that was done during his tenure but I haven't seen it. But I'm not aware of anything that --

SEN. SCHUMER: Would you be willing to submit those reports to us even if we wouldn't make them public?

MR. MCNULTY: Right. Well, other than -- I just want to fall short of making a firm promise right now, but we know that you're interested in them and we want to work with you to see how we can accommodate your needs.

SEN. SCHUMER: So your inclination is to do it but you don't want to give a commitment right here?

MR. MCNULTY: Correct.

SEN. SCHUMER: Okay. I will -- as I said in my opening statement, if we can't get them I will certainly discuss with the chairman my view that we should subpoena them if we can't get them. This is serious matter. I don't think they should be subpoenaed. I think we should get them -- certainly a report like this which is a positive evaluation. Your reasoning there, at least as far as Cummings is concerned -- obviously you can make imputations if others are not released -- wouldn't hurt his reputation in any way.

MR. MCNULTY: I'd just say, Mr. Chairman, if you get a report, see a report, and it doesn't show something that you believe is cause, to me that's not an a-ha moment, because as I say right up front, those reports are written by peers --

SEN. SCHUMER: Understood. MR. MCNULTY: -- and they may or may not contain (cross talk) --

SEN. SCHUMER: But you did say earlier -- and this is the first we've heard of this -- that he was not fired for a particular reason -- that when he said he was being fired simply to let someone else have a shot at the job, that's accurate as best you can tell.

MR. MCNULTY: I'm not disputing that characterization.

SEN. SCHUMER: Okay. That's important to know. Now -- so then we go on to the replacement for Mr. Cummins. And again, as Senator Feinstein and others have said, there are all kinds of reasons people are chosen to be U.S. attorneys. But I first want to ask about this. Senator Pryor talked about allegations -- I think they were in the press he mentioned -- about his successor, Mr. Griffin, quote, "Being involved in caging black votes," unquote.

First, if there were such an involvement, if he did do that at some point in his job -- in one of his previous jobs -- do you think that could be -- that should be a disqualifier for him being U.S. attorney in a state like Arkansas, where there are obviously civil rights suits?

MR. MCNULTY: I think any allegation or issue that's raised against somebody has to be carefully examined, and it goes into the thinking as to whether or not that person is the best candidate for the job.

SEN. SCHUMER: Was Mr. Griffin given a thorough, thorough review before he was asked to do this job? And are you aware of anything that said he was involved in, quote, "caging black votes"?

MR. MCNULTY: First of all, in terms of the kind of review, there are different levels of review, depending upon what a person's going to be doing. If you're an interim, you're already, by definition, in the Department of Justice in one way or another, either in the office or in the criminal division or some other place. You already have a background check; you're already serving the American people at the Department of Justice. And so you may -- at that point, that has been sufficient, historically, to serve as an interim.

Then there's a background check for purposes of nomination. That brings in more information.

SEN. SCHUMER: Yup.

MR. MCNULTY: We look at the background check carefully and decide, based upon that, whether or not it's appropriate to recommend to the president to nominate somebody.

SEN. SCHUMER: So I have two questions. Would such a background check have come up with the fact that he was involved in, quote, "caging black votes," if that were the fact?

MR. MCNULTY: Presumably -- I'm not an expert on how the background check process works entirely, but I think they go out and look at press clippings and other things. They might -- they go interview people. Maybe something comes up that relates to a person's activities; I'm pretty sure things come up relating to a person's activities apart from what they've done in the office.

SEN. SCHUMER: But let me get -- if he was involved in such -- such an activity, would it be your view, would you recommend to the attorney general that Mr. Griffin not become the U.S. attorney for Arkansas, if he were involved? And that's a big assumption, I admit. It's just something that Senator Pryor mentioned -- I think that was mentioned in a newspaper article.

MR. MCNULTY: And I don't want to sound like I'm quibbling. It's just that all I know here is that we have an article. Even Senator Pryor said that the explanation given was very different from what the article was.

SEN. SCHUMER: Mm-hm.

MR. MCNULTY: I don't know anything about it personally --

SEN. SCHUMER: Right.

MR. MCNULTY: -- and so I'm -- I don't want to say that if I knew some article was true that that would. I'd have to know more about what that -

SEN. SCHUMER: I didn't ask about the article, if he was doing something that would prevent black people from voting --

MR. MCNULTY: Oh, of course. Well, if that's what it comes down to after all the facts are in --

SEN. SCHUMER: Even if that was a legal political activity?

MR. MCNULTY: That sounds like a very significant problem.

SEN. SCHUMER: Okay. All right. Now, second, I just want to get to this one, too, in Senator Pryor's testimony. Again, there were allegations that the first assistant was passed over because of maternity leave. I believe she said that?

MR. MCNULTY: (No audible response.)

SEN. SCHUMER: Okay. Do you dispute that?

MR. MCNULTY: No, it's just that in my briefings on what occurred, there is definitely some factual difference as to whether or not that really was a factor or not. It shouldn't be a factor and, therefore, I've been told --

SEN. SCHUMER: What if it was? What if it was a factor?

MR. MCNULTY: I'm sorry?

SEN. SCHUMER: What if it was a factor? I mean, she said it. She's a person of a degree of integrity. She was the first assistant in an important office --

MR. MCNULTY: Right, but -- SEN. SCHUMER: -- and she's saying she was told she was passed over because of maternity leave. I'd have to check with my legal eagles, but that might actually be prohibited under federal law.

MR. MCNULTY: I don't know, but --

SEN. SCHUMER: I think that's probably true.

MR. MCNULTY: It should not be a factor in consideration of whether or not she would serve as the interim. And so I don't -- but I don't know if that is accurate.

SEN. SCHUMER: Can you, again, if you choose to -- I don't see any reason to do this in private, because this doesn't -- the reason you gave of not wanting to mention the EARS reports or others is you don't want to do any harm to the people who were removed. But would you be willing to come back to us and give us an evaluation as to whether that remark was, that that comment was true and whether she was fired because of -- passed over because of maternity leave? Could you come back to the committee and report to that?

MR. MCNULTY: Yes, I mean -- at this point I can say, to the best of my knowledge, that is not the case. In fact, Mr. Griffin was identified as the person who would become the interim and possibly become the nominee before the knowledge of her circumstances was even known.

SEN. SCHUMER: Okay. Again, I would ask that you come back and give us a report in writing as to why what she is saying is not true or is a misinterpretation, okay?

MR. MCNULTY: Okay.

SEN. SCHUMER: All right, now let me ask you this. You admitted, and I'm glad you did, that Bud Cummins was fired for no reason. Were any of the other six U.S. attorneys who were asked to step down fired for no reason as well?

MR. MCNULTY: As the attorney general said at the - his oversight hearing last month, the phone calls that were made back in December were performance-related.

SEN. SCHUMER: Mm-hm. All the others?

MR. MCNULTY: Yes.

SEN. SCHUMER: But Bud Cummins was not one of those calls, because he had been notified earlier.

MR. MCNULTY: Right. He was notified in June of -

SEN. SCHUMER: Okay, so there was a reason to remove all the other six? MR. MCNULTY: Correct.

SEN. SCHUMER: Okay. Let me ask you this. I want to go back to Bud Cummins here. So here we have the attorney general adamant; here's his quote, "We would never, ever make a change in the U.S. attorney position for political reasons." Then we have now -- for the first time, we learn that Bud Cummins was asked to leave for no reason and we're putting in someone who has all kinds of political connections -- not disqualifiers, obviously, certainly not legally -- and I'm sure it's been done by other administrations as well. But do you believe that firing a well-performing U.S. attorney to make way for a political operative is not a political reason?

MR. MCNULTY: Yes, I believe that's it's not a political reason.

SEN. SCHUMER: Okay, could you try to explain yourself there?

MR. MCNULTY: I'll do my best. I think that the fact that he had political activities in his background does not speak to the question of his qualifications for being the United States attorney in that district. I think an honest look at his resume shows that while it may not be the thickest when it comes to prosecution experience, it's not insignificant either. He had been assistant United States attorney in that district to set up their Project Safe Neighborhoods program --

SEN. SCHUMER: For how long had he been there?

MR. MCNULTY: I think that was about a year or so.

SEN. SCHUMER: Yeah, I think it was less than that, a little less than that.

MR. MCNULTY: And he -- but he did a number of gun cases in that period of time. He's also done a lot of trials as a JAG attorney. He'd gone and served his country over in Iraq. He came back from Iraq and he was looking for a new opportunity. Again, he had qualifications that exceed what Mr. Cummins had when he started, what Ms. Casey had, who was the Clinton U.S. attorney in that district before she became U.S. attorney. So he started off with a strong enough resume, and the fact that he was given an opportunity to step in -- and there's one more piece of this that's a little tricky, because you don't want to get into this business of what did Mr. Cummins say here or there, because I think we should talk to him. But he may have already been thinking about leaving at some point anyway.

There are some press reports where he says that. Now, I don't know, and I don't want to put words in his mouth; I don't know what the facts are there completely. What I've been told, that there was some indication that he was thinking about this as a time for his leaving the office or in some window of time. And all those things came together to say in this case, this unique situation, we can make a change and this would still be good for the office.

SEN. SCHUMER: So you can say to me that you -- you put in your testimony you want somebody who's the best person possible.

MR. MCNULTY: Well, I didn't --

SEN. SCHUMER: Do you think Mr. Griffin is the best person possible? I can't even see how Mr. Griffin would be better qualified in any way than -- than Bud Cummins, who had done a good job, who was well respected, who had now had years of experience. There's somebody who served a limited number of months on a particular kind of case and had all kinds of other connections. It sure doesn't pass the smell test. I don't know what happened, and I can't -- you know, we'll try to get to the bottom of that. And I have more questions, but --

MR. MCNULTY: I didn't say "best person possible." If I used that as a standard, I would not become U.S. attorney.

SEN. SCHUMER: You did.

MR. MCNULTY: I said "well qualified."

SEN. SCHUMER: Okay.

MR. MCNULTY: And that was -- those words were purposely chosen to say that he met the standards that are sufficient to take a job like that, and I have no hesitancy of that.

SEN. SCHUMER: I just want to -- I don't want to pick here with my friend Paul McNulty. Quote from your testimony, "For these reasons, the department is committed to having the best person possible discharging the responsibilities of that office at all times in every district."

I find it hard to believe that Tim Griffin was the best person possible. I find it hard to believe that anyone who did an independent evaluation in the Justice Department thought that Tim Griffin was a superior choice to Bud Cummins.

MR. MCNULTY: Well, I guess I was referring to my opening statement -- (cross talk) --

SEN. SCHUMER: Yeah, okay.

Let me ask you this: Can you give us some information how it came to be that Tim Griffin got his interim appointment? Who recommended him? Was it someone within the U.S. Attorneys Office in Arkansas? Was it someone from within the Justice Department?

MR. MCNULTY: Yeah. I don't know the answers to those questions.

SEN. SCHUMER: Could you get us answers to that in writing? And I'd also like to ask the question, did anyone from outside the Justice Department -- including Karl Rove -- recommend Mr. Griffin for the job? Again, I'm not saying there's anything illegal about that, but I think we ought to know.

MR. MCNULTY: Okay.

SEN. SCHUMER: Okay. But you don't have any knowledge of this right now?

MR. MCNULTY: I don't.

SEN. SCHUMER: Okay.

Again, when Bud Cummins was told in the summer of 2006 that he was to leave, was the -- did those who told him have the idea of a replacement in mind?

MR. MCNULTY: I don't know for a fact, but I'm assuming that -- and being straightforward about this -- that the notion here was to install Mr. Griffin as an interim, give him an opportunity to go into that district, and then to work with the home-state senators on identifying the nominee who would be sent to the committee for the confirmation process. So if you want to assume that when Mr. Cummins was contacted there was already a notion that Mr. Griffin would be given an opportunity --

SEN. SCHUMER: You are assuming that.

MR. MCNULTY: -- is, I think, a fair assumption.

SEN. SCHUMER: All right.

Let me ask you this. Let's -- because we'll get some of these answers in writing about outside involvement and what specifically happened in the Bud Cummins case. It sure doesn't smell too good, and you know that and I know that, but maybe there's a more plausible explanation than the one that seems to be obvious to everybody.

But let's go onto these questions. Did the president specifically approve of these firings?

MR. MCNULTY: I'm not aware of the president being consulted. I don't know the answer to that question.

SEN. SCHUMER: Okay. Can we find out an answer to that?

MR. MCNULTY: We'll take it back.

SEN. SCHUMER: Yeah. Was the White House involved in anyway?

MR. MCNULTY: These are presidential appointments --

SEN. SCHUMER: Exactly.

MR. MCNULTY: -- so the White House personnel, I'm sure, was consulted prior to making the phone calls.

SEN. SCHUMER: Mm-hmm. Okay, but we don't know if the resident himself was involved, but the White House probably was.

When did the president become aware that certain U.S. attorneys might be asked to resign?

MR. MCNULTY: I don't know.

SEN. SCHUMER: Okay. Again, I would ask that you get back to us on that.

And fourth question, which I'm sure you cannot answer right now, was there any dissent over these firings? Do you know if there was any in the Justice Department -- did some people say, well, we shouldn't really do this?

MR. MCNULTY: I'm not aware of that. To the contrary, actually, you know Dave Margolis. He's -- SEN. SCHUMER: I do.

MR. MCNULTY: -- been involved in all of the interviews for every interim who's been put in in this administration. He's been involved in every interview for every U.S. attorney that's been nominated in this administration. We have a set group of people and a set procedure that involves career people. Dave actually takes the lead role for us in that. And Dave was well aware of this situation.

And -- so apart from objections, I know of folks who believed that we had the authority and the responsibility to oversee the U.S. Attorneys Office the way we thought was appropriate.

SEN. SCHUMER: Right.

Okay, let me get to the EARS evaluations. Now, you agree that the EARS evaluations address a broad range of performance criteria that's pretty good. You said it's not the sole reason -- it's not the only criteria, but it's a pretty good basis to start with. Is that fair to say?

MR. MCNULTY: It can be in some instances. It just depends on what was going at that office at that time that those evaluators might have been able to spot.

SEN. SCHUMER: Okay.

Have you seen each -- for each of the seven fired U.S. attorneys, have you seen the EARS evaluations?

MR. MCNULTY: I have not seen all the evaluations involved in these cases, no.

SEN. SCHUMER: Okay. Well, you had said you'd be willing to talk over with us what was in those evaluations in private so you would protect the reputations of the U.S. attorneys. Can we do that this week?

MR. MCNULTY: Sure. We can try and make --

SEN. SCHUMER: Great. Thank you. I very much appreciate that.

And do you have any objection, in private, of providing these evaluations to the committee -- the EARS evaluations?

MR. MCNULTY: The only reason why I'm hesitating on that is because evaluations like that are what we would normally call deliberative material. And Senator Specter and I've discussed this -- you know, about the committee's oversight responsibilities. And I respect the committee's ability to get information, but often the committee shows comity to the department by appreciating the sensitivity of certain things. And we've appreciated your respect for that. And these evaluations are done by career U.S. attorney office staff who go into an office and look at it. It's deliberative. It provides information that could be prejudicial to some people. And so that's the only reason why I'm not sitting here saying, "Sure." I want to go back and want to think about what our policies --

SEN. SCHUMER: I understand. But don't you agree it probably, given the sensitivities that you have, and given the questions we have, it seems to me logical we could work out something that would protect the reputations of those you wish to protect, and still answer our questions.

MR. MCNULTY: My goal is to give you as much information as we possibly can to satisfy your concerns that nothing was done wrong here.

SEN. SCHUMER: Good. Okay. And we will have our -- we will endeavor to have the meeting this week. And the legislation is moving, maybe we can clear the air on all of this or figure out what happened anyway, soon.

Let me just ask you this, in terms of more shoes that might drop: Is the job of Dan Dzwilewski -- now this is the special agent in San Diego. He defended Carol Lam. He called the firing political. He's the head FBI man over there. Is his job in any danger?

MR. MCNULTY: No.

SEN. SCHUMER: Good.

Next, are there any --

MR. MCNULTY: Certainly -- let me just put this -- not for reasons related that --

SEN. SCHUMER: As of today?

MR. MCNULTY: If the FBI has some other matter and I don't know --

SEN. SCHUMER: I understand.

MR. MCNULTY: Okay.

SEN. SCHUMER: We don't want him to have a carte blanche. We just don't want him to be fired for speaking his mind here, okay?

Are there anymore firings that might be expected? Any other U.S. attorneys who are going to be asked to resign in the very near future before the law that Senator Feinstein and Senator Specter are reinstating, I guess, is the right, takes effect? MR. MCNULTY: I am not aware of any other plans at this point to do that.

SEN. SCHUMER: Would you be willing to let the committee know if there were any plans -- or at least the home-state senators -- to know if there are any further plans in this regard, before those kinds of firings could occur?

MR. MCNULTY: That seems rather broad.

SEN. SCHUMER: Okay. Why don't you get back to us.

MR. MCNULTY: I just have to think about what you're asking there, okay? We want to consult with the home-state senators on filling those seats. I'm not sure if it's good policy for the executive branch to consult with the home-state senator before removing somebody from a position.

SEN. SCHUMER: It really has not -- I don't know if it's happened in the past. At least it hasn't -- I mean, I've had good consultations with the Justice Department on the four U.S. attorneys in New York. By the way, none of them are going to be asked to resign in the next month or so, are they?

MR. MCNULTY: We have no -- no one is currently being contemplated right now.

SEN. SCHUMER: Okay. But it's something maybe you should consider, given everything that's happening here. And you know, if there's a legitimate reason that somebody should be removed, it might clear the air if the home-state senators, or someone outside of the executive branch, were consulted. And the most logical people are, given the tradition, are the home-state senators. So I'd ask you to consider that, but you don't have to give me an answer here.

MR. MCNULTY: (Cross talk.)

SEN. SCHUMER: Let me ask you about one further person.

There's a U.S. attorney in Texas -- Senator Cornyn has left, he might have more to say about this -- but Johnny Sutton has come under considerable fire for prosecuting two border agents who shot an alien smuggler. There have been public calls for his ouster by more than one Congressman. Is his performance in any danger?

MR. MCNULTY: No.

SEN. SCHUMER: Okay. I mean, is his position in any danger? Okay.

I'd now like to go on to Carol Lam. We talked a little bit about this. Senator Sessions mentioned all the Congresspeople who had written letters. I'd just ask Senator Sessions when -- was that -- were -- was that -- were those bipartisan letters? Do you know? I don't know who the 13 or 18 --

SEN. SESSIONS: (Off mike.)

SEN. SCHUMER: Okay. Well, if you could submit those letters to the record, we could answer that question.

SEN. SESSIONS: I would be glad to.

SEN. SCHUMER: Great. Without objection.

Now given the velocity -- the heat of the investigations that have gone on in southern California, did the Justice Department consider the chilling effect on those -- the potential chilling effect on those prosecutions when Carol Lamb was fired? I mean, wasn't it -- should it have been a factor as -- in --

MR. MCNULTY: Certainly.

SEN. SCHUMER: To be weighted? Do you know if that did?

MR. MCNULTY: Yes. It -- we are -- I have to be careful here because, again, I'm trying to avoid speaking on specifics. But we would be categorically opposed to removing anybody if we thought it was going to have either a negative effect in fact, or a reasonable appearance. Now we can be accused of anything.

We can't always account for that. But as far as the -- a reasonable perception and the factual, that would be a very significant consideration. I mean, we wouldn't do it if we thought it would, in fact, interfere with a case.

SEN. SCHUMER: So you thought it would -- so there were discussions about this specific case, and people dismissed any --

MR. MCNULTY: Any time we ask for someone to resign --

SEN. SCHUMER: Chilling effect, or even as Senator Whitehouse mentioned, the break in the continuity of important ongoing prosecutions. Was that considered in this specific instance?

MR. MCNULTY: Any time we do this, we would consider that. And may I say one more thing about it? What happened in the prosecution of Congressman Cunningham was a very good thing for the American people, and for the department of Justice to accomplish. We are proud of that accomplishment, and any investigation that follows from that has to run its full course. Public corruption is a top priority for this department, and we would only want to encourage all public corruption investigations, and in no way want to discourage them. And our record, I think, speaks for itself on that.

SEN. SCHUMER: Were you involved in the dismissal -- in the decision to dismiss Carol Lamb?

MR. MCNULTY: I was involved in all of this, not just any one person. But I was consulted in the whole decision process.

SEN. SCHUMER: Okay. And did you satisfy yourself that -- I mean, it would be hard to satisfy yourself without an appearance problem --

MR. MCNULTY: Right.

SEN. SCHUMER: -- because there obviously was going to be an appearance problem. On the other hand, certain factors, at least in the Justice Department, must have outweighed that. It would be hard to believe that Carol Lamb was dismissed without cause in your mind. You must have had some cause.

MR. MCNULTY: All of the changes that we made were performance-related.

SEN. SCHUMER: Mm-hmm. Okay. And we'll discuss that privately towards the end of the week. So I'm not going to try to put you on the spot here.

But I do want to ask you this. Did anyone outside the Justice Department, aside from the letters we have seen that Senator Sessions mentioned, urge that Carol Lamb be dismissed?

MR. MCNULTY: I don't -- I don't know.

SEN. SCHUMER: Could you get an answer to that?

MR. MCNULTY: You mean anyone said -- because those letters --

SEN. SCHUMER: Those are public letters.

MR. MCNULTY: -- may not be the only letters we've received. We may have received --

SEN. SCHUMER: I know, but phone calls, any other -- I'd like you to figure out for us and get us answers on whether there were other people, other than the people who signed -- I don't know who they were -- who signed the letters that Senator Sessions mentioned outside the Justice Department who said -- obviously, given the sensitivity of this this is an important question -- who said that Carol Lamb should be dismissed. Can you get back to us on that?

MR. MCNULTY: Yes.

SEN. SCHUMER: Thank you.

MR. MCNULTY: I'm only not giving you a definitive answer now because I'm trying to avoid talking about any one district --

SEN. SCHUMER: Okay.

MR. MCNULTY: -- but I -- but the suggestion of your question would be whether there might have been some -- let's just say on a general matter, not referring to any one district, any undue influence on us from some unnamed --

SEN. SCHUMER: Oh, no. I didn't ask that.

MR. MCNULTY: (Cross talk.)

SEN. SCHUMER: I didn't ask whether it was undue.

MR. MCNULTY: Generically, I can say that with any change we made, they weren't subject to some influence from the outside.

SEN. SCHUMER: All right. I would just ask that when you meet with us, we get an answer to that question. Who from the outside urged, whether appropriately or inappropriately -- it might be appropriate. It's certainly your job, if you think a U.S. attorney isn't doing a good job, to let that be known, that she be dismissed.

Okay, let me just ask you this. We're going to hear from a fine U.S. attorney from the southern district former, and she says in her testimony -- she quotes Robert Jackson as Attorney General, and he gave a noted speech to U.S. attorneys. He said this, "Your responsible in your several districts for law enforcement and for its methods cannot wholly be surrendered to Washington and ought not to be assumed by a centralized Department of Justice." Do you agree with that?

MR. MCNULTY: I'm not sure if I can say that I appreciate -- I agree with everything being said in that. You know, what's tricky about this is that -- Senator, you or any other senator in this committee might call us on another day and say to us, "I want to see more health care fraud cases done. You people have turned your back on that problem." And we would get back to you and say, "Absolutely, Senator. We'll take that seriously." But how could we do that if we didn't have some confidence that if we turned around and said to our U.S. attorneys, "We need you to prioritize health care fraud. It's a growing problem in our country and you need to work on it?" Now that's a centralized Washington responsibility going out to the field. So I believe in a Department of Justice that does act with some control over its priorities and its -- use of its

resources. I don't believe, however, that that should go to the question of the integrity or the judgment --

SEN. SCHUMER: And he uses the words -- in all fairness, he uses the word "wholly." He doesn't say Washington should have no influence. He says "cannot be wholly surrendered to Washington."

MR. MCNULTY: Well then, I would agree with that.

SEN. SCHUMER: Yeah. Okay.

Final question, and I appreciate the indulgence of my colleagues here, and I'll extend to them the same courtesy. On the Feinstein-Specter bill, does the administration -- unless you want to answer that -- (off mike.) No? Okay.

I was --

SEN. SPECTER: No, wait a minute. Were you saying I only have 23 minutes and 28 seconds left? (Laughter.)

SEN. SCHUMER: Yeah, double that, if you wish.

Let's see -- then I'll ask it. What objection do you have to Feinstein's bill, the one that Senator Feinstein -- Senator Specter put in which restores a system which seemed to be perfectly adequate for 20 years, including in the Reagan administration, the Bush administration, and the first six years of this administration? Are you aware of any legal challenges prior to 2006 to the method of appointing U.S. interim attorneys?

MR. MCNULTY: Well, there are two issues or two legislative proposals that we seem to be talking about. One I think is, the bill I have in front of me, which is S. 214 -- if I'm reading it correctly, it goes beyond what was existed prior to the amendment in the Patriot Act. It gives the appointment authority to the district court -- the chief judge of the district -- completely. That -- and if I'm wrong, someone can correct me on that, but that's my reading on the legislation.

Now there's another idea on the table, which is to restore to what it was prior to the Patriot Act, which gave the Attorney General the authority to appoint someone for 120 days, and then the chief judge would appoint that person afterwards. Are you asking me about the latter more than the --

SEN. SCHUMER: Yeah, I'm asking you, would you have objection? Because as I understand it, the sponsors simply want to restore what existed before the Patriot Act changed. Would the administration be opposed to that? MR.

MCNULTY: Our position, I think, would be opposition. But we recognize that that's better than what the original legislation is. And the reason is because we supported what was done in the Patriot Act because we think it cleaned up a problem that though it only came up occasionally, and in the great majority of cases the system did work out okay, when it does come up, it can create some very serious problems.

SEN. SCHUMER: But you used the new Patriot angle -- Patriot Act language to go far beyond the specific problem that occurred in South Dakota.

MR. MCNULTY: Well, that's kind of what we're here today to talk about. I don't think that's true, but I understand your perspective on it. And I think

that if Arkansas -- if that Patriot Act provision had never passed, what would have happened in Arkansas? Would we have been prohibited from going in and asking someone to step aside and placing a new person in? No. It's just that the person would have served for 210 days, and then the chief judge would have had to re-up the person. So we may still be talking about what happened in Arkansas, and there's a linkage being made to that provision, and some initiative that we took afterwards. And there isn't any linkage in our minds.

SEN. SCHUMER: I would argue to you -- and this will be my last comment -- that knowing that there's an outside independent judge of an interim appointment is -- has a positive prophylactic effect, and makes you more careful as to -- make -- would make any executive more careful about who that interim appointment should be.

Senator Specter.

SEN. SPECTER: Thank you. Are you saying that the Department of Justice will not object to legislation which returns status quo antebellum, because this has been a war, prior to the amendments of the Patriot Act?

MR. MCNULTY: I'm not saying we will or we won't object because, sitting here at the table today, I can't take apposition on that legislation. I have to go back and have that decision made. I'm saying, though, that we support the law as it currently stands, and if we come back and object to the legislative idea that you have talked about here today, that would be the reason. But I'm not specifically saying today that we're going to object. We have to make a decision the appropriate way.

SEN. SPECTER: That's a "don't know."

MR. MCNULTY: Correct.

SEN. SPECTER: Would you be willing to make a commitment on situations where the attorney general has an interim appointment to have a presidential appointment within a specified period of time?

MR. MCNULTY: Don't know.

SEN. SPECTER: Well, that clarifies matters more --

MR. MCNULTY: I mean, I'd have to go back and think about that, but I understand the idea.

SEN. SPECTER: I like -- I like brief answers and brief lines of questioning.

Would you consult with a home-state attorney -- home-state senator -- before the selection of an interim U.S. attorney?

MR. MCNULTY: We have not done that to date. It's --

SEN. SPECTER: I know that. Would you?

MR. MCNULTY: Well, it's something that's worth considering, and it can be a very helpful thing if --

SEN. SPECTER: Will consider.

MR. MCNULTY: Will we consider doing that? SEN. SPECTER: Well, that's what you're saying. I'm trying to find your answer here. Will consider.

MR. MCNULTY: Right. Yes, we'll consider that possibility.

SEN. SPECTER: All right, I have 24 more questions, but they've all been asked twice. (Laughter.) And I would like --

SEN. SCHUMER: It's good to be the chairman, isn't it? (Laughter.)

SEN. SPECTER: -- and I would like to -- I certainly enjoyed it. The gavel was radioactive when I had it. (Laughter.) And I would like to hear the next panel, so I will cease and desist. Thank you.

SEN. SCHUMER: Thank you, and I will still call you Mr. Chairman, out of respect for the job you did.

Senator Whitehouse.

SEN. WHITEHOUSE: Thank you. Sorry to step out for a while. We have the Iraq budget down on the Budget Committee, so we're called in many directions here.

SEN. SCHUMER: (Off mike.)

SEN. WHITEHOUSE: Mr. McNulty, you said that the firings were performance-related and that there was a set procedure that involved career people that led to this action. To go back to The Washington Post, one administration official, says the Post, who spoke on the condition of anonymity in discussing personnel issues, said the spate of firings was the result of, and here's the quote from the administration official, "pressure from people who make personnel decisions outside of Justice" -- capital J, the department -- "who wanted to make some things happen in these places."

MR. MCNULTY: Whoever said that was wrong. That's -- I don't know where they'd be coming from in making a comment like that, because in my involvement with this whole process, that's not a factor in deciding whether or not to make changes or not. So I just don't know --

SEN. WHITEHOUSE: What is not a factor?

MR. MCNULTY: Well, that quote suggests agendas, political or otherwise, outside of the Department. And in looking at how to -- or who should be called or encouraged to resign or changes made they are based upon reasons -- they weren't based upon cause, but they were based upon reasons that were Department-related and performance-related, as we said. And so I don't ascribe any credibility to that quote in a newspaper. SEN. WHITEHOUSE: Okay. Would you agree with me that when you're in the process of selecting a United States attorney for a vacancy, it makes sense to cast your net broadly, make sure you have a lot of candidates, choose among the best and solicit input from people who are sort of outside of the law enforcement universe? Would you agree with me that it's different when you have a sitting United States attorney who is presently exercising law enforcement responsibilities in a district, how and whether you make the determination to replace that individual?

MR. MCNULTY: I think that's a fair concern, and one distinction that's important to keep in mind.

SEN. WHITEHOUSE: You wouldn't want to apply the same process to the removal of a sitting U.S. attorney that you do when you're casting about for potential candidates for a vacancy?

MR. MCNULTY: I'm not sure I fully appreciate the point you're making here. Could I ask you to restate it so I make sure if I'm agreeing with you that I know exactly what you're trying to say?

SEN. WHITEHOUSE: Yeah. I think what I'm trying to say is that when there's an open seat and you're looking for people to fill it --

MR. MCNULTY: Yes.

SEN. WHITEHOUSE: -- you can cast your net pretty broadly, and it's fair to take input from all sorts of folks. It's fair to take input from people in this building --

MR. MCNULTY: Oh, I see what you're saying.

SEN. WHITEHOUSE: -- it's fair to take input from people, you know, in law enforcement. It's fair to take input from people at the White House. It's fair to take input from a whole variety of sources. But it's different once somebody is exercising the power of the United States government and is standing up in court saying, "I represent the United States of America." And if you're taking that power away from them, that's no longer an appropriate process, in my view, and I wanted to see if that view was shared by you.

MR. MCNULTY: I think I appreciate what you're saying there, and I think that when it -- you know, there's two points. The first is that we believe a U.S. attorney can be removed --

SEN. WHITEHOUSE: Of course.

MR. MCNULTY: -- for a reason or for no reason, because they serve at the pleasure of the president. But there's still a prudential consideration. There's got to be good judgment exercised here. And when that judgment is being exercised, there have to be limitations on what would be considered; I think that's what you're suggesting. And there's going to be some variety of

factors that may or may not come out in an EARs report or some other kind of well-documented thing. But it comes down to a variety of factors that have to do with the performance of the job, meaning --

SEN. WHITEHOUSE: But they're truly performance-related, you don't just move around, because, you know, somebody in the White House or somebody in this building thinks, "You know what? I'd kind of like to appoint a U.S. attorney in Arkansas. Why don't we just clear out the guy who's there so that I can get my way." That person might very well, with respect to a vacancy, say, "I want my person there," and that's a legitimate conversation to have, whether you choose it or not. But it's less legitimate when there's somebody in that position, isn't it?

MR. McNULTY: Yeah, I hear the distinction you're trying to make there. I'm not sure I -- I agree with it. The change that is occurring by bringing a new person in versus the change that's occurring by bringing a person in to replace an interim, I'm not sure if I appreciate the dramatic distinction between them. If the new person is qualified and if you're satisfied that it's not going to interfere with an ongoing case or prosecution, it's not going to have some general disruptive effect that not good for the office --

SEN. WHITEHOUSE: Well, there's always some disruptive effect --

MR. McNULTY: There is always some, right. The question is is it undue or is it substantial beyond the kind of normal turnover things that occur? I think that there needs to be flexibility there to make the changes that need to be made.

SEN. WHITEHOUSE: Finally, have the EARs evaluations changed since I had the pleasure of experiencing one? Do you still go and talk to all the judges in the district? Do you still go and talk to all the agencies that coordinate with the U.S. attorney's office in the district? Do you still go and talk to community leaders, like the attorney general and police chiefs who are regular partners and associates in the work of the Department of Justice in those areas?

MR. McNULTY: That's right. And I don't know if you were in the room when I was having this exchange with Senator Schumer, but I want to say it one more time to make it clear. We are ready to stipulate that the removal of U.S. attorneys may or may not be something supported by an EARs report because it may be something performance-related that isn't the subject of what the evaluator saw or when they saw it or how it came up, and so forth. And I -- I go back to this point because I know that your and Senator Schumer's interest in seeing them is because you want to see -- you want to try to identify the thing and say, "Well, there's justification," or there's not, right? And if there's not,

the assumption should not be made that therefore we acted inappropriately or that there wasn't other performance-related information that was important to us.

SEN. WHITEHOUSE: No, but given the scope of the EARS evaluations -- which really went into every nook and cranny of the operational scope of my U.S. attorney's office -- the idea that there is something else somewhere that might appear and justify the removal of a United States attorney, and yet the -- something that all of the judges in the district -- all of the federal law enforcement agencies in the District, the police chiefs and other coordinating partners with that U.S. attorney -- that all of them were completely unaware of and that never surfaced in the EARS evaluation would be somewhat of an unusual circumstance, and I think would require a little bit of further exploration.

MR. MCNULTY: Well, I appreciate the need for further explanation, and I -- and that's where we're committed to working with you to get the answers you're looking for. But maybe EARS reports have changed a bit, but there -- maybe the management of the Department of Justice has changed a bit too, because when we announce priorities, we mean it. And priorities, and how an office has responded to those priorities, may not be measured by the evaluators the way that other things -- the more nuts and bolts things -- are, and that's where those reports are very valuable, but they don't always tell the full story.

SEN. WHITEHOUSE: We'll follow up.

Thank you, Mr. Chairman.

SEN. SCHUMER: Senator Sessions?

SEN. SESSIONS: Thank you. It's a most interesting discussion. I do have very, very high ideals for United States attorneys. I think that's a critically important part of our American justice system. I think sometimes that the Department of Justice has not given enough serious thought to those appointments -- has not always given the best effort to selecting the best person.

President Reagan, when he was elected and crime was a big problem, he promised experienced prosecutors, and I think that was helpful. I'd been an assistant for two years and -- two-and-a-half years and that's how I got selected. And I did know something about prosecuting cases. I'd tried a lot of cases, and I was -- I knew something about the criminal system. So I think Giuliani is correct -- you need to have somebody to contribute to the discussion -- that knows something about the business. With regard to Arkansas, I just took a quick look. I don't think that Mr. Cummins had any prior prosecutorial experience before he became U.S. attorney, did he?

MR. MCNULTY: That's correct. He did not.

SEN. SESSIONS: But Mr. Griffin had at least been a JAG prosecutor in the military and been to Iraq and he tried people there, had he not?

MR. MCNULTY: Tim Griffin had actually prosecuted more cases than a lot of U.S. attorneys who go into office. A lot of people come from civil backgrounds or policy backgrounds, and he actually had been in court, whether it's as a JAG here in Ft. Campbell, where he tried a very high profile case, or

over in Iraq or as a special assistant in that office. And I don't think we should look lightly upon his experience as a prosecutor.

SEN. SESSIONS: And he spent a good bit of time with General Petraeus, I guess -- well, the 101st in Mosul, Iraq with the -- as an Army JAG officer. So anyway, he had some skills and experience beyond politics. But I just -- I want to join with Senator Schumer and my other colleagues in saying I think we need to look at these appointments maybe in the future more carefully. It's a tough job. You have to make tough decisions. I remember -- I guess I took it as a compliment -- people said that Sessions would prosecute his mother if he -- she violated the law. I guess that was a compliment; I took it as -- tried to take it as that. So I wanted to say that.

With regard to the problem of a judge making this appointment, you end up, do you not, with a situation in which the judge is appointing the prosecutor to try the poor slob that's being tried before him?

MR. McNULTY: Right.

SEN. SESSIONS: In other words, here he's appointing the guy to try the guy, and that really is not a healthy approach for a lot of reasons, and it's not consistent with the Constitution, to my way of thinking, which gives the oversight to U.S. attorneys to the Senate in the confirmation process, and to some degree the House because they got financial responsibilities and so forth. Is that a problem in your mind -- that a judge would actually be choosing the person and vouching for the prosecutor who will try the defendant that he's required to give a fair trial to?

MR. McNULTY: We've cited that as one of the issues that justified the provision that was in the Patriot Act.

SEN. SESSIONS: And is there any other circumstances which federal judges appoint other agencies -- other officers of other federal agencies that you know of? MR. McNULTY: I'm not aware of a situation where someone in another agency -- I know certainly situations where someone from private practice was appointed, and that creates difficulties because of --

SEN. SESSIONS: No, I'm really talking about do they ever -- do they have any authority if there's a uncertainty over a Department of Treasury official or a Department of Commerce official -- that a federal judge --

MR. McNULTY: Oh, I see your question.

SEN. SESSIONS: -- would appoint those appointments?

MR. McNULTY: No, this is unique actually, and I think that's another argument --

SEN. SESSIONS: Yeah. I don't think it's a -- I think it's a serious matter. Now Senator Schumer, let's think about this. Would it help -- and I'll ask you your comments, Mr. McNulty -- if we had some sort of speedy requirement to submit the nominee for confirmation and that gives the oversight to the Senate where the Constitution seems to give it? How would you feel about that?

MR. McNULTY: I appreciate what you're trying to do there, and we agree with the spirit of that -- that we want to get the names up here as fast as possible. The problem is we don't control completely the process for getting

the names, because when we're working with home state senators or some other person to provide names to us for us to look at, that's a step that's beyond our control, and it could create problems if there's a set timetable --

SEN. SESSIONS: Well, it could create problems for you, but you're going to have some sort of problems because you're not unilaterally empowered to appoint United States attorneys. You don't have any unilateral right, so somebody's going to have some oversight.

MR. MCNULTY: Yeah.

SEN. SESSIONS: In the other system you had 120 days and the federal judge had the responsibility. So you can't have it like you'd like it.

MR. MCNULTY: Well, I appreciate that and I'm not trying to sound greedy. I'm just saying that there -- if we're talking specifically about the idea of a timetable that's what we'd have to look at. I'd actually like to see the committee just judge us on our track record, and look at the openings -- look at the interims, look at the nominees, and how long it takes to get to a nomination and then the confirmation. And based upon the track record, that's the oversight -- that's the accountability. And I think the record we have is pretty good. I'd like to say one other thing, Senator. Your experience in Alabama and Senator Schumer's experience in New York I think illustrates how appointing somebody to come into a district as an interim who may eventually get nominated and confirmed can be a very positive thing. Both in Senator Schumer's case, where my predecessor, Jim Comey, was actually an assistant United States attorney in my office in eastern Virginia, and he came up as an assistant to New York to be the interim, sent by main Justice to New York, but he had connections there and a root there as a -- where he started his career. And he was an interim, and then he got nominated for that position later. And then the same thing happened in south Alabama. And it can be a very positive way of dealing with a vacancy and putting a competent person in place that doesn't come from within that same office.

SEN. SESSIONS: I do think that we have a responsibility to at some point confirm United States nominees if there's time sufficient to do so because -- but the position cannot go vacant. Somebody's got to hold the job in every district at some point in time because the work of the office can't continue without somebody as the designated United States attorney. So I would note that I don't know Arkansas -- I think you've learned that you got to be careful with these offices. They -- there are perceptions out there.

Senator Pryor's concerned about this appointment. He's a good man -- former attorney general. It would have been better I think had you been a little more careful with that appointment, although the nominee I think is -- got a far better track record than some would suggest -- the new U.S. attorney. I would note that we could give -- I'll just say it this way. Most of us in the Senate do not review the U.S. attorney appointee -- appointments personally. Staff reviews that and we hear if there are objections and get focused on it if there's a problem.

I think we all probably should give a little more attention to it. And we hold the administrations, as they come forward, to high standards about appointments, because it's a very important office.

MR. MCNULTY: Senator Sessions, to be clear on Arkansas, Tim Griffin is an interim appointment. And consulting with Senator Pryor and Senator Lincoln

has been going on for some time. And a nomination in that district will be made in consultation with them. In fact, we'll even take his statement that he made here today and look at it closely and see what it is.

He said today he's going to Attorney General Gonzales. That's the process that we're committed to following. There's no effort there to go around Senator Pryor or Senator Lincoln and find a nominee that they wouldn't support. And so that approach in Arkansas has been the same that we've used in all the other places where we seek the guidance and the input from the home-state senators as we look for someone we can get confirmed by the Senate.

SEN. SESSIONS: I would just conclude by noting that there is a danger when politicians get involved in appointments, and particularly when United States attorneys have to make a tough-charging decisions like the border patrol shooting and other things like that. And we've got to be real careful about that.

I would just say, though, when it comes to priorities of an assistant United States attorney or the Department of Justice or a U.S. attorney, then I think if -- I think the political branch does have a right to question whether the right priorities are being carried out.

Thank you, Mr. Chairman.

SEN. SCHUMER: Well, thank you.

And I want to thank you, Mr. McNulty. This is not an easy thing for you to come and testify to. And I appreciate your candor, admitting that Bud Griffin (sic/Cummins) was not fired for any particular reason.

Your willingness to come and talk with us so we can figure out exactly what went on this week -- as well as your inclination to both submit the EARS reports and give us information about any outside influences on this -- that will be very helpful not only here, but in establishing a smooth working relationship between this committee and the Justice Department and the new Congress. And the proof of the pudding, obviously, is going to be in the eating, but I think we look forward to getting real information about what happened here.

Thank you.

Okay. Let me call our next three witnesses and appreciate them for their patience.

The first is Mary Jo White. She's currently a partner at the New York law firm of Debevoise & Plimpton, the first and only woman to have served as the U.S. attorney for the Southern District, which many view as the best federal prosecutor's office in the country. Ms. White has a lot to do with the fine reputation of that office, and her own reputation for excellence and integrity is unparalleled. A graduate of William & Mary and Columbia Law School. She was an officer of The Law Review. And I also owe her a personal debt of gratitude, because my chief counsel, who's done a great job here, Preet Bharara, sort of worked under her when she lured him away from private practice and he's still there.

Professor Laurie Levenson is currently the professor of law and William M. Rains Fellow at Loyola Law School in Los Angeles. She teaches criminal law, criminal procedure, ethics, anti-terrorism and evidence. Prior to joining the faculty at Loyola Law School, Ms. Levenson spent eight years as an assistant U.S. attorney where she prosecuted violent crimes, narcotic offenses, white-collar crimes, immigration and public corruption cases. She's a graduate of Stanford and the UCLA Law School where she was chief articles editor for The Law Review.

Stuart Gerson is currently head of litigation -- the litigation practice at the law firm of Epstein Becker & Green. He joined as a partner in 1980. Prior to his return to private practice, Mr. Gerson served as assistant attorney general for the Civil Division at the Department of Justice under both President H.W. Bush -- George H.W. Bush -- and later as acting attorney general under President Clinton. He served as an assistant U.S. attorney in the District of Columbia and is a graduate of Penn State and the Georgetown University Law Center.

(The witnesses are sworn.)

Ms. White, you may proceed.

MS. WHITE: Thank you very much, Senator Schumer, Senator Specter.

I'm honored to appear before you today. I've spent over 15 years in the Department of Justice both as an assistant United States attorney -- the best job you could ever have -- and as United States attorney. I served during the tenures of seven attorneys general of both political parties, most recently John Ashcroft. I was twice appointed as an interim U.S. attorney, first in the Eastern District of New York in 1992 by Attorney General William Barr -- and I heard from Mr. Gerson that he also had a hand in signing those papers -- and then in 1993, appointed as interim U.S. Attorney in the Southern District of New York by Attorney General Janet Reno. Most recently, as Senator Schumer indicated, I served for nearly nine years as the presidentially appointed U.S. attorney in the Southern District of New York from 1993 until January 2002.

Before I comment substantively on the issues before the committee, let me make very clear up front that I have the greatest respect for the Department of Justice as an institution, and I have no personal knowledge of the facts and circumstances regarding any of the reported requests for resignations of sitting United States attorneys. Because I do not know the precipitating facts and circumstances, I'm not in a position to either support or criticize the particular reported actions of the department and do not do so by testifying at this hearing.

I am, however, troubled by the reports that at least some United States attorneys, well regarded, have been asked by the department to resign without any evidence of misconduct or other apparent significant cause. And I -- you know, I do find that troubling. I think that the appearance -- if it happened, in particular -- but even the appearance of that tends to undermine the importance of the office of the United States attorney, their independence and the public sense of evenhanded and impartial justice.

Casual or unwisely or insufficiently motivated requests for U.S. attorney resignations -- or the perception of such requests -- diminish our system of justice and the public's confidence in it. United States attorneys are political appointees who do serve at the pleasure of the president. It is thus

customary and expected that the U.S. attorneys, generally, will be replaced when a new president of a different party is elected. There is also no question that presidents have the power to replace any United States attorney they have appointed for whatever reason they choose. In my experience and to my knowledge, however, it would be unprecedented for the Department of Justice or the president to ask for the resignations of U.S. attorneys during an administration, except in rare instances of misconduct or for other significant cause. This is, in my view, how it should be.

U.S. attorneys are the chief law enforcement officers in their districts, subject to the general supervision of the attorney general. Although political appointees, the U.S. attorneys once appointed play a critical and nonpolitical, impartial role in the administration of justice in our federal system.

Senator Schumer alluded to this, but in his well-known address to the United States attorneys in 1940, then-Attorney General Robert H. Jackson, although acknowledging the need for some measure of centralized control and coordination by the department, emphasized the importance of the role of the U.S. attorneys and their independence. He said, "The prosecutor has more control over life, liberty and reputation than any other person in America. His discretion is tremendous. Because of this immense power, the post of United States attorney, from the very beginning, has been safeguarded by presidential appointment, requiring confirmation of the Senate of the United States. Your responsibility in your several districts for law enforcement and for its methods cannot be wholly surrendered to Washington and ought not to be assumed by a centralized Department of Justice. Your positions are of such independence and importance that while you are being diligent, strict and vigorous in law enforcement, you can also afford to be just."

In my view, the Department of Justice should guard against acting in ways that may be perceived to diminish the importance of the Office of United States Attorney or of its independence, taking nothing away from the career assistant United States attorneys and other career attorneys in the Justice Department.

Changing a United States attorney invariably causes disruption, and often loss of traction in cases and investigations. This is especially so in sensitive or controversial cases where the leadership and independence of the U.S. attorney are often crucial to the successful pursuit of such matters, particularly in the face of criticism or political backlash.

Replacing a U.S. attorney can, of course, be necessary or part of the normal and expected process that accompanies a change of the political guard. But I do not believe that such changes should, as a matter of sound policy, be undertaken lightly or without significant cause.

If U.S. attorneys are replaced during an administration without apparent good cause, the wrong message can be sent to other U.S. attorneys. We want our U.S. attorneys to be strong and independent in carrying out their jobs and the priorities of the department. We want them to speak up on matters of policy, to be appropriately aggressive in investigating and prosecuting crimes of all kinds and wisely use their limited resources and broad discretion to address the priorities of their particular districts.

In my opinion, the United States attorneys have historically served this country with great distinction. Once in office, they become impartial

public servants, doing their best to achieve justice without fear or favor. I am certain that the Department of Justice would not want to act in such a way or have its actions perceived in such a way to derogate from this model of the nonpolitical pursuit of justice by those selected in an open and transparent manner.

Thank you very much. I'll be happy to answer questions.

SEN. SCHUMER: Thank you, Ms. White.

Professor Levenson.

MS. LEVENSON: (Off mike.) Does that work now?

SEN. SCHUMER: Yes.

MS. LEVENSON: Okay. I served in the United States attorney's office for four different United States attorneys of both parties and one interim United States attorney. I believe that we, in fact, have the best prosecutorial system in the world. But I'm here because I fear that the operation of that system and its reputation for excellence is jeopardized because of the increased politicization of the United States attorney's offices.

As this committee knows, the most recent concerns have focused on a rash of dismissals of experienced and respected United States attorneys across the country. There's at least a strong perception by those in and outside of the United States attorney's office that this is not business as usual, that qualified United States attorneys are being dismissed and their replacements who are being brought in do not have the same experience and qualifications for the position.

Moreover, there's a deep concern that the interim appointments by the attorney general will not be subject to the confirmation process, and therefore there will be no check on those qualifications and the interests of the offices will be sacrificed for political favors.

I want to make three basic points in my testimony today. One, politicizing federal prosecutors does have a corrosive effect on the federal criminal justice system. It is demoralizing to AUSAs. These are the best and the brightest, who go in there because they are dedicated public servants. And they expect their leaders to be the same.

It's also, as we've heard, disruptive to ongoing projects. It creates cynicism among the public. It makes it harder in the long run to recruit the right people for those offices. And as Mr. McNulty said, if you lose the AUSAs, you lose the greatest assets of all.

Second, although there's always been a political component to the selection of United States attorneys, what is happening now is categorically different. Traditionally we saw changeover when there was a new administration. Thus when President Clinton came in, he had every right and did ask for those resignations.

But we have never seen what we're seeing today, which is, in quick succession, seven U.S. attorneys who have excellent credentials, successful records and outstanding reputations being dismissed midterm. And we've never seen their interim replacements, at least some of them, coming in with the lack

of experience and qualification they have and being put in on an interim basis indefinitely without the prior process that we had for evaluation.

We all recognize that federal prosecutors serve at the pleasure of the president, and the Department of Justice controls many of the policies and the purse strings. But it has been a strong tradition of local autonomy and accountability and continuity that has made these district U.S. attorneys successful, not the arbitrary dismissals in order to give others a fresh start. This is an important tradition. With local autonomy and continuity comes a greater ability to serve the needs of the district.

Third, and finally, in my opinion the prior system, which allowed the attorney general to indeed appoint the interim U.S. attorney for 120 days, and then if there's no confirmed U.S. attorney have the chief judge make an interim appointment, was not only constitutional, but frankly had advantages over the most recently placed provisions.

First, it's constitutional because, under the appointments clause and the accepting clause to that, inferior officers, which U.S. attorneys are, may be appointed by the president, courts of law or heads of department. And under the Supreme Court's decision written by Chief Justice Rehnquist in Morrison versus Olson, the role of judges in appointing prosecutors has been held to be constitutional. In that case, which dealt with independent counsel, the court cited a lower court case dealing with interim U.S. attorneys, and cited it favorably.

I don't think any of the panelists today and any of the witnesses I heard today, in fact, challenge the constitutionality of having judges in the process. But as Mr. Gerson eloquently states in his written testimony, it's one of congressional discretion.

As a matter of discretion, I think that the prior system, the one that Senators Specter and Feinstein are talking about returning to, has strong benefits in comparison to the new approach. Under that approach, the attorney general makes the initial appointment. It gives plenty of time to the department to come up with a nominee and present that nominee. And then, if that is not able to happen in a timely fashion, the chief judge starts making appointments.

And can chief judges do this in a fair way? Not only can they, but they have for decades. And that's because, in my experience, frankly the chief judges know the district often better than the people thousands of miles away in the Department of Justice. They know the practitioners in their courtrooms. They care about the cases in their courtroom. And those judges have the credibility and confidence of the public in making their appointments. They appoint magistrate judges and they even appoint federal public defenders, while not government officials, nonetheless, readily and regularly appear before those judges.

I personally have never heard and seen of a case where a judge exerted any pressure on the appointment of an interim U.S. attorney or when that person appeared before them because he had made that appointment. And I think we have to compare it to the current system under the Patriot Act, where only the attorney general is involved in the process and those interim appointments can be forever. And there may be no or little oversight by the Senate because there is not the traditional confirmation process.

So in conclusion, I'd like to say that whether or not the current attorney generals' recent actions have been in good or bad faith, their impact has been the same. It has demoralized the troops. It has created the perception that politics is playing a greater role in federal law enforcement. And it has stripped the Senate of its important role in evaluating and confirming the candidates.

In my opinion, the healthiest thing to do is not to rely just on what I'm sure are the sincere promises of the Department of Justice officials of what they're not going to do with this interim power, but to put in some statutory scheme that allows flexibility of interim appointments but still has accountability. That would mean the attorney general could make some interim appointments but would restore the Senate's role as a check and balance.

With that, I welcome any questions from the committee. Thank you.

SEN. SCHUMER: Thank you, Professor Levenson.

Mr. Gerson.

MR. GERSON: Mr. Chairman, Senator Specter, it's a great delight always to testify before this committee, especially as an old Justice Department hand. I'll concur. My wife thinks the best job I've ever had is being her husband. But in terms of what I got paid to do, certainly being an assistant United States attorney was a terrific job.

And let me talk to a couple of contrarian issues.

But first, Senator Schumer, given the lateness of the hour, I ask your parliamentary discretion in incorporating my written testimony as if read here and in full.

SEN. SCHUMER: You are indeed an old Justice Department hand. Thank you.

Without objection, Mr. Gerson's entire statement will be read into the record.

MR. GERSON: Thank you.

I came here different, perhaps, from anybody else, with an agenda. And coming last, I have the pleasure of having seen that agenda satisfied. I thought and think that S. 214 is a very bad idea. I thought that Senator Feinstein's reaction, while understandable, was not finely enough drawn. And certainly returning to the previous method of appointments serially of interim United States attorneys is vastly superior to what was being proposed, which was taking the executive branch out of an executive function. But that battle now has been won.

I urge you, though, to have hearings on it, because it's not -- the idea of including the judiciary at all is not without problems. Different from Ms. Levenson, I actually know and have experienced some cases where judicial intervention has proved ill-advised and badly directed.

But at the end of the day, I came here to speak for the Constitution, and I think the Constitution has gotten a good break out of the day, that we function best when the executive does things that are committed to the executive

branch, the legislature does things that are committed to the legislative branch, and the judiciary fulfills a judicial function, and that those roles, when stuck to, create the right kind of dynamic tension that the framers had in mind and which has made our written Constitution the oldest written constitution in the world.

There's a certain sense of deja vu in all of this. One of the reasons, perhaps, that I was invited is I probably superintended the most dismissals of United States attorneys that anybody ever did, and I did it accidentally when, by force of circumstances -- and Senator Schumer and Senator Specter remember my unusual circumstance when I ended up as the long-term acting attorney general. That had never happened in American history, where a president was saddled for more than a few days with an attorney general of the other party. There's something to be said for that, by the way.

And in this case, it was easy to support President Clinton's decision to dismiss U.S. attorneys, many of them on the same day, many of them that had served full terms, and many of them that were involved in ongoing investigations, because it was a presidential prerogative.

And I just note with some irony that I was accused by some of my colleagues of being involved in the termination of the United States attorney in Arkansas, who was in the midst of -- actually she had recused herself, but the office was in the midst of the Whitewater investigation, and that was alleged to have been a cover-up on behalf of President Clinton.

Of course, pressure then turned that occupation over to a judicially selected officer and created the situation where a prosecutor responsible to the judicial branch caused a great deal of discomfort both to the president and to what is now the Democrat majority. And I urge everyone to remember that in looking at the role of the judiciary in a restored context to the one that Senator Schumer, I think, accurately described.

The greatest value of the judiciary is it tells the other -- not just the executive branch, but the legislative branch -- to get on with their constitutional business and move on to permanent United States attorneys with due speed. That's the value of the judicial part of it, not judges picking prosecutors, because that's an anomalous role for the judiciary.

Let me also address one other point, and that's -- I'm as great an admirer of Justice Jackson as anyone and have learned a lot about what the political branches should do and shouldn't do from reading Justice Jackson. But I want to say a word on behalf of centralization and the proper role of politics.

I've seen much of this before. I've dealt with problems between senators and presidents for many years. Senator Specter and I and Senator Heinz resolved an issue in the Reagan administration where there was a dispute of who should be the United States attorney for the eastern district of Pennsylvania.

These disputes are old and oftentimes difficult. But it should be remembered that there were many valid reasons why the main Justice component of the Justice Department ought to be able to exert its will over United States attorney's offices in a prudent way and why perhaps it hasn't happened enough.

I cite several instances of where I myself felt compelled to act and think that I did justice. I'm of an age where some of the things I remember

best perhaps didn't happen and I'm informed that at least one of my examples may be flawed. Although what I state is true, I attribute something to the then-U.S. attorney for the southern district of New York that perhaps I shouldn't have. I apologize to him, and will personally if I have contradicted his memory.

But several cases immediately came to mind where I know that United States attorneys were not adequately attending to national priorities. One was in the savings-and-loan crisis. It was very clear that a centrally directed civil system was vastly outperforming the dispersed, decentralized way that the criminal cases in the savings-and-loan area were being handled, and there were many U.S. attorneys that didn't do a good job. And it wasn't until main Justice imposed task forces on them that that situation improved.

And then I pointed out, lastly, a situation that I had where, if I had listened to the United States attorney and indeed to the chief judge of the district in which the case was being tried, I would have been complicit in what I thought was an act of racial discrimination in jury selection, albeit involving a minority public official of the opposite party to me. I felt it important to impose my will on the United States attorney.

I think that justice was done. It didn't matter to me that it was criticized. It was fairly illuminated in the public record, and that's all that really mattered. But it was certainly something that was warranted no matter how many people I displeased and no matter what an ill effect I might have had on the morale in the given office.

I don't know that morale generally in the United States attorney's offices is being challenged. I haven't seen it. And I do work that involves a lot of United States attorneys. I subscribe to Mary Jo White's analysis of what a United States attorney's office ought to be. I hope that my career, in retrospect, will be reviewed and held as consistent with that tradition.

I know that I got a great deal of support from main Justice when I was a prosecutor of cases that weren't generally popular, including the prosecution of a United States senator, including being involved in one of the more controversial Watergate cases. And it was people like Henry Petersen, the legendary figure who was then the head of the criminal division, who provided a lot of support for what a rookie line assistant, assistant U.S. attorney, thought needed to be done. And that tradition still is present.

Somebody I got to know in my early days the first time I was in the Justice Department is Dave Margolis. You heard about him earlier, and I know he's a person who is familiar to you. It's not the practice of the Justice Department to throw career people to the winds of political judgments and political testimony, but he and so many other people are the folks who make this system go. They're there whoever are United States attorneys. Every office has them. And Ms. White and I have been honored, as has Ms. Levenson, been honored to serve with people like that. So I happily conclude my remarks noting that what I came here to do was achieved when Senator Feinstein took her seat and announced what I think is a beneficial compromise.

Thank you.

SEN. SCHUMER: Thank you, Mr. Gerson. And we did say we'd try to wrap up by 12:30, so I'll keep my questions brief. And we may submit some others in writing.

First to Mary Jo White. Do you think -- first, what should be the standard for firing a presidentially appointed U.S. attorney? What have you understood the historical standard to be? And is it ever wise or appropriate to fire a Senate-confirmed U.S. attorney simply to give another person a chance?

MS. WHITE: Senator, in answer to that, clearly the president has the power to remove any U.S. attorney for any reason or no reason, but as a matter of policy and as a matter of precedent as well, that, in my experience during an administration, has not been done and I don't believe should be done, absent evidence of misconduct or other significant cause. And I think we have to be careful about the slippery slope of performance-related, because I don't think a U.S. attorney is like any other employee in the sense that it's a presidential appointee. It should be for serious significant cause. It does cause disruption, it does cause a tremendous appearance problem, it can disrupt cases. So I think the historical pattern has been absent misconduct or significant cause that you don't unseat a sitting U.S. attorney.

SEN. SCHUMER: What you say makes a great deal of sense. Even assuming that some people were unhappy with the priorities, say, of Miss Lamb -- I mean, the problems that this has created, I'll bet the Justice Department wishes they hadn't done what they did. And we don't know the record. Maybe there's some smoking gun, but it's hard -- it's difficult to believe that, given the external reports.

Professor Levinson, I just want to ask you since I read your testimony last night and heard it again here with care, did you find the statement -- I won't call it an admission -- of Deputy Attorney General McNulty that he -- that they removed the Arkansas U.S. attorney -- well, I was going to say troubling, shocking, unprecedented. Would you disagree with any of those words?

MS. LEVINSON: No, I wouldn't. I mean, in some ways it was refreshing to hear him say outward that --

SEN. SCHUMER: You bet.

MS. LEVINSON: -- he fired him not because he had done anything wrong, but because they wanted to give somebody else a political chance. That's precisely the problem. The job of U.S. attorney should not be a political prize. There's too much at stake for the district and for the people who work in that office.

SEN. SCHUMER: Right. And finally, to Mr. Gerson, in your time at the Justice Department, which is extensive, did you ever see a U.S. attorney asked to resign for no reason other than to give someone else a shot? MR. GERSON: Yes.

SEN. SCHUMER: Want to give us the example?

MR. GERSON: Well, I can't give you a name, and I've tried to think back over this. It was certainly suggested to individuals during my time at the midterm that perhaps it was time to do something else. I --

SEN. SCHUMER: In the two-year or the four-year?

MR. GERSON: Four-year.

SEN. SCHUMER: Four-year.

MR. GERSON: Four-year. But I note that all of -- it would seem -- I don't want to be an apologist for anybody here, and I agree with you that the situation in San Diego is worth examining. I know that the person who was deposed, I thought her to be a very fine lawyer, but I don't know any of the circumstances. I dealt with her in health care cases, where she was quite vigorous, not in immigration cases that I have nothing to do with.

But all of the individuals involved seemed to have served four years and were in a subsequent term, and I think that's worth knowing. They'd been allowed to serve that time, and I guess I'm taking a contrarian view, which is I don't want to adopt some categorical vision that there's anything inherently wrong with looking at an organization while it's healthy and making a change. I don't carry any presumption that if someone is doing a good job, they're automatically entitled to continue. On the other hand, I'm a conservative in most every way, and I believe in least action, and I generally try to do something for a reason. And I don't conceive that I'd have made a change without a reason to do so.

SEN. SCHUMER: Final question to you, sir. Given the fact that the replacement in the seven we talked about was probably contemplated before the day they were actually dismissed, isn't 120 days enough?

MR. GERSON: It should be. Yeah, I'd -- it should be, but it should be -- let me make it clear. I -- Senator Specter and I have argued with each other over almost three decades now on separation questions. I knew him when he was the D.A., so I go back a ways.

SEN. SPECTER: (Off mike.)

MR. GERSON: (Laughter.) We were both very young.

I think that it should be a notice both to the executive branch and to the legislature. I don't think that we benefit from having interim anything for a long period of time, and that ought to move expeditiously to having permanent people who whether or not it's constitutionally required, as a matter of constitutional custom, have their nominations submitted to the Senate, and the Senate give advice and consent.

SEN. SCHUMER: Thank you.

Senator Specter.

SEN. SPECTER: I thank you -- I thank Mr. Chairman. I haven't been in a situation like this. The chairman wants to end this hearing at 12:30. It's now 12:29-and-a half.

SEN. SCHUMER: You can speak as long as you wish.

SEN. SPECTER: I haven't been in a situation like this since I was invited in 1993 to be the principal speaker at the commissioning of the Gettysburg in Maine. And when I looked at the speaker's list, I was ninth. There was an admiral from Washington, there was an undersecretary of State, there was the governor, there was Senator George Mitchell, there was Senator Bill Cohen, and I was called upon to speak at 4:32. And I was told as I walked to the podium that the commissioning had to be at 4:36 -- (laughter) -- because

that's when the tide was right. So this brings back fond recollections to be called upon after all the time has expired.

SEN. SCHUMER: Well, I just want to remind my colleague a rising tide lifts all boats. (Laughter.)

SEN. SPECTER: I only wish there were a rising tide in Washington. (Laughter.) But we have the power in the Senate to change the clock. I was on the Senate floor one day when we had to finish activity by midnight, and we stopped the clock at 10 minutes to 12 --

SEN. SCHUMER: I heard about that.

SEN. SPECTER: -- until we finished our work.

But on to the serious questions at hand for no more than three minutes. Mr. Gerson, it's been a very important subject today as to what was a person's best job. Now you testified that your wife thought being her husband was your best job, but it seems to me that begs the question. Did you think that was your best job? (Laughter.)

MR. GERSON: I'd darn well better.

SEN. SPECTER: Well, that clears the air on that.

In Morrison v. Olson, the appointment of a special prosecutor was up, and the special prosecutor statute provided that the appointing judge could not preside over any case in which a special prosecutor was involved. Ms. White, do you think we might bring that rule to bear so that if we have the chief judge make the appointment after 120 days that the prosecutor ought not to be able to appear before that judge? MS. WHITE: Certainly, I think that's wise particularly from an appearance point of view, whether dictated as a matter of constitutional law. And again, I did not go into the subject of the best mechanism for appointing interim U.S. attorneys because I think the solution that seems to be on the table -- not perfect, at least in my view -- is probably the best one, achieving the best balance. Not without its issues, though.

SEN. SPECTER: Professor Levinson, don't you think it would be a good idea when there is a change of administration to at least make some sort of an inquiry as to whether the firing of all -- there were only 92 U.S. attorneys fired by Attorney General Gerson, as I understand it. I understand they kept Chertoff in North ---- in Jersey at the request of Senator Bradley to put to -- not that that wasn't political, but don't you think there ought to be some inquiry as to what's happening, and whether there's some politically sensitive matter so that you just don't have a carte blanche rule?

MS. LEVINSON: Well, I do --

SEN. SPECTER: Whoa, wait a minute. I haven't finished my question. And don't you think that Attorney General Gerson acted inappropriately in firing all of those people when Clinton took office? After all, Ruckle's (ph) house resigned and Richardson resigned. They wouldn't fire Archibald Cox. Do you think that Gerson was the Bork of his era? (Laughter.)

MS. LEVINSON: I think the record speaks for itself, Senator.

From: Perino, Dana M.
Sent: Thursday, March 08, 2007 8:53 AM
To: Martin, Catherine
Subject: Re: Did you talk with Solomon tonight?

Nah _ not them. I'll call you with my thought. Just landed!

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

From: Martin, Catherine
To: Perino, Dana M.
Sent: Thu Mar 08 07:33:27 2007
Subject: Re: Did you talk with Solomon tonight?

Who do you think? I told pete and tim today in an effort to get their help on outreach strategy but I doubt they are talking to him.

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

From: Perino, Dana M.
To: Martin, Catherine
Sent: Wed Mar 07 20:53:31 2007
Subject: Fw: Did you talk with Solomon tonight?

Criminy - this is bad. Who would say such things to a reporter?

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

From: Roehrkasse, Brian
To: Perino, Dana M.
Sent: Wed Mar 07 20:52:39 2007
Subject: Re: Did you talk with Solomon tonight?

Ok. Thanks. Who is point in press ofc in your absence?

The source appeared to be someone at a very high level...stated that Mueller briefed potus today, potus was very concerned, doj is taking a number of immediate steps to put in immediate oversight to "soften the political blow," etc....

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

From: Perino, Dana M. <Dana_M_Perino@who.eop.gov>
To: Roehrkasse, Brian
Sent: Wed Mar 07 20:48:12 2007
Subject: Re: Did you talk with Solomon tonight?

Say what?! I have no idea who spoke to him. Is he writing for tonight? Taking off in about an hour for s america trip. Will have bb. Cell is same.

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

From: Roehrkasse, Brian
To: Perino, Dana M.
Sent: Wed Mar 07 20:44:04 2007
Subject: Re: Did you talk with Solomon tonight?

Solomon has a wh source that told him about nsls and that the idea to fire us atty originated in a meeting with kyle and bill kelly about getting judicial nominees through in the last two years. He is not writing for tomorrow, but is working on both stories for Friday. Let's talk tomorrow to make sure we're synched up.

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

From: Perino, Dana M. <Dana_M._Perino@who.eop.gov>
To: Roehrkasse, Brian
Sent: Wed Mar 07 20:40:20 2007
Subject: Re: Did you talk with Solomon tonight?

No _ what's he up to? David Johnston told me he's not writing for tomorrow.

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

From: Roehrkasse, Brian
To: Perino, Dana M.
Sent: Wed Mar 07 20:24:34 2007
Subject: Did you talk with Solomon tonight?

From: Scudder, Michael Y.
Sent: Thursday, March 08, 2007 11:51 AM
To: Kelley, William K.
Subject: RE: never saw your email...

Yes, that's better. I'll send the answer to Dana and copy you.

-----Original Message-----
From: Kelley, William K.
Sent: Thursday, March 08, 2007 11:46 AM
To: Scudder, Michael Y.
Subject: RE: never saw your email...

Instead of "best made", how about "made".

-----Original Message-----
From: Scudder, Michael Y.
Sent: Thursday, March 08, 2007 11:39 AM
To: Kelley, William K.
Subject: FW: never saw your email...

How about answering this way:

The Attorney General is responsible for keeping the President informed of the Department of Justice's efforts to implement the Administration's policy and priorities. The President relies upon the Attorney General to manage the Justice Department's daily affairs, including criminal investigations and prosecutions. Decisions of whether or how to investigate or prosecute cases are best made by the Attorney General and the men and women, including the many career attorneys, who serve within the Department of Justice.

-----Original Message-----
From: Perino, Dana M.
Sent: Thursday, March 08, 2007 9:47 AM
To: Scudder, Michael Y.
Subject: Re: never saw your email...

Got it - how do I answer the follow up? Is it inappropriate for a president to be briefed about an ongoing criminal investigation?

-----Original Message-----
From: Scudder, Michael Y.
To: Perino, Dana M.
CC: Martin, Catherine; Kelley, William K.
Sent: Thu Mar 08 09:29:08 2007
Subject: RE: never saw your email...

Dana:

I've conferred w/ Fred and Bill, and they agree w/ the "no comment" position on these questions. Let us know if you learn more about what Waas has in the works.

Thanks,

Mike

-----Original Message-----
From: Perino, Dana M.
Sent: Wednesday, March 07, 2007 8:00 PM
To: Scudder, Michael Y.
Cc: Martin, Catherine; McIntosh, Brent J.; Kelley, William K.

Subject: RE: never saw your email...

Ok - I'll wait to respond to him

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

From: Scudder, Michael Y.
Sent: Wednesday, March 07, 2007 7:39 PM
To: Perino, Dana M.
Cc: Martin, Catherine; McIntosh, Brent J.; Kelley, William K.
Subject: RE: never saw your email...

Here are my thoughts on the questions:

- 1 - no comment (for reasons we discussed earlier)
- 2 - no comment (P decisions regarding security clearances are strictly confidential)
- 3 - no comment (same reason as #2; also not appropriate for Pres to comment on existence, scope, or status of IG investigations)
- 4 - no comment (asks for communications to/from Pres)
- 5 - I share Brent's understanding of the facts. I'm for not commenting on the TSP clearance issues. Perhaps you could confirm, consistent w/ the Privacy Board's statements to the AP (Hope Yen) earlier this week, that the Board has received a briefing from DOJ on the FISA court orders and was impressed by what they learned. The Board's chair, Carol Dinkins, told the AP that "The program is structured and implemented in a way that is properly protective and attentive to civil liberties."

I'll discuss this subject matter w/ Fred and Bill in the morning and pass along any guidance they may have.

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

From: Perino, Dana M.
Sent: Wednesday, March 07, 2007 6:55 PM
To: Scudder, Michael Y.
Cc: Martin, Catherine; McIntosh, Brent J.
Subject: FW: never saw your email...

Mike - per our earlier discussion -- this guy has good sources and writes a lot of stories that have some staying power. Could you take a look at his questions below? I'm copying Brent in case he recalls any of this -- there's some we can't comment on...

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

From: murraywaas
Sent: Wednesday, March 07, 2007 4:18 PM
To: Perino, Dana M.
Subject: Re: never saw your email...

Hi Dana:

1-- According to DOJ officials, the AG has told them the NYT probe has been a priority of the administration and the president. And the AG has said he has spoken to President Bush and briefed him about the status of the investigation.

During those discussions, did the AG provide specific information about the investigation? For example, such as whether or who might be called before a federal grand jury, who suspects were, or any information particular to the investigation itself.

2-- The President personally made the decision to deny security clearances to the Office of Public Responsibility to conduct a review of the propriety of DOJ officials authorizing and overseeing the NSA program.

Do you have any additional comment on that?

3. Since that time, the DOJ Inspector General has initiated a probe of some of the things that OPR was to examine, and security clearances were granted. Did the President approve the granting of security clearances in that instance?

4-- After the President made the decision to deny OPR the security clearances, senior DOJ officials discussed as part of a damage control strategy discrediting the head of OPR, Marshall Jarrett. Among other things, they discussed disseminating information to the media about his party affiliation, the fact that he was appointed by the President, etc, and in some instances did, while in others did not, provide that information to the press. Did President Bush know about this from his discussions with the AG, or anyone else at the White House?

(if the President didn't know, and no-one at the White House did, why not knock it down off the record, so the story doesn't linger?)

5-- In correspondence made public about the OPR issue, Jarrett, the OPR head, complains that while he could not get clearances to do his investigation, a privacy board of private citizens, who would obviously be much greater security risks, got such clearances. I have an administration official who will only say off-the-record basis that Jarrett is mistaken. I was hoping that you or someone from the White House would say this for the record.

If true, it is a falsehood that has been needlessly sitting out there, and I would like to clarify the record, and it is something that could be repeated in stories by other journalists on this subject.

Thanks again for the quotes you gave me. If you want, I can send them back to you later, in the context of how I want to use them, and you can refine them or change them if you want.

Best,

Murray

----- Original message -----
From: "Perino, Dana M."
> Did you send it? If not, please reply to this one with the story
> you're working on and your specific questions for me. thanks
>
>

From: Scudder, Michael Y.
Sent: Thursday, March 08, 2007 12:23 PM
To: Perino, Dana M.
Cc: Kelley, William K.
Subject: RE: never saw your email...

We propose answering the follow-up question this way:

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Have a fun trip.

Mike

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Subject: Re: never saw your email...

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>

From: Rethmeier, Blain K.
Sent: Thursday, March 08, 2007 3:36 PM
To: Snow, Tony; Kelley, William K.; Kaplan, Joel; Wolff, Candida P.; Martin, Catherine; Perino, Dana M.; Sullivan, Kevin F.; Oprison, Christopher G.; Fielding, Fred F.; Bartlett, Dan; Looney, Andrea B.; Fiddelke, Debbie S.; Frech, Christopher W.
Subject: FYI: Rove defends Bush administration firing of U.S. attorneys

Rove defends Bush administration firing of U.S. attorneys

By JON GAMBRELL Associated Press Writer

LITTLE ROCK (AP) _ Presidential adviser Karl Rove on Thursday defended the Bush administration's firing of several U.S. attorneys, stressing the positions serve at the pleasure of the president.

"My view is this is unfortunately a very big attempt by some in the Congress to make a political stink about it," Rove told a crowd of more than 700 at an event hosted by the University of Arkansas Clinton School of Public Service. "The question is, did they have the same reaction if they were in the Congress in the '90s or did they have the same reaction if they were in the '80s? Every president comes in and appoints U.S. attorneys and then makes changes over the course of their time."

At least eight U.S. attorneys have been ousted from office in recent months, including Bud Cummins, who served in Arkansas' eastern district. The firings sparked congressional subpoenas and hearings this week, where several described what they said was improper pressure by Republicans on pending cases.

Cummins was replaced by interim U.S. Attorney Tim Griffin, who once served as Rove's assistant.

Rove said some of the attorneys were "removed for cause," while others were removed over performance issues. The administration removed one attorney for refusing to ask for the death penalty in a case, which Rove referred to as "against policy." As for fired attorney Carol Lam of San Diego, Calif., Rove said officials removed her for failing to file immigration cases.

However, a Justice Department official told a House panel this week Cummins fell into none of the categories laid out by Rove.

"This is normal and ordinary," Rove said. "What happened in this instance was there were seven done all at once and people wanted to play politics with it."

Rove said the administration wanted all of its interim U.S. attorneys to go before the Senate for confirmation hearings. Under a new provision of the Patriot Act, interim attorneys can serve without Senate confirmation, as opposed to the 120-day period once in place.

Griffin has said he won't seek confirmation because of the "partisan circus" surrounding his appointment. However, if the Bush administration doesn't nominate a replacement or ask Griffin to leave, he could serve through the remainder of the president's term.

Griffin, who attended Thursday's speech, said he was working on building relationships with counties in his district and providing civil rights workshops in different communities.

"I'm not going to be a chairwarmer and just sit there. I'm going to do all that I can in the time I'm given," he said. "Despite all of the external press, I'm staying focused every single day, whether that be the day I have left, the week I have left or the three months I have left."

Rove spoke for about an hour at the event in downtown Little Rock, touching on the 2008 presidential election, the war in Iraq and other issues during a question-and-answer segment. However, Rove said White House lawyers advised him not to speak about former vice presidential aide I. Lewis "Scooter" Libby, who was convicted of perjury and obstruction

charges after an investigation into the 2003 leak of CIA operative's name.

"I can say anybody who worked with him and anybody who knows him and his wife Harriet Grant is sad about it," Rove said. "It was a painful moment but we're going to let the legal process move forward."

From: Sullivan, Kevin F.
Sent: Thursday, March 08, 2007 3:36 PM
To: Martin, Catherine; Scolinos, Tasia; Roehrkasse, Brian
Subject: Little Rock AP Story - Rove speech/US Attorneys

heads up on this...

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From: Fratto, Tony
Sent: Thursday, March 08, 2007 4:39 PM
To: Perino, Dana M.
Subject: FW: AP - Rove defends Bush administration firing of U.S. attorneys

Grrrr.....

From: White House News Update [mailto:News.Update@WhiteHouse.Gov]
Sent: Thursday, March 08, 2007 4:35 PM
To: Fratto, Tony
Subject: AP - Rove defends Bush administration firing of U.S. attorneys

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From: Perino, Dana M.
Sent: Thursday, March 08, 2007 4:53 PM
To: Fratto, Tony
Subject: Re: AP - Rove defends Bush administration firing of U.S. attorneys

Story never ends

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

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To: Perino, Dana M.
Sent: Thu Mar 08 16:38:34 2007
Subject: FW: AP - Rove defends Bush administration firing of U.S. attorneys

Grrrrr.....

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Sent: Thursday, March 08, 2007 3:52 PM
To: Rethmeier, Blain K.; Snow, Tony; Kelley, William K.; Kaplan, Joel; Wolff, Candida P.; Martin, Catherine; Perino, Dana M.; Sullivan, Kevin F.; Oprison, Christopher G.; Fielding, Fred F.; Bartlett, Dan; Looney, Andrea B.; Fiddelke, Debbie S.; Frech, Christopher W.
Subject: FYI: Senate Republicans Deliver Sharp Criticism of Gonzales
Importance: High

Senate Republicans Deliver Sharp Criticism of Gonzales

Senators Say Attorney General Fired Prosecutors Without Explanation

By Paul Kane and Dan Eggen
Washington Post Staff Writers
Thursday, March 8, 2007; 3:36 PM

Senior Senate Republicans today delivered scathing criticism of Attorney General Alberto R. Gonzales for his handling of the firing of eight U.S. attorneys, joining Democrats in chagrin that the prosecutors were dismissed without adequate explanation.

Sen. Arlen Specter (R-Pa.), the top Republican on the Senate Judiciary Committee, suggested that Gonzales's status as the nation's leading law enforcement officer might not last through the remainder of President Bush's term, pointedly disputing the attorney general's public rationale for the mass firings.

"One day there will be a new attorney general, maybe sooner rather than later," Specter said at a committee hearing where a new round of subpoenas to the Justice Department was considered.

After the meeting, Specter declined to elaborate on that remark, but told reporters that most of the blame for the ongoing controversy rests with the attorney general. "It's snowballing, mostly with the help of the Department of Justice," he said.

Two of the Justice Department's most vocal defenders on the issue, Sens. Jon Kyl (R-Ariz.) and Jeff Sessions (R-Ala.), also had sharp words for senior Justice Department officials who attacked the credibility of the prosecutors publicly by saying they performed poorly at their jobs.

"Some people's reputations are going to suffer needlessly," Kyl said. "Hopefully we can get to the point where we say, 'These people did a great job.'"

Sessions said the firings were handled in an "unhealthy" manner. "They really should have talked with these people in far more detail," he added.

Kyl and Sessions said, however, that the evidence does not yet point to a widespread conspiracy to oust the prosecutors for political motives. Both said it was within Bush's right to ask for the resignations of the eight prosecutors.

The remarks from a trio of top Republicans marked the strongest criticism so far from Bush administration allies in the controversy. Senior Democrats on the panel continued to sharply criticize the firings.

The eight prosecutors were dismissed last year, seven of them on Dec. 7. The Justice Department has said that all but one

were fired for "performance" issues, including failing to adhere to Bush administration policy on a number of matters. The other was removed to make way for an ally of White House political adviser Karl Rove.

One of the U.S. attorneys, David C. Iglesias of New Mexico, has charged that he was let go after a conflict with Sen. Pete V. Domenici (R-N.M.) and Rep. Heather A. Wilson (R.-N.M.) over a corruption investigation involving Democrats that his office was pursuing. He has testified to Congress that both called him shortly before the 2006 election to pressure him on the timing of indictments. Domenici and Wilson have acknowledged phoning Iglesias but said they were not trying to sway his investigation.

Specter said that an op-ed article by Gonzales that appeared in USA Today yesterday, in which he said the firings were an "overblown personnel matter," only served to exacerbate the problem. "I hardly think it's a personnel matter, and I hardly think it's been overblown," he said.

He read portions of the Gonzales article, pausing to critique each one. He added that the suggestion that the attorney general had lost "confidence" in the prosecutors needlessly suggested they performed poorly at their jobs.

"There will always be a black mark against them," Specter said.

Committee Republicans objected to issuing subpoenas to force the testimony of Gonzales's inner circle of aides, instead arguing that the panel should continue to negotiate for their testimony on a voluntary basis. Democrats agreed with that idea, saying they would be willing to conduct interviews in private if that produced information they are seeking about the decision-making process behind the mass firing.

Also today, a liberal-leaning advocacy group formally requested a third ethics investigation in the controversy. Citizens for Responsibility and Ethics in Washington (CREW) asked the House ethics committee to investigate allegations that a top aide to Rep. Doc Hastings (R-Wash.) called the U.S. attorney in Seattle to inquire about a vote fraud case.

Former U.S. attorney John McKay said Hastings's chief of staff called him shortly after a hotly disputed gubernatorial race inquiring about the pending inquiry, but McKay said he cut the call short. Hastings and his former aide, Ed Cassidy, have characterized the call as routine and appropriate.

CREW's executive director, Melanie Sloan, said that Hastings, ranking member of the House ethics panel, "attempted to use the criminal justice system to interfere with a gubernatorial election."

Hastings and Rep. Stephanie Tubbs Jones (D-Ohio), who chairs the House ethics committee, declined comment. They said they were forbidden from talking about any internal issues on the panel, which is officially called the Committee on Standards of Official Conduct.

CREW has also filed requests for probes of Domenici and Wilson. The Senate Ethics Committee has announced a preliminary inquiry into the Domenici call.

From: Bartlett, Dan
Sent: Thursday, March 08, 2007 6:21 PM
To: Martin, Catherine; Sullivan, Kevin F.
Subject: Fw: FYI: Senate Republicans Deliver Sharp Criticism of Gonzales

Importance: High

Really bad.

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

From: Rethmeier, Blain K.
To: Rethmeier, Blain K.; Snow, Tony; Kelley, William K.; Kaplan, Joel; Wolff, Candida P.; Martin, Catherine; Perino, Dana M.; Sullivan, Kevin F.; Oprison, Christopher G.; Fielding, Fred F.; Bartlett, Dan; Looney, Andrea B.; Fiddelke, Debbie S.; Frech, Christopher W.
Sent: Thu Mar 08 15:52:16 2007
Subject: FYI: Senate Republicans Deliver Sharp Criticism of Gonzales

Senate Republicans Deliver Sharp Criticism of Gonzales
Senators Say Attorney General Fired Prosecutors Without Explanation

By Paul Kane and Dan Eggen
Washington Post Staff Writers
Thursday, March 8, 2007; 3:36 PM

Senior Senate Republicans today delivered scathing criticism of Attorney General Alberto R. Gonzales for his handling of the firing of eight U.S. attorneys, joining Democrats in chagrin that the prosecutors were dismissed without adequate explanation.

<<http://projects.washingtonpost.com/congress/members/s000709/>> Sen. Arlen Specter (R-Pa.), the top Republican on the Senate Judiciary Committee, suggested that Gonzales's status as the nation's leading law enforcement officer might not last through the remainder of President Bush's term, pointedly disputing the attorney general's public rationale for the mass firings.

"One day there will be a new attorney general, maybe sooner rather than later," Specter said at a committee hearing where a new round of subpoenas to the Justice Department was considered.

After the meeting, Specter declined to elaborate on that remark, but told reporters that most of the blame for the ongoing controversy rests with the attorney general. "It's snowballing, mostly with the help of the Department of Justice," he said.

Two of the Justice Department's most vocal defenders on the issue, <<http://projects.washingtonpost.com/congress/members/k000352/>> Sens. Jon Kyl (R-Ariz.) and Jeff Sessions (R-Ala.), also had sharp words for senior Justice Department officials who attacked the credibility of the prosecutors publicly by saying they performed poorly at their jobs.

"Some people's reputations are going to suffer needlessly," Kyl said. "Hopefully we can get to the point where we say, 'These people did a great job.'"

Sessions said the firings were handled in an "unhealthy" manner. "They really should have talked with these people in far more detail," he added.

Kyl and Sessions said, however, that the evidence does not yet point to a widespread conspiracy to oust the prosecutors for political motives. Both said it was within Bush's right to ask for the resignations of the eight prosecutors.

The remarks from a trio of top Republicans marked the strongest criticism so far from Bush administration allies in the controversy. Senior Democrats on the panel continued to sharply criticize the firings.

The eight prosecutors were dismissed last year, seven of them on Dec. 7. The Justice Department has said that all but one were fired for "performance" issues, including failing to adhere to Bush administration policy on a number of matters. The other was removed to make way for an ally of White House political adviser Karl Rove.

One of the U.S. attorneys, David C. Iglesias of New Mexico, has charged that he was let go after a conflict with <http://projects.washingtonpost.com/congress/members/d000407/> Sen. Pete V. Domenici (R-N.M.) and Rep. Heather A. Wilson (R.-N.M.) over a corruption investigation involving Democrats that his office was pursuing. He has testified to Congress that both called him shortly before the 2006 election to pressure him on the timing of indictments. Domenici and Wilson have acknowledged phoning Iglesias but said they were not trying to sway his investigation.

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Also today, a liberal-leaning advocacy group formally requested a third ethics investigation in the controversy. Citizens for Responsibility and Ethics in Washington (CREW) asked the House ethics committee to investigate allegations that a top aide to <http://projects.washingtonpost.com/congress/members/h000329/> Rep. Doc Hastings (R-Wash.) called the U.S. attorney in Seattle to inquire about a vote fraud case.

Former U.S. attorney John McKay said Hastings's chief of staff called him shortly after a hotly disputed gubernatorial race inquiring about the pending inquiry, but McKay said he cut the call short. Hastings and his former aide, Ed Cassidy, have characterized the call as routine and appropriate.

CREW's executive director, Melanie Sloan, said that Hastings, ranking member of the House ethics panel, "attempted to use the criminal justice system to interfere with a gubernatorial election."

Hastings and <http://projects.washingtonpost.com/congress/members/j000284/> Rep. Stephanie Tubbs Jones (D-Ohio), who chairs the House ethics committee, declined comment. They said they were forbidden from talking about any internal issues on the panel, which is officially called the Committee on Standards of Official Conduct.

CREW has also filed requests for probes of Domenici and Wilson. The Senate Ethics Committee has announced a preliminary inquiry into the Domenici call.

From: Saliterman, Robert W.
Sent: Thursday, March 08, 2007 10:34 PM
To: Bartlett, Dan; Martin, Catherine; Rethmeier, Blain K.; Mamo, Jeanie S.; Snow, Tony; Perino, Dana M.; Lawrimore, Emily A.; Sullivan, Kevin F.; Fratto, Tony; Buckley, Edward W.; Stanzel, Scott M.; Witcher, Eryn M.
Subject: Night Notes Additions

DOJ

USAs. Today, Attorney General Alberto R. Gonzales spoke with leaders of the Senate Judiciary Committee in person and via telephone. The Attorney General indicated the Department will not oppose legislation to revert the U.S. Attorney appointment authority passed in the USA PATRIOT Reauthorization Act of 2006. (Scolinos)

IG Report. Tomorrow, the Justice Department's Office of Inspector General will issue a report examining the FBI's use of National Security Letters (NSLs) from 2003-2005. The report will indicate that when issuing National Security Letters the FBI did not have sufficient controls and failed to follow its own policies and Attorney General Guidelines. Tomorrow, Justice Department and FBI officials plan to brief a number of members of Congress, stakeholders, and the press regarding Department efforts to address the concerns raised in the report. (Scolinos)

From: Scolinos, Tasia [Tasia.Scolinos@usdoj.gov]
Sent: Thursday, March 08, 2007 11:21 PM
To: Bartlett, Dan; Martin, Catherine
Subject: FW: WaPo: Gonzales Yields On Hiring Interim U.S. Attorneys

We have to stop the bleeding on this story. I am extremely concerned when I see so many friendlies publicly criticizing the AG like this and we have not even taken the full blow yet from NSLs. I am trying to think outside the box about different ways to change the dynamic on this and I keep coming back to an "accountability" move by the AG. I am open to all ideas at this point if you guys have any other thoughts. Thanks, T

Gonzales Yields On Hiring Interim U.S. Attorneys

By Paul Kane and Dan Eggen
Washington Post Staff Writers
Friday, March 9, 2007; A01

Attorney General Alberto R. Gonzales agreed yesterday to change the way U.S. attorneys can be replaced, a reversal in administration policy that came after he was browbeaten by members of the Senate Judiciary Committee still angry over the controversial firings of eight federal prosecutors.

Gonzales told Sen. Patrick J. Leahy (D-Vt.) and other senior members of the committee that the administration will no longer oppose legislation limiting the attorney general's power to appoint interim prosecutors. Gonzales also agreed to allow the committee to interview five top-level Justice Department officials as part of an ongoing Democratic-led probe into the firings, senators said after a tense, hour-long meeting in Leahy's office suite.

The concessions represent a turnaround by the White House and the Justice Department, which have argued for three months that Gonzales must have unfettered power to appoint interim federal prosecutors and have resisted disclosing details about the firings.

But the administration has been battered by mounting allegations that several of the fired prosecutors -- six of whom testified before Congress on Tuesday -- had been the subject of intimidation, including improper telephone calls from GOP lawmakers or their aides, and alleged threats of retaliation by Justice Department officials. One prosecutor told lawmakers this week that he felt "leaned on" by a senior Republican senator, and Senate Democrats have readied subpoenas for five key members of Gonzales' inner circle of advisers.

The capitulation came just hours after several leading Senate Republicans sharply criticized Gonzales for his handling of the issue. Sen. Arlen Specter (Pa.), the top Republican on the Judiciary Committee, seemed to suggest that Gonzales's tenure may not last through the remainder of President Bush's term.

"One day there will be a new attorney general, maybe sooner rather than later," Specter said sharply. In an interview with Reuters after the meeting with Gonzales, Specter said his comments did not imply he thought the attorney general should be replaced.

Even two of the administration's strongest defenders on the issue openly questioned the Justice Department's handling of the dismissals. Sen. Jeff Sessions (R-Ala.) called the lack of explanation for the firings "unhealthy," and Sen. Jon Kyl (R-Ariz.) said the department's public criticisms of the ousted prosecutors were unwarranted.

"Some people's reputations are going to suffer needlessly," Kyl said.

The firings, most of which happened Dec. 7, became a flashpoint for Democrats in part because they were accompanied by a little-noticed change in federal law in 2006 that allowed Gonzales to appoint interim federal prosecutors to indefinite terms. Under the previous system, the local federal district court would appoint a temporary replacement until a permanent candidate was named and confirmed by the Senate.

Democrats and some Republicans said they were concerned the Justice Department was attempting to use the new provision to appoint political cronies without Senate oversight and that the firings were a means to that end. Gonzales and other Justice officials have argued that the old replacement system was inefficient and unconstitutional.

Democrats have attempted to attach to several pieces of legislation language to remove the provision, but they have been blocked repeatedly by Kyl. Senate aides cautioned that Gonzales's assertion that the administration will stand down did not guarantee passage, as Senate Republicans could still block the measure.

But after their meeting, Leahy said Gonzales assured him Bush will sign the bill if it reaches his desk. "My understanding is the president would," Leahy said.

Emerging from what participants called a "frank" discussion, Sen. Charles E. Schumer (D-N.Y.) said the attorney general agreed to allow five senior Justice Department aides to be interviewed by the committee in an inquiry that will probably begin in a private setting. Schumer said the committee will also consider whether to hold public hearings at which the aides would testify about their roles in the firings. Schumer said the decision makes it unnecessary for Democrats to pursue subpoenas to compel testimony from the aides, including Gonzales's chief of staff, Kyle Sampson, and the top aide to Deputy Attorney General Paul J. McNulty.

That aide, Michael J. Elston, had a phone conversation with one of the ousted U.S. attorneys, Bud Cummins of Arkansas, shortly after a Feb. 18 story on the firings appeared in The Washington Post. According to Cummins's testimony earlier this week, the conversation with Elston ended with a brief exchange in which the Justice aide appeared to threaten Cummins and the other former U.S. attorneys who were on the verge of agreeing to testify before the House and Senate judiciary committees.

Specter emerged from the meeting saying he still had no clear understanding why the prosecutors were dismissed. He said he instructed Gonzales to take back remarks he made in an op-ed in Wednesday's USA Today, in which he called the issue an "overblown personnel matter." Specter also asked Gonzales to do something to help remove the "significant blemish" now on the records of the fired prosecutors.

The House Judiciary Committee sent a letter to Gonzales yesterday requesting testimony from the same five officials and demanding copies of all documents related to the firings.

No agreement has been reached between Gonzales and lawmakers on what documents will be turned over to Capitol Hill in relation to the firings.

At least one administration official, presidential adviser Karl Rove, stood by several stances that the Justice Department has now backed away from. He defended the firings in an appearance at the University of Arkansas Clinton School of Public Service in Little Rock as "normal and ordinary" and compared them to decisions by President Bill Clinton and Bush to remove nearly all federal prosecutors after taking office.

However, the anger among Republicans about the handling continued to grow. One GOP leader, Sen. John Ensign (R-Nev.), told his hometown newspaper that he remains furious over the firing of Daniel Bogden, who was U.S. attorney for Nevada, questioning whether Justice Department officials have been straight with him in explaining the dismissal.

From: Perino, Dana M.
Sent: Thursday, March 08, 2007 5:49 PM
To: Martin, Catherine
Cc: Fielding, Fred F.
Subject: Re: US Attorney language

Yes, agree with that point. Wonder if liza could amplify on it re: our administration's approach to fresh eyes in a second term but also if I could say this is a usual practice for all presidents who've been elected to a second term?

-----Original Message-----
From: Martin, Catherine
To: Perino, Dana M.
CC: Fielding, Fred F.
Sent: Thu Mar 08 17:27:09 2007
Subject: US Attorney language

Dana: Here is some language for you to work with. I'd like to be able to put it into the even broader context of looking across the administration to make changes after 2004 which I think is a fair statement but I can check with Liza if you'd like. Let me know what you think.

* DOJ has provided detail on the reasons for the specific removals but we wanted to give you more context for the process of how these decisions were made:

* Following the election in 2004, the White House looked across the board at political appointees to determine whether changes should be made in the second term.

* Might remind them of changes made at cabinet level, etc.

* With respect to US Attorneys, we took a comprehensive look at whether we should remove those who had completed full 4-year terms and whether we should make room for other bright lawyers to have an opportunity to serve in a second term.

* Over the course of the year, discussions occurred with DOJ and we ultimately decided to take a more limited approach. DOJ whittled down the list and the White House signed off on their recommendation to replace the 8 US attorneys who were removed.

From: Bakke, Mary Beth
Sent: Thursday, March 08, 2007 6:19 PM
To: Martin, Catherine
Subject: RE: Revised US Attorney language

Absolutely.
MB

-----Original Message-----
From: Martin, Catherine
Sent: Thursday, March 08, 2007 6:19 PM
To: Fielding, Fred F.; Bakke, Mary Beth
Subject: FW: Revised US Attorney language

Mary Beth - Can you let Fred know that Dana is NOT going to talk to the NYT reporter tonight about the US Attorney story so we can regroup tomorrow before she does. Thanks.
cathie

-----Original Message-----
From: Perino, Dana M.
Sent: Thursday, March 08, 2007 6:13 PM
To: Martin, Catherine
Subject: Re: Revised US Attorney language

Def not going tonight. Regrouping tomorrow is great

-----Original Message-----
From: Martin, Catherine
To: Perino, Dana M.
Sent: Thu Mar 08 18:10:23 2007
Subject: RE: Revised US Attorney language

Revisions from Fred. I think this is better. I am calling you now. You aren't planning to go with this tonight are you? I think we should regroup one more time before you do...hopefully you can just do this tomorrow with the NYT.

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From: Sullivan, Kevin F.
Sent: Thursday, March 08, 2007 6:33 PM
To: Martin, Catherine
Subject: RE: Revised US Attorney language

sent this to dan - meant to cc you and hit send too fast... We Got the excerpts from solomon - ..really bad...tasia working it with solomon to shape...ag working with fbi re improving their tone...

it's basically the fbi has repeatedly violated national security laws...have used false pretenses to get people's records...first time administration has been found to have violated the law in using its special anti-terror powers...in 04-05 fbi approved NSLs for 100,000 people - more than half were americans or legal residents...fbi not complying with law that gave it special powers post 9/11...mueller has ordered sweeping changes to address probs identified by IG

From: Martin, Catherine
Sent: Thursday, March 08, 2007 6:29 PM
To: Bartlett, Dan; Sullivan, Kevin F.
Subject: FW: Revised US Attorney language

Turns out Tasia was right about discussions about removing all US Attorney's following the 04 election. Nothing wrong with it just not what we were being told around here. There is email traffic to support that Fred just learned of today and we were made aware of as well. As a result, we think we probably need to get this out in our way... Not doing anything yet. David Johnston from NYT is writing for Saturday on the Kyle Sampson angle so we thought that might be a good story to try to get into. Below are the talkers Fred and I worked up for Dana to give her a construct. Let us know if you have thoughts on message of strategy... We are regrouping tomorrow.

Fred also told me the hill meeting with the AG was apparently pretty bad. They want the 5 staffers who they requested to come up to brief them and would not agree not to subpoena them later for testimony.

Also, soloman is writing on the NSL story for tomorrow. Tasia is getting in the story to help frame it. AG has a strong message in his speech for tomorrow. Muller's is a little tepid so AG and Fran are calling him to tell him to lead with acknowledging the problems, taking them serious and addressing the problem. The draft we saw of muller's statement led with how great NSL's are and how the IG didn't find any deliberate violations and eased it's way into saying there were some inadequacies in the auditing process. Working as hard as we can from staff level to fix tone but I think the AG and Fran are the only ones who can help us fix it. They were calling him now.

From: Martin, Catherine
Sent: Thursday, March 08, 2007 6:10 PM
To: Perino, Dana M.
Subject: RE: Revised US Attorney language

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From: Bartlett, Dan
Sent: Thursday, March 08, 2007 6:46 PM
To: Martin, Catherine
Subject: Re: Revised US Attorney language

Yes

-----Original Message-----
From: Martin, Catherine
To: Bartlett, Dan
Sent: Thu Mar 08 18:44:03 2007
Subject: Re: Revised US Attorney language

Yes. Too bad we didn't start with this message. You okay with my construct below?

-----Original Message-----
From: Bartlett, Dan
To: Martin, Catherine; Sullivan, Kevin F.
Sent: Thu Mar 08 18:39:47 2007
Subject: Re: Revised US Attorney language

Maybe that will help show we were not focused on atty's with corruption cases.

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From: Martin, Catherine
To: Bartlett, Dan; Sullivan, Kevin F.
Sent: Thu Mar 08 18:29:05 2007
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United States Department of Justice
Office Of Public Affairs

TASIA SCOLINOS
DIRECTOR

950 Pennsylvania Avenue, NW Washington, DC 20530 Phone: (202) 616-2777 Fax: (202) 514-4276

Fax Cover Page

To: Cathie Martin 456-5684

CC:

Date: 03/08/07

Pages (including cover):

Cathie-

per your recent conversation
with Tasia.

Jonathan

Sampson, Kyle

From: Sampson, Kyle
Sent: Monday, January 09, 2006 10:09 AM
To: Harriet Miers (Harriet_Miers@who.eop.gov)
Cc: Bill Kelley (william_k_kelley@who.eop.gov)
Subject: U.S. Attorney Appointments – PLEASE TREAT THIS AS CONFIDENTIAL

PLEASE TREAT THIS AS CONFIDENTIAL

Harriet, you have asked whether President Bush should remove and replace U.S. Attorneys whose four-year terms have expired. I recommend that the Department of Justice and the Office of the Counsel to the President work together to seek the replacement of a limited number of U.S. Attorneys.

The U.S. Code provides that each United States Attorney "shall be appointed for a term of four years . . . [and] shall continue to perform the duties of his office until his successor is appointed and qualifies." 28 U.S.C. § 541(b). Accordingly, once confirmed by the Senate and appointed, U.S. Attorneys serve for four years and then holdover indefinitely (at the pleasure of the President, of course). In recent memory, during the Reagan and Clinton Administrations, Presidents Reagan and Clinton did not seek to remove and replace U.S. Attorneys they had appointed whose four-year terms had expired, but instead permitted such U.S. Attorneys to serve indefinitely under the holdover provision.

There likely are several explanations for this: In some instances, Presidents Reagan and Clinton may have been pleased with the work of the U.S. Attorneys who, after all, they had appointed. In other instances, Presidents Reagan and Clinton may simply have been unwilling to commit the resources necessary to remove the U.S. Attorneys, find suitable replacements (i.e., receive the "advice" of the home-state Senators), complete background investigations, and secure Senate confirmations.

There are practical obstacles to removing and replacing U.S. Attorneys. First, wholesale removal of U.S. Attorneys would cause significant disruption to the work of the Department of Justice. Second, individual U.S. Attorneys often were originally recommended for appointment by a home-state Senator who may be opposed to the President's determination to remove the U.S. Attorney. Third, a suitable replacement must be found in consultation with the home-state Senator, the difficulty of which would vary from state to state. Fourth, a background investigation must be completed on the replacement – a task often complicated if the outgoing U.S. Attorney remains in office. Fifth, after nomination, the Senate must confirm the replacement.

None of the above obstacles are insuperable. First, a limited number of U.S. Attorneys could be targeted for removal and replacement, mitigating the shock to the system that would result from an across-the-board firing. Second, the Department of Justice's Executive Office of U.S. Attorneys (EOUSA) could work quietly with targeted U.S. Attorneys to encourage them to leave government service voluntarily; this would allow targeted U.S. Attorneys to make arrangements for work in the private sector and "save face" regarding the reason for leaving office, both in the Department of Justice community and in their local legal communities. Third, after targeted U.S. Attorneys have left office or indicated publicly their intention to leave office, then the Office of the Counsel to the President can work with home-state Senators and/or other political leaders in the state to secure recommendations for a replacement U.S. Attorney. Finally, after background investigations are complete and the replacement candidate is nominated, the Attorney General can appoint the nominee to serve as Interim U.S. Attorney pending confirmation, thereby reducing the time during which the leadership of the office is uncertain.

If a decision is made to remove and replace a limited number of U.S. Attorneys, then the following might be considered for removal and replacement:

1. **Thomas B. Heffelfinger**, U.S. Attorney for the District of Minnesota
 Term expired 9/24/2005
 Replacement candidates: ???
 Home-state Senators: Coleman (R) (first opportunity to recommend a U.S. Attorney candidate) and Dayton (D)
2. **Todd P. Graves**, U.S. Attorney for the Western District of Missouri
 Term expired 10/19/2005
 Replacement candidates: John Wood?
 Home-state Senators: Bond (R) and Talent (R)
3. **Margaret M Chiara**, U.S. Attorney for the Western District of Michigan
 Term expired 11/2/2005

Replacement candidates: Rachel Brand?

Home-state Senators/political leaders: Levin (D) and Stabenow (D); numerous GOP congressmen

4. **David E. O'Meilia**, U.S. Attorney for the Northern District of Oklahoma

Term expired 12/7/2005

Replacement candidates: ???

Home-state Senators: Inhofe (R) and Coburn (R)

5. **Harry E. "Bud" Cummins III**, U.S. Attorney for the Eastern District of Arkansas

Term expires 1/9/2006 (today!)

Replacement candidates: Tim Griffin?

Home-state Senators/political leaders: Pryor (D) and Lincoln (D); Gov. Huckabee(?)

6. **Kevin V. Ryan**, U.S. Attorney for the Northern District of California

Term expires 8/2/2006

Replacement candidates: Dan Levin?

Home-state Senators/political leaders: Feinstein (D) and Boxer (D); Parsky Commission

7. **Carol C. Lam**, U.S. Attorney for the Southern District of California

Term expires 11/18/2006

Replacement candidates: Jeff Taylor, Deb Rhodes

Home-state Senators/political leaders: Feinstein (D) and Boxer (D); Parsky Commission

I list these folks based on my review of the evaluations of their offices conducted by EOUSA and my interviews with officials in the Office of the Attorney General, Office of the Deputy Attorney General, and the Criminal Division. If a determination is made to seek the removal of these folks, then we should similarly seek to remove and replace Paula D. Silsby, the Interim U.S. Attorney for the District of Maine, and William J. Leone, the Interim U.S. Attorney for the District of Colorado.

Please let me know how you would like to proceed. The first steps, I think, would be (1) to agree on the target list of U.S. Attorneys and (2) ask EOUSA to begin quietly calling them to ascertain their intentions for continued service/indicating to them that they might want to consider looking for other employment.

center 2.10.2006

January 1, 2006

MEMORANDUM FOR THE COUNSEL TO THE PRESIDENT

FROM: Kyle Sampson

SUBJECT: U.S. Attorney Appointments

[REDACTED]

[REDACTED]

[REDACTED]

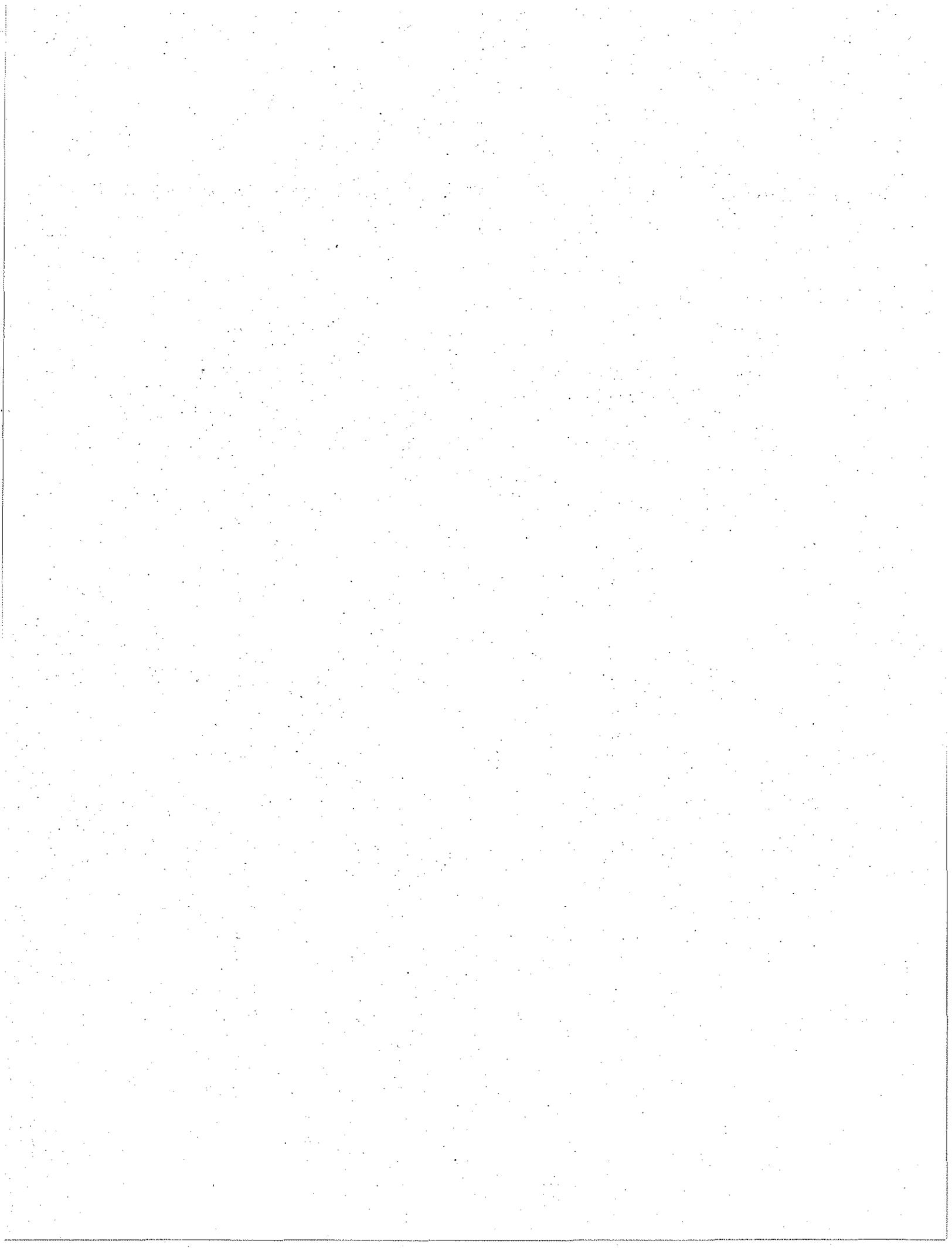
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



replacement -- a task often complicated if the outgoing U.S. Attorney remains in office. Fifth, after nomination, the Senate must confirm the replacement.

None of the above obstacles are insuperable. First, a limited number of U.S. Attorneys could be targeted for removal and replacement, mitigating the shock to the system that would result from an across-the-board firing. Second, the Department of Justice Executive Office of U.S. Attorneys (EOUSA) could work directly with the targeted U.S. Attorneys to encourage them to leave government service voluntarily; this would allow targeted U.S. Attorneys make arrangements for work in the private sector and to "stay face" both in the Department of Justice community and in the local legal community. Third, after targeted U.S. Attorneys have left office or indicated publicly their intention to leave office, then the Office of the Counsel to the President can work with home-state Senators and/or other political leaders in the state to secure recommendations for a replacement U.S. Attorney. Finally, after background investigations are complete and the replacement candidate is nominated, the Attorney General can appoint the nominee to serve as interim U.S. Attorney, reducing the time during which the leadership of the office is uncertain.

The decision is made to remove and replace a limited number of U.S. Attorneys, then the following might be considered for removal and replacement:

Thomas B. Heffelfinger, U.S. Attorney for the District of Minnesota

Term expires 9/24/2005

Replacement candidates: [redacted]

Home state Senators: Coleman (D) and Peterson (R), Governor: [redacted]

U.S. Attorney candidate: [redacted]

Paul P. Harvey, U.S. Attorney for the Western District of Missouri

Term expires 10/19/2005

Replacement candidates: John W. [redacted]

Home state Senators: Bond (R) and Pritchard (R)

Margaret McChirch, U.S. Attorney for the Western District of Michigan

Term expires 11/2/2005

Replacement candidates: Rachel E. [redacted]

Home state Senators/political leaders: Boyle (D) and Stabenow (D), Governor: [redacted]

GOP congressman [redacted]

David L. O'Malley, U.S. Attorney for the Northern District of Oklahoma

Term expires 12/7/2005

Replacement candidates: [redacted]

Home state Senators: Inhofe (R) and Coburn (R)

Harry E. "Bud" Cummins III, U.S. Attorney for the Eastern District of Arkansas

Term expires 1/9/2006

Replacement candidates: Tim Griffin

Home state Senators/political leaders: Pryor (D) and Lincoln (D), Gov: [redacted]

Huckabee (?)

Kevin V. Ryan, U.S. Attorney for the Northern District of California

Term expires 8/2/2006

Replacement candidates: Dan Lewin
Home state Senators/political leaders: Feinstein (D) and Boxer (D), Parks
Commission

Caryl C. Lam, U.S. Attorney for the Southern District of California

Term expires 10/18/2006
Replacement candidates: Jeff Taylor, Del. Rhodes
Home state Senators/political leaders: Feinstein (D) and Boxer (D), Parks
Commission

If these folks based on my review of the evaluation report of the conduct of the
EOUSA and my interviews with officials in the District of Columbia, Office of
the Deputy Attorney General, and the Criminal Division, if a determination is made to
seek the removal of these folks, then we should similarly seek to remove and replace
Paula D. Sulby, the U.S. Attorney for the District of Maine, and William J. Lyons, the
U.S. Attorney for the District of Colorado.

Please let me know how we would like to proceed.

Others:

Tier 1

Lampton
Wagoner
Vines
Charleton
Christie

Tier 2

Bogden
Sperling
Heavican
Miller

Tier 3

Melgren
Marino
Mead
Connelly

Sampson, Kyle

From: Harriet_Miers@who.eop.gov
Sent: Sunday, September 17, 2006 3:15 PM
To: Sampson, Kyle
Subject: RE: United States Attorneys

Kyle, thanks for this. I have not forgotten I need to follow up on the info, but things have been crazy. Will be back in touch!

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

From: Kyle.Sampson@usdoj.gov [mailto:Kyle.Sampson@usdoj.gov]
Sent: Wednesday, September 13, 2006 4:23 PM
To: Miers, Harriet
Subject: RE: United States Attorneys

Harriet, the U.S. Attorney ranks currently break down as follows:

I. Vacancies w/o Candidates

D. Alaska
E.D. Tenn.
S.D.W.V.

II. USAs Who Have Been (Or Will Be) Nominated for Other Things (I am strongly of the view that we should be working now to get their replacements selected and in the pipeline)

S.D. Ga. (Lisa Wood)
N.D. Ind. (Joe Van Bokkelen)
E.D. Mich. (Steve Murphy)
D. Mont. (Bill Mercer)
E.D.N.Y. (Roz Mausekopf)
D.D.C. (Ken Wainstein)

III. USAs Who, Rumor Has It, Will Be Leaving in Coming Months

C.D. Cal. (Deb Yang)
N.D. Iowa (Chuck Larsen, Sr.)
M.D. Tenn. (Jim Vines)

IV. USA in the Process of Being Pushed Out

E.D. Ark. (Bud Cummins)

V. USAs We Now Should Consider Pushing Out

D. Ariz. (Paul Charlton)
S.D. Cal. (Carol Lam)
N.D. Fla. (Greg Miller)
D. Me. (Paula Silsby)
W.D. Mich. (Margaret Chiara)
D. Nev. (Dan Bogden)
M.D. Pa. (Tom Marino)
W.D. Wash. (John McKay)

VI. Summary

I am only in favor of executing on a plan to push some USAs out if we really are ready and willing to put in the time necessary to select candidates and get them appointed -- it will be counterproductive to DOJ operations if we push USAs out and then don't have replacements ready to roll immediately. In addition, I strongly recommend that, as a matter of Administration policy, we utilize the new statutory provisions

that authorize the AG to make USA appointments. We can continue to do selection in JSC, but then should have DOJ take over entirely the vet and appointment. By not going the PAS route, we can give far less deference to home-State Senators and thereby get (1) our preferred person appointed and (2) do it far faster and more efficiently, at less political cost to the White House.

Let me know when you have read this; I have one follow up item I would want to do over the phone. What say you?

Kyle

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

From: Harriet_Miers@who.eop.gov [mailto:Harriet_Miers@who.eop.gov]
Sent: Wednesday, September 13, 2006 2:39 PM
To: Sampson, Kyle
Subject: United States Attorneys

Kyle, any current thinking on holdover U. S. Attorneys? Any recent word on Debra Yang's intentions?

Sampson, Kyle

From: Elston, Michael (ODAG)
Sent: Wednesday, November 01, 2006 7:22 PM
To: Sampson, Kyle
Subject: Other Possibilities

These have been suggested to me by others:

- Chris Christie
- Colm Connelly
- Mary Beth Brownlee
- Max Wood

Sampson, Kyle

From: Sampson, Kyle
 Sent: Saturday, December 02, 2006 2:20 PM
 To: Elston, Michael (ODAG)
 Subject: Re: N.D.Cal

The list is expanded; still waiting for green light from White House (though we would not launch until after 12/7 anyway).

 Sent from my BlackBerry Wireless Handheld

-----Original Message-----
 From: Elston, Michael (ODAG)
 To: Sampson, Kyle
 Sent: Sat Dec 02 13:50:25 2006
 Subject: Re: N.D.Cal

I agree. It is certainly something we should consider fighting about. Any chance that we get candid information from such evaluations would be gone if we just turned it over.

This may also become unlikely if the list is expanded by one as we discussed earlier.

-----Original Message-----
 From: Sampson, Kyle
 To: Elston, Michael (ODAG)
 Sent: Sat Dec 02 11:47:37 2006
 Subject: RE: N.D.Cal

EARS evaluations seem pretty deliberative to me.

-----Original Message-----
 From: Elston, Michael (ODAG)
 Sent: Friday, December 01, 2006 7:41 PM
 To: Sampson, Kyle
 Subject: Fw: N.D.Cal

-----Original Message-----
 From: Margolis, David
 To: Moschella, William; Kelly, John (USAE0); Battle, Michael (USAE0); Elston, Michael (ODAG)
 Sent: Fri Dec 01 19:32:44 2006
 Subject: N.D.Cal

I just got a call from a well placed source who said that judge Marilyn Hall Patel will be asking conyers, pelosi and waxman to secure copies of the ears evaluation and the special follow up review. A couple of months ago, the judge (with whom I have dealt for almost 10 years and have dined with) had called to ask me for a copy of the evaluation and I declined noting that I would not ask her for and she would not give me a copy of any evaluations of the court or the clerk's office. I thought she was satisfied. Evidently I was wrong.

Battle informs the U.S. Attorneys as follows:

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

STEP 3

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

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

STEP 4

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

STEP 5

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

Sampson, Kyle

From: Sampson, Kyle
Sent: Monday, December 04, 2006 6:26 PM
To: 'Kelley, William K.'
Cc: 'Miers, Harriet'
Subject: RE: US Atty Plan
Attachments: USA replacement plan.doc

here is the revised plan, per our discussions

From: Sampson, Kyle
Sent: Monday, December 04, 2006 6:12 PM
To: 'Kelley, William K.'
Cc: Miers, Harriet
Subject: RE: US Atty Plan
Importance: High

Great. We would like to execute this on Thursday, December 7 (all the U.S. Attorneys are in town for our Project Safe Childhood conference until Wednesday; we want to wait until they are back home and dispersed, to reduce chatter). So, on Thursday morning, we'll need the calls to be made as follows:

- * AG calls Sen. Kyl
- * Harriet/Bill call Sens. Ensign and Domenici (alternatively, the AG could make these calls and, if Senators express any concern, offer briefings re why the decision was made -- let me know)
- * White House OPA calls California, Michigan, and Washington "leads"

EOUSA Director Mike Battle then will call the relevant U.S. Attorneys. Okay?

From: Kelley, William K. [mailto:William_K_Kelley@who.eop.gov]
Sent: Monday, December 04, 2006 4:48 PM
To: Sampson, Kyle
Cc: Miers, Harriet
Subject: US Atty Plan

We're a go for the US Atty plan. WH leg, political, and communications have signed off and acknowledged that we have to be committed to following through once the pressure comes.

sent 3.9.2005

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

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

From: Bartlett, Dan
Sent: Thursday, March 08, 2007 6:21 PM
To: Martin, Catherine; Sullivan, Kevin F.
Subject: Fw: FYI: Senate Republicans Deliver Sharp Criticism of Gonzales

Importance: High

Really bad.

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

From: Rethmeier, Blain K.
To: Rethmeier, Blain K.; Snow, Tony; Kelley, William K.; Kaplan, Joel; Wolff, Candida P.; Martin, Catherine; Perino, Dana M.; Sullivan, Kevin F.; Oprison, Christopher G.; Fielding, Fred F.; Bartlett, Dan; Looney, Andrea B.; Fiddelke, Debbie S.; Frech, Christopher W.
Sent: Thu Mar 08 15:52:16 2007
Subject: FYI: Senate Republicans Deliver Sharp Criticism of Gonzales

Senate Republicans Deliver Sharp Criticism of Gonzales Senators Say Attorney General Fired Prosecutors Without Explanation

By Paul Kané and Dan Eggen
Washington Post Staff Writers
Thursday, March 8, 2007; 3:36 PM

Senior Senate Republicans today delivered scathing criticism of Attorney General Alberto R. Gonzales for his handling of the firing of eight U.S. attorneys, joining Democrats in chagrin that the prosecutors were dismissed without adequate explanation.

<<http://projects.washingtonpost.com/congress/members/s000709/>> Sen. Arlen Specter (R-Pa.), the top Republican on the Senate Judiciary Committee, suggested that Gonzales's status as the nation's leading law enforcement officer might not last through the remainder of President Bush's term, pointedly disputing the attorney general's public rationale for the mass firings.

"One day there will be a new attorney general, maybe sooner rather than later," Specter said at a committee hearing where a new round of subpoenas to the Justice Department was considered.

After the meeting, Specter declined to elaborate on that remark, but told reporters that most of the blame for the ongoing controversy rests with the attorney general. "It's snowballing, mostly with the help of the Department of Justice," he said.

Two of the Justice Department's most vocal defenders on the issue, <<http://projects.washingtonpost.com/congress/members/k000352/>> Sens. Jon Kyl (R-Ariz.) and Jeff Sessions (R-Ala.), also had sharp words for senior Justice Department officials who attacked the credibility of the prosecutors publicly by saying they performed poorly at their jobs.

"Some people's reputations are going to suffer needlessly," Kyl said. "Hopefully we can get to the point where we say, 'These people did a great job.'"

Sessions said the firings were handled in an "unhealthy" manner. "They really should have talked with these people in far more detail," he added.

Kyl and Sessions said, however, that the evidence does not yet point to a widespread conspiracy to oust the prosecutors for political motives. Both said it was within Bush's right to ask for the resignations of the eight prosecutors.

The remarks from a trio of top Republicans marked the strongest criticism so far from Bush administration allies in the controversy. Senior Democrats on the panel continued to sharply criticize the firings.

The eight prosecutors were dismissed last year, seven of them on Dec. 7. The Justice Department has said that all but one were fired for "performance" issues, including failing to adhere to Bush administration policy on a number of matters. The other was removed to make way for an ally of White House political adviser Karl Rove.

One of the U.S. attorneys, David C. Iglesias of New Mexico, has charged that he was let go after a conflict with <http://projects.washingtonpost.com/congress/members/d000407/> Sen. Pete V. Domenici (R-N.M.) and Rep. Heather A. Wilson (R.-N.M.) over a corruption investigation involving Democrats that his office was pursuing. He has testified to Congress that both called him shortly before the 2006 election to pressure him on the timing of indictments. Domenici and Wilson have acknowledged phoning Iglesias but said they were not trying to sway his investigation.

Specter said that an op-ed article by Gonzales that appeared in USA Today yesterday, in which he said the firings were an "overblown personnel matter," only served to exacerbate the problem. "I hardly think it's a personnel matter, and I hardly think it's been overblown," he said.

He read portions of the Gonzales article, pausing to critique each one. He added that the suggestion that the attorney general had lost "confidence" in the prosecutors needlessly suggested they performed poorly at their jobs.

"There will always be a black mark against them," Specter said.

Committee Republicans objected to issuing subpoenas to force the testimony of Gonzales's inner circle of aides, instead arguing that the panel should continue to negotiate for their testimony on a voluntary basis. Democrats agreed with that idea, saying they would be willing to conduct interviews in private if that produced information they are seeking about the decision-making process behind the mass firing.

Also today, a liberal-leaning advocacy group formally requested a third ethics investigation in the controversy. Citizens for Responsibility and Ethics in Washington (CREW) asked the House ethics committee to investigate allegations that a top aide to <http://projects.washingtonpost.com/congress/members/h000329/> Rep. Doc Hastings (R-Wash.) called the U.S. attorney in Seattle to inquire about a vote fraud case.

Former U.S. attorney John McKay said Hastings's chief of staff called him shortly after a hotly disputed gubernatorial race inquiring about the pending inquiry, but McKay said he cut the call short. Hastings and his former aide, Ed Cassidy, have characterized the call as routine and appropriate.

CREW's executive director, Melanie Sloan, said that Hastings, ranking member of the House ethics panel, "attempted to use the criminal justice system to interfere with a gubernatorial election."

Hastings and <http://projects.washingtonpost.com/congress/members/j000284/> Rep. Stephanie Tubbs Jones (D-Ohio), who chairs the House ethics committee, declined comment. They said they were forbidden from talking about any internal issues on the panel, which is officially called the Committee on Standards of Official Conduct.

CREW has also filed requests for probes of Domenici and Wilson. The Senate Ethics Committee has announced a preliminary inquiry into the Domenici call.

From: Scolinos, Tasia [Tasia.Scolinos@usdoj.gov]
Sent: Thursday, March 08, 2007 6:22 PM
To: Perino, Dana M.; Martin, Catherine; Roehrkasse, Brian
Subject: RE: Solomon

Our advisories have either gone out or are going out soon

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

From: Perino, Dana M. [mailto:Dana_M_Perino@who.eop.gov]
Sent: Thursday, March 08, 2007 6:09 PM
To: Martin, Catherine; Roehrkasse, Brian; Scolinos, Tasia
Subject: Re: Solomon

Brian - one tactical point - perhaps it's smart for fbi/doj to put out advisories tonight or let the duty officer say that there's going to be a presser tomorrow

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

From: Martin, Catherine
To: Perino, Dana M.; 'Brian.Roehrkasse@usdoj.gov'; 'tasia.scolinos@usdoj.gov'
Sent: Thu Mar 08 18:05:21 2007
Subject: RE: Solomon

Yes. On with fred, will call you in a minute.

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

From: Perino, Dana M.
Sent: Thursday, March 08, 2007 6:05 PM
To: 'Brian.Roehrkasse@usdoj.gov'; Martin, Catherine; 'tasia.scolinos@usdoj.gov'
Subject: Re: Solomon

Is solomon writing for tomorrow?

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

From: Roehrkasse, Brian
To: Perino, Dana M.; Martin, Catherine; Scolinos, Tasia
Sent: Thu Mar 08 18:03:42 2007
Subject: RE: Solomon

Solomon just faxed a portion of the story and has a lot of it. I sent it to Fratto, but am reluctant to fax again since I think it has classified information in it.

On the USA issue, I just drafted some quick process talkers for kyle.

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

From: Perino, Dana M. [mailto:Dana_M_Perino@who.eop.gov]
Sent: Thursday, March 08, 2007 4:57 PM
To: Roehrkasse, Brian; Martin, Catherine; Scolinos, Tasia
Subject: Solomon

Tasia - brian reminded me you're bird-dogging nsls. Is solomon writing for tomorrow morning?

Also - brian and I are coordinating on us attys stories re: tick-tock and wh-doj involvement/coordination. Looks like we'd be talking to both johnston and solomon/eggen tomorrow on that. Brian's going to do a conf call on that with he, kyle and me tomorrow (and cathie if you want) to sync up.

From: Klunk, Kate A.
Sent: Thursday, March 08, 2007 7:14 PM
To: Martin, Catherine
Subject: RE: fax from tasia

They did not get it yet. Heading over to drop it off then going home. See you in the morning.

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

From: Martin, Catherine
Sent: Thursday, March 08, 2007 7:09 PM
To: Klunk, Kate A.
Subject: Re: fax from tasia.

Call mary beth and see if she has received yet. If not, get to her. Otherwise no worries.

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

From: Klunk, Kate A.
To: Martin, Catherine
Sent: Thu Mar 08 18:55:08 2007
Subject: fax from tasia

It is coming through. Do you need me to make copies for anyone? Get it to you? Happy to drop it off if you need it for later tonight.

From: Block, Jonathan [Jonathan.Block@usdoj.gov]
Sent: Thursday, March 08, 2007 9:59 PM
To: Block, Jonathan; Martin, Catherine; Klunk, Kate A.; Saliterman, Robert W.
Cc: Peterson, Evan; Scolinos, Tasia; Roehrkasse, Brian
Subject: DEPARTMENT OF JUSTICE NIGHT NOTES

Department of Justice Night Notes

Thursday, March 08, 2007

Today, Attorney General Alberto R. Gonzales spoke with leaders of the Senate Judiciary Committee in person and via telephone. The Attorney General indicated the Department will not oppose legislation to revert the U.S. Attorney appointment authority passed in the USA PATRIOT Reauthorization Act of 2006.

Tomorrow, the Justice Department's Office of Inspector General will issue a report examining the FBI's use of National Security Letters (NSLs) from 2003-2005. The report will indicate that when issuing National Security Letters the FBI did not have sufficient controls and failed to follow its own policies and Attorney General Guidelines. Tomorrow, Justice Department and FBI officials plan to brief a number of members of Congress, stakeholders, and the press regarding Department efforts to address the concerns raised in the report.

From: Saliterman, Robert W.
Sent: Thursday, March 08, 2007 10:34 PM
To: Bartlett, Dan; Martin, Catherine; Rethmeier, Blain K.; Mamo, Jeanie S.; Snow, Tony; Perino, Dana M.; Lawrimore, Emily A.; Sullivan, Kevin F.; Fratto, Tony; Buckley, Edward W.; Stanzel, Scott M.; Witcher, Eryn M.
Subject: Night Notes Additions

DOJ

USAs. Today, Attorney General Alberto R. Gonzales spoke with leaders of the Senate Judiciary Committee in person and via telephone. The Attorney General indicated the Department will not oppose legislation to revert the U.S. Attorney appointment authority passed in the USA PATRIOT Reauthorization Act of 2006. (Scolinos)

IG Report. Tomorrow, the Justice Department's Office of Inspector General will issue a report examining the FBI's use of National Security Letters (NSLs) from 2003-2005. The report will indicate that when issuing National Security Letters the FBI did not have sufficient controls and failed to follow its own policies and Attorney General Guidelines. Tomorrow, Justice Department and FBI officials plan to brief a number of members of Congress, stakeholders, and the press regarding Department efforts to address the concerns raised in the report. (Scolinos)

From: "Scott Jennings" <sjennings@gwb43.com>

Date: Thursday, March 08, 2007, 10:52:56 PM

To: "Karl Rove" <kr@georgewbush.com>

Subject: RE: Call me after 10 tonight or after 9 in the am to discuss northern district of NY vacancy

Yes sir –

On the phone right now with Pete Domenici. This news is not going over well. Will wrap up and fill you in.

From: Karl Rove

Sent: Thursday, March 08, 2007 5:51 PM

To: Scott Jennings

Subject: Call me after 10 tonight or after 9 in the am to discuss northern district of NY vacancy

From: Kelley, William K.

Sent: Thursday, March 08, 2007 6:39 PM

To: Fielding, Fred F.

By the way, I don't have that email on my system. I must have deleted it.

From: Fielding, Fred F.
Sent: Thursday, March 08, 2007 6:57 PM
To: Kelley, William K.
Subject: RE:

Do you have any e-mail from January 2006?

From: Kelley, William K.
Sent: Thursday, March 08, 2007 6:39 PM
To: Fielding, Fred F.
Subject:

By the way, I don't have that email on my system. I must have deleted it.

From: Kelley, William K.
Sent: Thursday, March 08, 2007 6:58 PM
To: Fielding, Fred F.
Subject: RE:

Tons, and from that day. (I have no idea how things get archived, and I sometimes delete emails – but usually not substantive ones. I have no recollection of this one, of course.)

From: Fielding, Fred F.
Sent: Thursday, March 08, 2007 6:57 PM
To: Kelley, William K.
Subject: RE:

Do you have any e-mail from January 2006?

From: Kelley, William K.
Sent: Thursday, March 08, 2007 6:39 PM
To: Fielding, Fred F.
Subject:

By the way, I don't have that email on my system. I must have deleted it.

From: Kelley, William K.
Sent: Thursday, March 08, 2007 6:59 PM
To: Fielding, Fred F.
Subject: RE:

It was January 6, right?

From: Fielding, Fred F.
Sent: Thursday, March 08, 2007 6:57 PM
To: Kelley, William K.
Subject: RE:

Do you have any e-mail from January 2006?

From: Kelley, William K.
Sent: Thursday, March 08, 2007 6:39 PM
To: Fielding, Fred F.
Subject:

By the way, I don't have that email on my system. I must have deleted it.

From: Oprison, Christopher G.
Sent: Thursday, March 08, 2007 9:12 AM
To: Fielding, Fred F.; Kelley, William K.
Subject: FW: USA Subpoenas

fyi

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

From: Looney, Andrea B.
Sent: Thursday, March 08, 2007 9:09 AM
To: Wolff, Candida P.; Fiddelke, Debbie S.; Oprison, Christopher G.; O'Hollaren, Sean B.
Cc: Frech, Christopher W.
Subject: Fw: USA Subpoenas

See below. Seems logical to me but I welcome thoughts.

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

From: Hertling, Richard
To: Looney, Andrea B.; Frech, Christopher W.
Sent: Thu Mar 08 09:05:29 2007
Subject: USAs

As you know, SJC has scheduled vote on subpoenas to 5 DOJ folks re: the US Attorney mess. W/R/T these 5, one is Mike Battle, head of our Exec. Office for US Attorneys, who delivered the terminations and has now announced he is leaving DOJ. He has testified before and heads a component. We would make him available voluntarily. A second is Bill Mercer, acting Associate AG (nominee for the position) and a current US Attorney (Montana). Bill has testified before. He is a fact witness here, if you will, as he spoke to one or two of these terminated US Attorneys following their receipt of their termination notices. I don't see how we can avoid making him available. The third is Mike Elston, the DAG's chief of staff. He is a fact witness for a specific event, a call he had with Bud Cummins. Again, I do not see how we can deny the Hill the chance to question Mike on his phone call. Frankly, I expect the subpoenas to be held over and not actually considered today. They are merely a threat held against us to be voted on next week if we do not send our folks up voluntarily. With the three people already mentioned, we are prepared to send them up for an interview or a hearing (or perhaps both).

The remaining two are the AG's chief of staff, Kyle Sampson, and our WH Liaison, Monica Goodling. Our plan right now is to have the AG seek a meeting with Leahy and Specter today and tell them that this is a bad precedent, that he was the decision-maker, and that if they want to know why these guys were asked to leave, he will tell them directly, as we have already provided the information to the Committee. Members may not agree with the AG's decision, but he made and stands by it. If he has the meeting, I will let you know how it goes.

From: Wolff, Candida P.
Sent: Thursday, March 08, 2007 9:23 AM
To: Looney, Andrea B.; Fiddelke, Debbie S.; Oprison, Christopher G.; O'Hollaren, Sean B.
Cc: Frech, Christopher W.
Subject: Re: USA Subpoenas

Looks good to me.

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

From: Looney, Andrea B.
To: Wolff, Candida P.; Fiddelke, Debbie S.; Oprison, Christopher G.; O'Hollaren, Sean B.
CC: Frech, Christopher W.
Sent: Thu Mar 08 09:09:16 2007
Subject: Fw: USA Subpoenas

See below. Seems logical to me but I welcome thoughts.

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

From: Hertling, Richard
To: Looney, Andrea B.; Frech, Christopher W.
Sent: Thu Mar 08 09:05:29 2007
Subject: USAs

As you know, SJC has scheduled vote on subpoenas to 5 DOJ folks re: the US Attorney mess. W/R/T these 5, one is Mike Battle, head of our Exec. Office for US Attorneys, who delivered the terminations and has now announced he is leaving DOJ. He has testified before and heads a component. We would make him available voluntarily. A second is Bill Mercer, acting Associate AG (nominee for the position) and a current US Attorney (Montana). Bill has testified before. He is a fact witness here, if you will, as he spoke to one or two of these terminated US Attorneys following their receipt of their termination notices. I don't see how we can avoid making him available. The third is Mike Elston, the DAG's chief of staff. He is a fact witness for a specific event, a call he had with Bud Cummins. Again, I do not see how we can deny the Hill the chance to question Mike on his phone call. Frankly, I expect the subpoenas to be held over and not actually considered today. They are merely a threat held against us to be voted on next week if we do not send our folks up voluntarily. With the three people already mentioned, we are prepared to send them up for an interview or a hearing (or perhaps both).

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From: Klunk, Kate A.

Sent: Thursday, March 08, 2007 6:55 PM

To: Martin, Catherine

Subject: fax from tasia

It is coming through. Do you need me to make copies for anyone? Get it to you? Happy to drop it off if you need it for later tonight.

From: Martin, Catherine
Sent: Thursday, March 08, 2007 7:09 PM
To: Klunk, Kate A.
Subject: Re: fax from tasia

Call mary beth and see if she has received yet. If not, get to her. Otherwise no worries.

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

From: Klunk, Kate A.
To: Martin, Catherine
Sent: Thu Mar 08 18:55:08 2007
Subject: fax from tasia

It is coming through. Do you need me to make copies for anyone? Get it to you? Happy to drop it off if you need it for later tonight.