

**From:** Kelley, William K.  
**Sent:** Friday, December 08, 2006 6:33 PM  
**To:** 'Sampson, Kyle'  
**Cc:** Miers, Harriet; Fiddelke, Debbie S.  
**Subject:** Nevada US Atty

Heads up about disgruntlement in Nevada. Sen. Ensign's COS informs me that the Senator is very unhappy about the decision to let Bogden go, very unhappy about its timing, and doesn't understand the urgency. They say that they have confirmed about 6 judges, 5 marshals, and 1 US Attorney, and it hasn't taken less than 9 months for a single one of those confirmations to be accomplished in a Republican-controlled Congress. Why, they ask, leave the office in the hands of an interim person during that period when it could have been Bogden?

I explained to him our thinking at some length. But they are unsatisfied, and the COS said that Ensign would be calling the AG to make sure that Bodgen, who they say has done a great job for Nevada, gets a fair shake.

Hastings, R-Wash., from asking him detailed questions about an investigation into the disputed election of Washington state's Democratic Gov. Christine Gregoire in 2004.

A Justice Department official, invited to one of the two hearings, denied that any of the eight fired U.S. attorneys was improperly pressured or that they were ousted to make room for Republican political allies. Most of the firings were inspired by performance-related issues, he said.

``This administration has never removed a United States attorney to retaliate against them. Not once,`` William Moschella, an associate deputy attorney general, told a House subcommittee. ``The department stands by its decision to ask these U.S. attorneys to resign.``

His comments took up only a few moments in the daylong parade of fired federal prosecutors across Capitol Hill, where they recounted being kicked out of their jobs, first to the Senate Judiciary Committee and then to the House subcommittee on commercial and administrative law.

Their stories spanned states and legal issues, but they insisted together they were not fired for poor performance. The Justice Department's claim to the contrary, several fired prosecutors said, inspired them to speak publicly.

In perhaps the day's most dramatic testimony, one ousted prosecutor in New Mexico told the Senate panel that he felt sickened when Sen. Domenici hung up on him after being told that indictments in a corruption case against Democrats would not be handed down before the November elections.

``He said, 'Are these going to be filed before November?``' Iglesias recalled. ``I said I didn't think so. And to which he replied, 'I'm very sorry to hear that.' And then the line went dead.``

Iglesias said he received the call from Domenici at home on Oct. 26 or 27 and that it lasted two minutes, ``tops.``

``I felt leaned on. I felt pressured to get these matters moving,`` Iglesias testified. Asked by Sen. Chuck Schumer, D-N.Y., whether such a call was unusual in Iglesias' experience, the former prosecutor answered, ``Unprecedented.``

Democrats tried to connect the anecdotes into a pattern of intimidation and obstruction by the Bush administration and two Republican lawmakers.

``For over 150 years the process of appointing interim U.S. attorneys has worked well with virtually no problems,`` said Sen. Dianne Feinstein, D-Calif. ``We need to assure that this kind of politicization of the U.S. attorney's offices does not happen again.``

The Democrats' version: The Bush administration fired eight federal prosecutors in recent months without cause in an effort to make way for and reward GOP allies with the plum appointments without Senate confirmation.

A Republican joined the criticism to some extent Tuesday, saying he wasn't convinced the Justice Department acted properly.

``If the allegations are correct, then there has been serious misconduct in what has occurred in the terminations of these United States attorneys,`` Sen. Arlen Specter of Pennsylvania said.

As a former district attorney in Philadelphia, he was troubled by reports that two lawmakers Domenici and Rep. Heather Wilson, both New Mexico Republicans had contacted Iglesias about a pending case.

Domenici and Wilson, who was in a tight race for re-election last fall, have acknowledged making the calls but have denied placing political pressure on Iglesias. Neither responded to requests for reaction to Iglesias' testimony.

The two lawmakers may face additional questions over the matter. House Majority Leader Steny Hoyer, D-Md., said the House ethics committee ``has a responsibility`` to investigate Wilson's conduct. A watchdog group, Citizens for Responsibility and Ethics in

Washington, has called for investigations of both Wilson and Domenici.

In the Arkansas firing, the Judiciary Committee released an e-mail written by ousted U.S. attorney Cummins regarding a phone call he says he received Feb. 20 from a Justice Department official.

Mike Elston, chief of staff to Deputy Attorney General Paul McNulty, had called and expressed displeasure that the fired prosecutors had talked to reporters about their dismissals, according to the text.

"If they feel like any of us intend to continue to offer quotes to the press, or organize behind the scenes congressional pressure, then they feel forced to somehow pull their gloves off and offer public criticisms to defend their actions more fully," Cummins said in the e-mail to five other fired prosecutors.

"I don't want to overstate the threatening undercurrent in the call, but the message was clearly there," he added.

Asked by Specter whether he felt he was being threatened, Cummins said, "Some people would want to interpret that as a threat, but it could also be, 'Hey, here's some friendly advice.'"

The Justice Department denied that any threat, implied or otherwise.

"A private and collegial conversation between Mike Elston and Bud Cummins is now somehow being twisted into a perceived threat by former disgruntled employees grandstanding before Congress," said department spokesman Brian Roehrke.

Iglesias told the panel he received a call from Rep. Wilson last mid-October in which she asked him about sealed indictments a topic prosecutors cannot discuss. Wilson's question "raised red flags in my head," Iglesias said.

"I was evasive and nonresponsive to her question," Iglesias told the panel, saying he talked generally about why some indictments are sealed. "She was not happy with that answer. And she said, 'Well I guess I'll have to take your word for it.'" The call ended almost immediately, Iglesias said.

Asked by Schumer if he felt pressured by that call, Iglesias replied: "Yes sir, I did."

Associated Press writers Jennifer Talhelm, Hope Yen and Larry Margasak contributed to this report.

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**From:** Perino, Dana M.  
**Sent:** Wednesday, March 07, 2007 9:12 AM  
**To:** Martin, Catherine  
**Subject:** RE: USAT - (Att. Gen. Gonzalex Op-Ed) They lost my confidence

Not a word.

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

**From:** Martin, Catherine  
**Sent:** Wednesday, March 07, 2007 7:54 AM  
**To:** Perino, Dana M.  
**Subject:** Fw: USAT - (Att. Gen. Gonzalex Op-Ed) They lost my confidence

Did they tell u this was coming?

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

**From:** White House News Update  
**To:** Martin, Catherine  
**Sent:** Wed Mar 07 06:40:43 2007  
**Subject:** USAT - (Att. Gen. Gonzalex Op-Ed) They lost my confidence

Opposing view: They lost my confidence

Attorneys' dismissals were related to performance, not to politics.

By Alberto R. Gonzales

As any employer or manager knows, the handling of personnel matters — especially the termination of employees — is one of the most challenging tasks in any business. Personnel matters in the federal government are no exception.

To be clear, it was for reasons related to policy, priorities and management — what have been referred to broadly as "performance-related" reasons — that seven U.S. attorneys were asked to resign last December.

The Justice Department, out of respect for these individuals, would have preferred not to talk publicly about those reasons, but disclosures in the press and requests for information from Congress altered those best-laid plans. Although our reasons for their dismissal were appropriate, our failure to provide those reasons to these individual U.S. attorneys at the time they were asked to resign has only served to fuel wild and inaccurate speculation about our motives. That is very unfortunate because faith and confidence in our justice system are more important than any one individual.

We have never asked a U.S. attorney to resign in an effort to retaliate against him or her or to inappropriately interfere with a public corruption case (or any other type of case, for that matter). Indeed, during the last six years, the department has established an extremely strong record of rooting out public corruption, including prosecuting a number of very high-profile cases.

Like me, U.S. attorneys are political appointees, and we all serve at the pleasure of the president. If U.S. attorneys are not executing their responsibilities in a manner that furthers the management and policy goals of departmental leadership, it is appropriate that they be replaced. After all, the responsibility of the Department of Justice, and of the Congress, is to serve the people of the United States. While I am grateful for the public service of these seven U.S. attorneys, they simply lost my confidence. I hope that this episode ultimately will be recognized for what it is: an overblown personnel matter.

Alberto R. Gonzales is attorney general of the United States.

Our view on impartial justice: Political pressure taints firing of top prosecutors

U.S. attorneys need independence in pursuit of corruption cases.

David Iglesias, until recently the top federal prosecutor in New Mexico, served as a model for the smart, fearless Navy defense lawyer played by Tom Cruise in the 1992 courtroom drama *A Few Good Men*.

On Tuesday, Iglesias starred in another drama, this one a real-life political saga that is threatening the reputation for independence of the nation's 93 U.S. attorneys.

Iglesias — one of seven U.S. attorneys fired Dec. 7 by the Justice Department — told a Senate panel that he was ousted after he refused to succumb to pressure from Sen. Pete Domenici and Rep. Heather Wilson, both New Mexico Republicans, to speed up a federal probe of local Democrats. Iglesias testified that Domenici called him at home last October and asked whether there would be indictments before the Nov. 7 elections. When Iglesias said no, Domenici said he was "sorry to hear that" and "the line went dead," according to Iglesias.

"I felt sick afterwards," Iglesias told the panel.

Queasiness is a justified reaction to congressional meddling with federal prosecutors and to the Bush administration's clumsy, unusual firings. Both deserve the close scrutiny they are beginning to get in Congress and the news media.

Though the nation's federal prosecutors are political appointees named by presidents, they've long been known for their independence. Their job is to bring civil and criminal cases for the federal government, without regard to politics. And many have done just that. In the early 1970s, a Richard Nixon appointee supervised the investigation that led to the resignation of Nixon's vice president, Spiro Agnew. Just two years ago, Bush appointee Carol Lam brought the case that sent former GOP congressman Randy "Duke" Cunningham to prison.

The recent firings undermine that image of independence. Lam, in fact, was one of the seven fired on Pearl Harbor Day. An eighth, Bud Cummins, of Arkansas, was let go last June.

Justice officials grudgingly acknowledged that Cummins was terminated to make way for Tim Griffin, a former aide to Bush adviser Karl Rove. As for the others, officials have gone from denying in January that the dismissals were political, to saying in February that six were "performance-related," to admitting last week that the White House approved the firings after Justice officials identified prosecutors who weren't carrying out administration law enforcement policies.

It's possible, of course, that some of the eight deserved to be replaced, but the shifting explanations raise serious doubts about the whole process. High-level appointments can't be completely insulated from politics, but one good step would be to return to a system, in place for many years, that gave the president the power to appoint U.S. attorneys and the Senate the power to confirm them. Last year, the Bush administration won a change that would give the attorney general more authority to appoint interim prosecutors to serve for unlimited periods without Senate confirmation. That's an invitation to trouble.

Historically, few U.S. attorneys have been dismissed by a president in the middle of their terms. That's a worthy precedent, one that inspires public confidence that the justice system is working properly and ensures that a few good men and women don't become victims of political vendettas.

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**From:** Saliterman, Robert W.  
**Sent:** Wednesday, March 07, 2007 12:02 PM  
**To:** Sullivan, Kevin F.; Martin, Catherine; Rethmeier, Blain K.  
**Subject:** FW: Moschella testimony from yesterday

fyi – having trouble finding Moschella transcript but will work up the talkers as soon as we get it.

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**From:** Block, Jonathan  
**Sent:** Wednesday, March 07, 2007 11:59 AM  
**To:** Klunk, Kate A.; Saliterman, Robert W.  
**Cc:** Miller, Asa G  
**Subject:** RE: Moschella testimony from yesterday

Kate and Rob,

We've been told by the folks at Federal News Service that this transcript should be made available later today. We have pressed them hard to send it to us as soon as they have it. Asa Miller (copied here) will pass it along to you as soon as we receive it.

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**From:** Martin, Catherine  
**Sent:** Wednesday, March 07, 2007 12:02 PM  
**To:** Bartlett, Dan  
**Subject:** Let me know if you need any help

I assume you all have decided by now but I think we should more quickly to address what we can....silence is killing us.

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**From:** Bartlett, Dan  
**Sent:** Wednesday, March 07, 2007 4:11 PM  
**To:** Perino, Dana M.; Fielding, Fred F.; Snow, Tony  
**Cc:** Martin, Catherine  
**Subject:** RE: fred fielding profile for weekend

And pardon...

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

**From:** Perino, Dana M.  
**Sent:** Wednesday, March 07, 2007 2:34 PM  
**To:** Bartlett, Dan; Fielding, Fred F.; Snow, Tony  
**Cc:** Martin, Catherine  
**Subject:** FW: fred fielding profile for weekend

I don't think it's wise for Fred to participate in this profile - because I believe the only reason she's been assigned to do this is because of the US Atty story. Do you agree?

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

**From:** Sheryl Stolberg  
**Sent:** Wednesday, March 07, 2007 2:29 PM  
**To:** Perino, Dana M.  
**Subject:** fred fielding profile for weekend

i have a quickie assignment to do a profile of fred fielding for the weekend requests:

1. interview with him.
2. interview with josh bolten about him.
3. interview with anyone else who would be relevant and could speak about fielding's work, his style, what he has been doing since he came on board.

thanks

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**From:** Martin, Catherine  
**Sent:** Wednesday, March 07, 2007 6:00 PM  
**To:** Fielding, Fred F.; Kelley, William K.; Bartlett, Dan; Sullivan, Kevin F.; Rove, Karl C.  
**Cc:** Kaplan, Joel; Perino, Dana M.  
**Subject:** FW: Schumer: Judiciary Committee Will Get To Bottom of US Attorneys Purge

I am hearing they plan to go up voluntarily to brief staff. But this a where the story is going to try to get at the WH angle.

DOJ is getting calls now about this and they are working on a statement that hits back that this is a political move by Schumer and the Democrats.

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

**From:** Scolinos, Tasia [mailto:Tasia.Scolinos@usdoj.gov]  
**Sent:** Wednesday, March 07, 2007 5:50 PM  
**To:** Perino, Dana M.; Martin, Catherine  
**Subject:** FW: Schumer: Judiciary Committee Will Get To Bottom of US Attorneys Purge

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

**From:** Schultz, Eric (Schumer)  
**Sent:** Wed 3/7/2007 5:20 PM  
**Subject:** Schumer: Judiciary Committee Will Get To Bottom of US Attorneys Purge

Based on yesterday's hearing on the recent purge of U.S. Attorney's, the Senate Judiciary Committee will be calling on several Department of Justice officials to testify voluntarily before the committee. In order to prepare for circumstances if they do not choose to do so, on tomorrow's Senate Judiciary Committee markup agenda, will be the authorization of subpoenas for several Department of Justice officials who were identified in yesterday's hearings: Mike Elston, Kyle Sampson, Monica Goodling, Bill Mercer, Mike Battle.

U.S. Senator Charles E. Schumer released the following statement:

"Now that it's clear that there was a concerted effort to purge an impressive crop of U.S. Attorneys, the next step is to identify and question those responsible for hatching this scheme to use U.S. Attorneys as pawns in a political chess game."

Eric Schultz

Communications Director

U.S. Senator Charles Schumer

313 Hart Senate Office Building

Washington DC 20510

p: 202-224-

f: 202-228-

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**From:** Perino, Dana M.  
**Sent:** Wednesday, March 07, 2007 6:24 PM  
**To:** Martin, Catherine  
**Subject:** FW: US Atty related Subpoenas on SJC agenda tomorrow

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**From:** Looney, Andrea B.  
**Sent:** Wednesday, March 07, 2007 6:19 PM  
**To:** Perino, Dana M.  
**Subject:** FW: US Atty related Subpoenas on SJC agenda tomorrow

FYI

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**From:** Looney, Andrea B.  
**Sent:** Wednesday, March 07, 2007 6:18 PM  
**To:** Wolff, Candida P.; Fiddelke, Debbie S.; Oprison, Christopher G.; O'Hollaren, Sean B.  
**Cc:** Frech, Christopher W.  
**Subject:** US Atty related Subpoenas on SJC agenda tomorrow

I am told that subpoenas for Battle, Elston, Mercer, Sampson and Goodling from DOJ will all be on the agenda tomorrow.

Also, Elston is meeting with House Republican staff tomorrow.

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**From:** Oprison, Christopher G.  
**Sent:** Wednesday, March 07, 2007 6:21 PM  
**To:** Looney, Andrea B.; Wolff, Candida P.; Fiddelke, Debbie S.; O'Hollaren, Sean B.  
**Cc:** Frech, Christopher W.  
**Subject:** RE: US Atty related Subpoenas on SJC agenda tomorrow

Thanks. Leahy sent a letter today to the AG to that effect today.

What is the purpose of Elston's meeting?

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**Sent:** Wednesday, March 07, 2007 6:18 PM  
**To:** Wolff, Candida P.; Fiddelke, Debbie S.; Oprison, Christopher G.; O'Hollaren, Sean B.  
**Cc:** Frech, Christopher W.  
**Subject:** US Atty related Subpoenas on SJC agenda tomorrow

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**From:** Oprison, Christopher G.  
**Sent:** Wednesday, March 07, 2007 6:26 PM  
**To:** Kelley, William K.  
**Subject:** FW: US Atty related Subpoenas on SJC agenda tomorrow

fyi

Andrea does not know the exact purpose of Elston's meeting, but I suspect the topic of discussion will be the call to Cummins and dissecting Cummins' email to the other US Attorneys

I will be in a little late tomorrow - my wife has an appointment early, but I should be in by 10 or so. Can we raise with Fred when I get in?

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**From:** Looney, Andrea B.  
**Sent:** Wednesday, March 07, 2007 6:18 PM  
**To:** Wolff, Candida P.; Fiddelke, Debbie S.; Oprison, Christopher G.; O'Hollaren, Sean B.  
**Cc:** Frech, Christopher W.  
**Subject:** US Atty related Subpoenas on SJC agenda tomorrow

I am told that subpoenas for Battle, Elston, Mercer, Sampson and Goodling from DOJ will all be on the agenda tomorrow.

Also, Elston is meeting with House Republican staff tomorrow.

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**From:** Oprison, Christopher G.  
**Sent:** Wednesday, March 07, 2007 7:20 PM  
**To:** Kelley, William K.; Fielding, Fred F.  
**Subject:** intel from Kyle

Gentlemen - just received a call from Kyle re: Leahy's letter. Kyle indicated that subpoenas of AG staffers is wholly unprecedented. In response, the AG has scheduled a meeting with Leahy and Specter in the morning to work through this in order to strike an accommodation - either no hearing, or a hearing with the AG testifying only, or informal interviews, etc. Kyle also indicated that Specter was incensed because Leahy did not notify him prior to sending the letter to the AG and suggested this might make Specter more receptive to helping temper Schumer's and Leahy's efforts. Kyle said he would update me tomorrow morning after the AG's meeting.

Christopher G. Oprison  
Associate Counsel to the President  
phone: (202) 456-  
fax: (202) 456-

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**From:** Perino, Dana M.  
**Sent:** Wednesday, March 07, 2007 8:54 PM  
**To:** Martin, Catherine  
**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.  
**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.  
**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?

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**From:** Townsend, Frances F.  
**Sent:** Wednesday, March 07, 2007 9:15 PM  
**To:** Perino, Dana M.; Kelley, William K.; Fielding, Fred F.; Scudder, Michael Y.; Oprison, Christopher G.; Snow, Tony; Martin, Catherine; Bartlett, Dan; Rethmeier, Blain K.; Mamo, Jeanie S.  
**Subject:** Re: Did you talk with Solomon tonight?

Hsc has gotten no press inquiries that I am aware of. But lots of wh staff have been briefed this week.

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

**From:** Perino, Dana M.  
**To:** Kelley, William K.; Fielding, Fred F.; Scudder, Michael Y.; Oprison, Christopher G.; Snow, Tony; Martin, Catherine; Bartlett, Dan; Rethmeier, Blain K.; Mamo, Jeanie S.; Townsend, Frances F.  
**Sent:** Wed Mar 07 21:09:36 2007  
**Subject:** Re: Did you talk with Solomon tonight?

More from brian on what solomon told him::

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:** Kelley, William K.  
**To:** Perino, Dana M.; Fielding, Fred F.; Scudder, Michael Y.; Oprison, Christopher G.; Snow, Tony; Martin, Catherine; Bartlett, Dan; Rethmeier, Blain K.; Mamo, Jeanie S.; Townsend, Frances F.  
**Sent:** Wed Mar 07 20:57:34 2007  
**Subject:** Re: Did you talk with Solomon tonight?

I talk to Kyle most days, and don't have any idea or recollection of what they're talking about.

To the extent there is a suggestion that any aspect of the US Atty stuff originated with me or anyone else in Counsel's office, that is simply not true. We didn't think of any aspect of the plan, and we had absolutely nothing to do with identifying any of the US Attys on the list. (Treating Cummins separately.)

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**From:** Perino, Dana M.  
**To:** Fielding, Fred F.; Scudder, Michael Y.; Oprison, Christopher G.; Kelley, William K.; Snow, Tony; Martin, Catherine; Bartlett, Dan; Rethmeier, Blain K.; Mamo, Jeanie S.; Townsend, Frances F.  
**Sent:** Wed Mar 07 20:51:39 2007  
**Subject:** Fw: Did you talk with Solomon tonight?

Heads up \_ see below. Story is for friday. I did not talk to solomon - have no idea who did. But he told doj he knows about the nsls. The us atty nugget is yet another issue - although I'm not sure if the kyle\_kelley convo happened that way, or at all.

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**From:** Roehrkasse, Brian  
**To:** Perino, Dana M.  
**Sent:** Wed Mar 07 20:44:04 2007  
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Subject: Re: Did you talk with Solomon tonight?

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From: Roehrkasse, Brian  
To: Perino, Dana M.  
Sent: Wed Mar 07 20:24:34 2007  
Subject: Did you talk with Solomon tonight?

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**From:** Snow, Tony  
**Sent:** Wednesday, March 07, 2007 10:40 PM  
**To:** Perino, Dana M.; Fielding, Fred F.; Scudder, Michael Y.; Oprison, Christopher G.; Kelley, William K.; Martin, Catherine; Bartlett, Dan; Rethmeier, Blain K.; Mamo, Jeanie S.; Townsend, Frances F.  
**Subject:** Re: Did you talk with Solomon tonight?

No, but we need to get briefed up on whatever (if anything) we need to know.

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

**From:** Perino, Dana M.  
**To:** Fielding, Fred F.; Scudder, Michael Y.; Oprison, Christopher G.; Kelley, William K.; Snow, Tony; Martin, Catherine; Bartlett, Dan; Rethmeier, Blain K.; Mamo, Jeanie S.; Townsend, Frances F.  
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**Sent:** Wed Mar 07 20:24:34 2007  
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**Sent:** Wednesday, March 07, 2007 9:17 PM  
**To:** Bartlett, Dan; Perino, Dana M.; Kelley, William K.; Fielding, Fred F.; Scudder, Michael Y.; Oprison, Christopher G.; Snow, Tony; Martin, Catherine; Rethmeier, Blain K.; Mamo, Jeanie S.  
**Subject:** Re: Did you talk with Solomon tonight?

Agree. DOJ should handle the contact with the IG.

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

**From:** Bartlett, Dan  
**To:** Perino, Dana M.; Kelley, William K.; Fielding, Fred F.; Scudder, Michael Y.; Oprison, Christopher G.; Snow, Tony; Martin, Catherine; Rethmeier, Blain K.; Mamo, Jeanie S.; Townsend, Frances F.  
**Sent:** Wed Mar 07 21:12:39 2007  
**Subject:** Re: Did you talk with Solomon tonight?

unbelievable. Let's regroup in the morning. He might be a good person to use to shape the story. We'll have to inform the IG and adjust our rollout accordingly.

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

**From:** Perino, Dana M.  
**To:** Kelley, William K.; Fielding, Fred F.; Scudder, Michael Y.; Oprison, Christopher G.; Snow, Tony; Martin, Catherine; Bartlett, Dan; Rethmeier, Blain K.; Mamo, Jeanie S.; Townsend, Frances F.  
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**From:** Perino, Dana M.  
**To:** Fielding, Fred F.; Scudder, Michael Y.; Oprison, Christopher G.; Kelley, William K.; Snow, Tony; Martin, Catherine; Bartlett, Dan; Rethmeier, Blain K.; Mamo, Jeanie S.; Townsend, Frances F.  
**Sent:** Wed Mar 07 20:51:39 2007  
**Subject:** Fw: Did you talk with Solomon tonight?

Heads up \_ see below. Story is for friday. I did not talk to solomon - have no idea who did. But he told doj he knows about the nsis. The us atty nugget is yet another issue - although I'm not sure if the kyle\_kelley convo happened that way, or at all.

-----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 nsis 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.

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From: Perino, Dana M.  
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:** Fielding, Fred F.  
**Sent:** Wednesday, March 07, 2007 9:59 PM  
**To:** Perino, Dana M.  
**Cc:** Bartlett, Dan  
**Subject:** Re: Did you talk with Solomon tonight?

Sorry....I'm late to this....I assume this is NYT that we heard was doing story on Kyle....whoever tipped him to the POTUS briefing assumes it was at the published FBI mtg today...in fact the briefing was earlier, as you know, at an unpublished mtg, to add to the puzzle! In any event, we must review in AM. Damn!  
FFF

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

**From:** Perino, Dana M.  
**To:** Kelley, William K.; Fielding, Fred F.; Scudder, Michael Y.; Oprison, Christopher G.; Snow, Tony; Martin, Catherine; Bartlett, Dan; Rethmeier, Blain K.; Mamo, Jeanie S.; Townsend, Frances F.  
**Sent:** Wed Mar 07 21:09:36 2007  
**Subject:** Re: Did you talk with Solomon tonight?

More from brian on what solomon told him::

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:** Kelley, William K.  
**To:** Perino, Dana M.; Fielding, Fred F.; Scudder, Michael Y.; Oprison, Christopher G.; Snow, Tony; Martin, Catherine; Bartlett, Dan; Rethmeier, Blain K.; Mamo, Jeanie S.; Townsend, Frances F.  
**Sent:** Wed Mar 07 20:57:34 2007  
**Subject:** Re: Did you talk with Solomon tonight?

I talk to Kyle most days, and don't have any idea or recollection of what they're talking about.

To the extent there is a suggestion that any aspect of the US Atty stuff originated with me or anyone else in Counsel's office, that is simply not true. We didn't think of any aspect of the plan, and we had absolutely nothing to do with identifying any of the US Attys on the list. (Treating Cummins separately.)

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

**From:** Perino, Dana M.  
**To:** Fielding, Fred F.; Scudder, Michael Y.; Oprison, Christopher G.; Kelley, William K.; Snow, Tony; Martin, Catherine; Bartlett, Dan; Rethmeier, Blain K.; Mamo, Jeanie S.; Townsend, Frances F.  
**Sent:** Wed Mar 07 20:51:39 2007  
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**From:** Roehrkasse, Brian  
**To:** Perino, Dana M.

Sent: Wed Mar 07 20:44:04 2007

Subject: Re: Did you talk with Solomon tonight?

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From: Perino, Dana M.

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:** Kelley, William K.  
**Sent:** Wednesday, March 07, 2007 5:03 PM  
**To:** Oprison, Christopher G.  
**Subject:** RE: f PJJ ltr to AG on US Attys

We should raise with FFF tomorrow at staff mtg. They are inclined to go up for interviews right away, which I think they should do. The question will be what they can say about WH communications.

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

**From:** Oprison, Christopher G.  
**Sent:** Wednesday, March 07, 2007 5:02 PM  
**To:** Kelley, William K.  
**Subject:** RE: f PJJ ltr to AG on US Attys

Bill -- do we need to discuss or is this for DOJ to work through?

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

**From:** Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]  
**Sent:** Wednesday, March 07, 2007 5:00 PM  
**To:** Kelley, William K.  
**Cc:** Oprison, Christopher G.  
**Subject:** FW: f PJJ ltr to AG on US Attys  
**Importance:** High

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

**From:** Hertling, Richard  
**Sent:** Wednesday, March 07, 2007 4:56 PM  
**To:** Sampson, Kyle  
**Subject:** FW: f PJJ ltr to AG on US Attys

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

**From:** Cohen, Bruce (Judiciary-Dem)

**To:** Hertling, Richard  
**CC:** Bharara, Preet (Judiciary-Dem)  
**AG.pdf>>** ; Paris, Jeremy  
(Judiciary-Dem)  
**Sent:** Wed Mar 07 16:47:51 2007  
**Subject:** f PJJ ltr to AG on US Attys

<<3-07-07 PJJ USAttys ltr to

We look forward to working out prompt arrangements if possible. bac

---

**From:** Kelley, William K.  
**Sent:** Wednesday, March 07, 2007 8:58 PM  
**To:** Perino, Dana M.; Fielding, Fred F.; Scudder, Michael Y.; Oprison, Christopher G.; Snow, Tony; Martin, Catherine; Bartlett, Dan; Rethmeier, Blain K.; Mamo, Jeanie S.; Townsend, Frances F.  
**Subject:** Re: Did you talk with Solomon tonight?

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**To:** Fielding, Fred F.; Scudder, Michael Y.; Oprison, Christopher G.; Kelley, William K.; Snow, Tony; Martin, Catherine; Bartlett, Dan; Rethmeier, Blain K.; Mamo, Jeanie S.; Townsend, Frances F.  
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**Sent:** Wed Mar 07 20:40:20 2007  
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-----Original Message-----

**From:** Roehrkasse, Brian  
**To:** Perino, Dana M.  
**Sent:** Wed Mar 07 20:24:34 2007  
**Subject:** Did you talk with Solomon tonight?

MR. SNOW: I'm not going to get into -- again, that gets back into the issue of transparency.

Jim.

Q Tony, when's the last time the President had any contact with President Maliki?

MR. SNOW: Gordo? It's a good question. We'll find out. Couple of weeks maybe.

Q Is there any sense -- I mean, there's some sort of conflicting pictures coming out of Iraq this morning. On one hand, you have this implementation in Sadr City, more troops and the security plan. On the other hand, there's a story about the intelligence agency in Basra. First of all, what's the, sort of, assessment of how things are going with the implementation?

MR. SNOW: Well, okay, a couple --

Q And is there concern about what you're doing out of Basra?

MR. SNOW: We're still trying to figure out what the facts are. We don't have a full readout on that. If you take a look at what's been going on, the President -- the Prime Minister, I mean, gave a speech over the weekend on reconciliation, which, in fact, hit on all the themes that Democrats, Republicans, and the President have said are important. And he talked about such things as the rule of law and making sure that the law is enforced fairly across the country; reconciliation, he spoke of the oil law; he spoke of going after corruption. So all of those things certainly said the right things.

If you take a look at what's been going on, on the ground in Baghdad and elsewhere, there are encouraging signs. But I want to remind people that we're at the very beginning stages of the new way forward. There's one U.S. brigade in, out of five. The Iraqis have placed three brigades into Baghdad now. The Prime Minister has recently signed off on the orders for Baghdad security. We have seen operations in Shia and Sunni neighborhoods. We have seen some small, but encouraging signs. But, again, one doesn't want to read too much into it.

I think it's important to give everything a chance to work. General Petraeus has been on the ground for about three weeks. So I think for people to start drawing snap conclusions, let's see how things continue to work.

But you may recall, we were talking not so long ago about a series of things that would qualify as benchmarks, such as having three brigades in by the end of February -- it happened. As far as pushing for the oil law, it's now been passed by the Council of Ministers, it goes to the

legislature, the Council of Representatives. If you take a look at the way the Iraqis also have reached out within the region, that is a key recommendation of Baker-Hamilton, and something a lot of Democrats and this administration have talked about. We're going to have a meeting in Baghdad on the 10th of March, followed by a ministerial level meeting the following month, in April, that will include Secretary Rice and others.

So, again, a lot of encouraging signs. As you know, I'm hesitant to give out report cards on the Prime Minister, but we have seen many encouraging signs in recent days. But we also acknowledge that we're still at the very beginning of this plan.

Q Is it discouraging, his initial comments about the Basra incident seem to focus on the invasion into the office, as opposed to the apparent torture victims found there?

MR. SNOW: As I said, what you're trying to do is to get me to comment. I'm aware of the news reports, just as you are. What we're still trying to do is to unravel everything, and I feel a little uncomfortable about trying to do it simply on the basis of wire stories.

Q And one last question, I missed this. Has there been a location nailed down for the second meeting in April?

MR. SNOW: Not that I'm aware of, no. No, that's still pending.

Q Two questions, one on Walter Reed and the veterans. Is there anything that the President is doing to facilitate immediate improvements in care? I understand there are long-term commissions, but anything to help people who are in need right now?

MR. SNOW: I know what's going on is that there's a full-court press both out of DoD and the Department of Veterans Affairs. DoD obviously would have the lead on Walter Reed, and I'd send you in that direction.

Q So nothing the White House knows of?

MR. SNOW: Well, no, I'm not saying that. I'm saying what the President said early on is find out what's wrong and fix it. And we have seen quick action. I know that there were some people from DoD who were out there last week, inspecting Unit 18. I just honestly don't know, Jessica, precisely what's been done. But he's made it clear that he wants improvements done, and done quickly.

Q Why did it require media exposure for the President and the administration to act on this?

MR. SNOW: I think what happened was that people weren't aware of it. And that was one of the sources of concern.

Q So none of the letters or the protests that have been expressed by the veterans' families ever reached anyone in a position of power?

MR. SNOW: Well, apparently, what happened was that within the chain of command, things were not getting up high enough and, therefore, weren't acted upon.

Q And the President and the administration wasn't aware of other media reports that came out last year about these issues?

MR. SNOW: I don't want to say that nobody was aware of them, but when the President saw the story in The Post, that was the first he was aware of what was going on in Unit 18. And as I told you the following day, he wanted to know what was wrong and get it fixed.

Q Tony, U.S. forces killed a number of Afghan civilians over the weekend, including 10 who were shot by American troops. Can you tell us -- the Afghan government has condemned it, Karzai, in particular. The U.S. military says it was -- they acted in self-defense. And can you tell us what this says about winning hearts and minds, at a time when the Taliban are resurgent and al Qaeda is regrouping?

MR. SNOW: Yes, a couple of things. First, everything is under review, so I don't want to try to presume. Secondly, there's a real difference between the Taliban, which kills innocent as a matter of policy, and the United States, which abhors the death of any innocent. And that's just -- they're two different approaches. And, frankly, in the battle of hearts and minds, the Taliban already lost that. What they're trying to do, once again, is to use terror to impose their will -- and it's not going to happen.

But it is certainly the case that -- again, I want to make it very clear that any attempt to draw a moral comparison between terrorists who kill innocents as a matter of policy, and the United States, which is trying to save innocents as a matter of policy, is utterly unwarranted. There is no moral parallel between the two.

Q You just draw that parallel; I didn't. But what is the U.S. going to be doing --

MR. SNOW: Well, but it's embedded in the question, when you talk about winning hearts and minds -- when you're saying in winning hearts and minds, it would insinuate that there was something there that would, in fact, constitute a deliberate assault on hearts and minds. So I just -- well, I think a lot of people would construe it that way, so I wanted to make sure that there was no confusion.

Q What will the U.S. do to prevent this kind of tragedy from happening in the future? We've had two major instances --

MR. SNOW: In a time of war you can never fully -- if somebody tries to hold innocent civilians, put them in harm's way, it's very difficult to at all times avoid unfortunate circumstances. But, look, again, we're still studying it. So what you're asking me to do is to give you a detailed explanation of what happened and how one would fix it in the future, and I'm not in a position to do it.

Q Tony, just as a brief follow on that, has the President and Karzai, have they communicated on this, talked about this at all?

MR. SNOW: I don't believe -- no, no direct conversation. Again, look, when things like this happen, there is always immediate diplomatic contact.

Q Tony, maybe you commented on this already, but I saw the mention several times over the weekend that this line of analysis about Walter Reed, that the administration can't afford another Katrina, and that Walter Reed is viewed as if it is another potential Katrina.

MR. SNOW: I think that was done by a polemical columnist, but I don't see any parallel. Here you have a very rapid and definitive response on the part of the Department of Defense; you have a very rapid and definitive response on the part of the White House and the V.A. No comparison.

Q Is the "rapid and definitive" response, in some part, out of the memory of what happened when there wasn't a rapid and definitive response?

MR. SNOW: No. It's out of being concerned and alarmed by the reporting.

Q But, Tony, the reason there's no comparison is that Katrina was a natural disaster, whereas this situation at Walter Reed is something over which the administration had control. And it would suggest there was incompetence or, you know, not --

MR. SNOW: And what did you see -- and you saw the immediate holding of people accountable. Again, Sheryl, the first the President saw of that was in the pages of The Post. And that set in train without having to -- the President didn't have to call Bob Gates, people in the higher levels of the chain of command were not aware of it and that is a failing of the system.

Q But doesn't it speak to the larger level of incompetence --

MR. SNOW: No, I don't think so.

Q -- or a failing of the system, that it happened on the President's watch?

MR. SNOW: It is failures within the system that led to this. But I would also caution you against having wholesale indictments of a system that has saved many, many lives. There has been an extraordinary improvement in the quality of military medicine during the course of this conflict that has saved lives that otherwise would have been lost, and dedicated people -- look, I go to Walter Reed. I get my regular cancer checkups there. These are people who are really devoted to what they do. And so I would strongly caution against trying to use the broad brush of "incompetence." What we're talking about at this point is outpatient care. We're also talking about administrative problems.

But there is also, I think -- and I would direct you to V.A., because I know they've done some analysis of this, in terms of the levels of satisfaction with care -- but the fact is, look, as long as you have one of these cases, it's too much. But, again, I would just warn against trying to do a broad and sweeping allegation of incompetence based on this. It is simply something that -- but on the other hand, it is utterly unacceptable.

Q Tony, there was a front page story about a lack of a Plan B for the Baghdad security plan. Is there a Plan B?

MR. SNOW: Let me put it this way: Plan A is barely underway. And it is always -- the idea that the administration would talk freely about a Plan B is -- it's silly. But you also know, as you have long experience with the Pentagon -- that people have lots of plans, and continue to plan for every imaginable contingency. But as Secretary Rice said, the real secret right now is making Plan A work. And Plan A is -- we've got about 15 percent of the troop complement on the ground. As I said, we have seen encouraging signs, but there's a lot of work yet to do. And before people start casting about for Plan B, Plan A first has to be implemented.

Connie.

Q Just to follow up, since you know Walter Reed very well, and since thousands more wounded warriors are coming into Walter Reed, have you or the President discussed changing plans to close down Walter Reed?

MR. SNOW: I am aware of no -- I certainly haven't discussed it with the President. It is important to try to figure out how to provide the most effective care for all veterans. I am simply not going to get into the debate about facilities and BRAC decisions. But the point is we remain committed to first-class care for everybody.

Q Change of subject, immigration. I wanted to just do a spot check, based on discussions on the Hill. Does the President still believe that the guest worker program has to include a path to citizenship to be effective to work?

MR. SNOW: Well, first, the way the guest worker program operates is

there's a path to citizenship -- the path to citizenship and the guest worker program are separate items. The guest worker program is something in which people would come here for a specified stay, and they would return. They wouldn't bring family members; you'd have workers coming, being matched for jobs that Americans are not taking, and after a specified time, return. If they decided that they wanted to become citizens, then they would go through the regular process of trying to get green cards, and so on.

The path to citizenship -- I think you're referring to trying to figure out how to deal with 12 million people who are here illegally and coming up with some sensible way of dealing with the problem, knowing that you are not in a position to kick them all out, nor does it make any sense to ignore the fact that they're here as a result of having broken a law.

And what the President has proposed is a way of acknowledging the rule of law by requiring those who have gotten here illegally, effectively, to acknowledge it by paying penalties, and also, at the same time, going to the very back of the line when it comes to immigration -- I mean citizenship -- should they want to apply for it, and during that time, have to maintain continuous employment, good behavior and mastery of the English language.

Q Following up on that, Tony, if I may, really quickly. The President will talk about, I assume, defense with President Calderon during the trip --

MR. SNOW: I'm not sure precisely what it is. I'd refer you back to Steve Hadley's briefing. He gave that to you about an hour ago.

Q Okay. Let me also follow up, then, on the V.A. Is it your expectation that there may be more big fish, if you will, to fall in the wake of this particular circumstance?

MR. SNOW: I don't know. Our primary concern is to make sure the system gets fixed. I don't know if that implies that there are going to be other personnel changes, or not. I know that makes for, sort of, saucier reporting, but it's much better to get into the real and important business of ensuring that the people who have risked their lives and have been wounded in service to their country receive first-class treatment from the moment they're in, through the rest of their lives. That's what they're promised; that's what they deserve.

Les, and then in the back.

Q Thank you, Tony. The New York Times reports this morning that yesterday, in Selma, Mrs. Clinton recalled going as a teenager to hear Dr. King speak in Chicago in 1963, but she made no mention at all of what is in her autobiography, that in 1964, she campaigned as a Goldwater Girl, and Senator Goldwater opposed the '64 Civil Rights Act. And my question:

The President believes she surely should have admitted this at Selma yesterday, doesn't he?

MR. SNOW: Oh, please don't waste my time with this silly stuff. I've already told you we're not commenting --

Q It's not silly stuff, that --

MR. SNOW: Yes, it is.

Q -- was from The New York Times. Do you think that's a silly paper?

MR. SNOW: Yes, it's a silly question because we have told you the President is not going to play pundit-in-chief. As much as you want to go --

Q -- just want to know where he stands on this.

MR. SNOW: As much as you want to goad me into doing judgments about Hillary Rodham Clinton and Barack Obama, it's not going to happen. So don't blow one of your questions by asking something you know I'm not going to answer.

Q Well, let me ask you about another one, not Obama or -- the AP reported that Bill Clinton's induction yesterday into Selma's Voting Rights Hall of Fame -- do you, Tony, know of any record that, in March of '65, when 18-year-old Bill Clinton -- that he participated in the Selma march with those of us who did, and who came from a lot further away than either Arkansas or Georgetown?

MR. SNOW: I'm unaware.

Q You're unaware.

MR. SNOW: Paula.

Q The Employee Free Choice Act is under consideration; the White House has put out a veto threat based on the secret ballot provision.

MR. SNOW: Right.

Q But those who support the bill have said that the current system allows employers to intimidate anyone that wants to join a union, and threaten relocation. Does the administration dispute that --

MR. SNOW: I'm not going to get into that, simply because what you're asking -- if you've got specific instances you want to bring up, we'll be happy to refer you to the NLRB. That sort of activity, as you know, is illegal.

On the other hand, a secret ballot has always been a hallmark for protecting people's civil rights, as you know, and why people who are in the process of trying to decide whether to join labor unions would be denied that, is peculiar, and it is -- it's one of the reasons why this administration, the senior officials, have recommended a presidential veto if that provision carries forth.

Q Tony, real quickly, can you describe the process as the Secretary of Defense is making personnel changes related to responsibility at Walter Reed? How is he working with the White House to either fly those by him, choose the replacements --

MR. SNOW: We place a lot -- the President places a great deal of trust in Bob Gates. I am not aware that this is something where he does a flyer. I think he informs the President about what he's going to do. But this is my acting on instinct, rather than on direct knowledge. I have not been in on any meetings. It's not my understanding that it works in that way. Bob Gates was selected as Secretary of Defense in part because of his no-nonsense manner and also because of his managerial abilities, and we've seen both of those in evidence recently.

Q Thank you, Tony.

Q On North Korea, U.S.A.-North Korea will discuss normalization of relationship between U.S. and North Korea in New York today. Would you be more specific to tell us that normalization (inaudible)?

MR. SNOW: No. What's going on is within the context of the six-party talks, there are five different working groups, two of them involve normalization -- one with Japan, one with the United States -- and this is the first meeting under the six-party agreement that was signed off on a couple of weeks ago.

Q Thank you.

END

12:28 P.M. EST

**From:** Kelley, William K.  
**Sent:** Monday, March 05, 2007 3:01 PM  
**To:** Kaplan, Joel  
**Subject:** RE:

Okey Dokey.

---

**From:** Kaplan, Joel  
**Sent:** Monday, March 05, 2007 3:00 PM  
**To:** Kelley, William K.  
**Subject:** RE:

Bill--

Unfortunately, I have meetings scheduled straight from about now until 6:30. It's possible there is a brief opening b/w 5:00 and 5:30, but unlikely. I may ask Myriah Jordan to sit in. Communicators/press and leg most important in add'n to counsel's office, seems to me.

---

**From:** Kelley, William K.  
**Sent:** Monday, March 05, 2007 2:57 PM  
**To:** Kaplan, Joel  
**Subject:**

Joel--We are meeting with DOJ folks here at 5:00. Do you want to come, or have one of your staff come?

---

**From:** Perino, Dana M.  
**Sent:** Monday, March 05, 2007 3:30 PM  
**To:** Kelley, William K.  
**Cc:** Snow, Tony; Buckley, Edward W.  
**Subject:** RE: DOJ Meeting

I'll be there.

---

**From:** Kelley, William K.  
**Sent:** Monday, March 05, 2007 3:06 PM  
**To:** Wolff, Candida P.; Bartlett, Dan; Martin, Catherine; Perino, Dana M.; Rove, Karl C.  
**Cc:** Paola, Lindsey N.; Fielding, Fred F.  
**Subject:** DOJ Meeting

We are scheduled to meet with DOJ at 5:00. All are welcome; Joel thinks it is particularly important that somebody from OLA, Communications, and Press be present. Many thanks.

---

**From:** Kelley, William K.  
**Sent:** Monday, March 05, 2007 3:07 PM  
**To:** Martin, Catherine  
**Cc:** Perino, Dana M.; Bartlett, Dan  
**Subject:** RE: DOJ meeting

Just sent you an email.

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

**From:** Martin, Catherine  
**Sent:** Monday, March 05, 2007 3:06 PM  
**To:** Kelley, William K.  
**Cc:** Perino, Dana M.; Bartlett, Dan  
**Subject:** DOJ meeting

Have you all pinned down a time yet for the follow up meeting? Let us know and we'll try to make schedules work. Thanks. Cathie

---

**From:** Martin, Catherine  
**Sent:** Monday, March 05, 2007 3:10 PM  
**To:** Kelley, William K.  
**Subject:** Re: DOJ meeting

Sorry. Must have been having a mind meld with you. We will be there.

-----Original Message-----  
**From:** Kelley, William K.  
**To:** Martin, Catherine  
**CC:** Perino, Dana M.; Bartlett, Dan  
**Sent:** Mon Mar 05 15:06:35 2007  
**Subject:** RE: DOJ meeting

Just sent you an email.

-----Original Message-----  
**From:** Martin, Catherine  
**Sent:** Monday, March 05, 2007 3:06 PM  
**To:** Kelley, William K.  
**Cc:** Perino, Dana M.; Bartlett, Dan  
**Subject:** DOJ meeting

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---

**From:** Martin, Catherine  
**Sent:** Monday, March 05, 2007 3:11 PM  
**To:** Klunk, Kate A.  
**Subject:** Fw: DOJ Meeting

Add pls

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

**From:** Kelley, William K.  
**To:** Wolff, Candida P.; Bartlett, Dan; Martin, Catherine; Perino, Dana M.; Rove, Karl C.  
**CC:** Paola, Lindsey N.; Fielding, Fred F.  
**Sent:** Mon Mar 05 15:06:19 2007  
**Subject:** DOJ Meeting

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---

**From:** Bartlett, Dan  
**Sent:** Monday, March 05, 2007 5:21 PM  
**To:** Martin, Catherine  
**Subject:** RE: Are u coming to doj mtg?

no

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

**From:** Martin, Catherine  
**Sent:** Monday, March 05, 2007 5:08 PM  
**To:** Bartlett, Dan  
**Subject:** Are u coming to doj mtg?

If not, we will handle.

---

**From:** Martin, Catherine  
**Sent:** Monday, March 05, 2007 6:52 PM  
**To:** Sullivan, Kevin F.  
**Subject:** Fw: US Atty Way Forward

Fyi

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

**From:** Kelley, William K.  
**To:** Kaplan, Joel; Wolff, Candida P.; Rove, Karl C.; Bartlett, Dan; Martin, Catherine; Perino, Dana M.; Jordan, Myriah L.  
**CC:** Fielding, Fred F.; Oprison, Christopher G.; Scudder, Michael Y.  
**Sent:** Mon Mar 05 18:27:03 2007  
**Subject:** US Atty Way Forward

After the meeting late this afternoon with DOJ, the following will occur:

1. DOJ will rework the oral statement that was circulated at the meeting to reflect the comments/suggestions that more detail be provided, and that it be made clear that the Department is ready to talk about the specific policy and management issues that led to the decisions to ask for these resignations.
2. DOJ will submit for clearance a very short (1 paragraph) statement on the legislation, referring to the AG's and DAG's prior statements in opposition, but offering to work with Congress as the legislation progresses. They now understand that there is no taste here to expend time or capital fighting the inevitable. (Our judgment was that it wasn't necessary actually to support the legislation, or to seek to have DOJ withdraw its prior statements in opposition, but would instead be sufficient to signal acquiescence in offering to work with them going forward. Also, some Republicans, particularly Sen. Kyl, strongly oppose the legislation, and it was thought inadvisable to pull the rug from under those who are supporting us.)

DOJ will share drafts and coordinate with Cathie and Dana, as well as our Office, on point 1 above. If others want to be heard, please advise. Also, please let us know if you recommend more or different steps.

---

**From:** Martin, Catherine  
**Sent:** Monday, March 05, 2007 6:19 PM  
**To:** Perino, Dana M.  
**Subject:** Fw: surrogate on us atty

**Attachments:** Phil Musser

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

**From:** Bartlett, Dan  
**To:** Martin, Catherine  
**Sent:** Mon Mar 05 18:13:20 2007  
**Subject:** Fw:

Can y'all make sure u get him some points.

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

**From:** Phil Musser  
**To:** Bartlett, Dan  
**Sent:** Mon Mar 05 18:08:14 2007  
**Subject:**



Phil Musser

<<Phil Musse

>>

Dan—I am doing some msnbc tomorrow and the questions are Domenici and the DA firings. Can someone on your staff give me the talkers on this?

my cell is 703-509-

hope alls well-PM

---

**From:** Martin, Catherine  
**Sent:** Monday, March 05, 2007 6:52 PM  
**To:** Bartlett, Dan  
**Subject:** Re:

Just finished. Talking to sully re commission name. Will call you on my way home

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

**From:** Bartlett, Dan  
**To:** Martin, Catherine  
**Sent:** Mon Mar 05 18:51:02 2007  
**Subject:** Re:

How'd the meeting go?

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

**From:** Martin, Catherine  
**To:** Bartlett, Dan  
**Sent:** Mon Mar 05 18:32:47 2007  
**Subject:** Re:

Done. Dana sent her talkers.

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

**From:** Bartlett, Dan  
**To:** Martin, Catherine  
**Sent:** Mon Mar 05 18:13:20 2007  
**Subject:** Fw:

Can y'all make sure u get him some points.

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**To:** Bartlett, Dan  
**Sent:** Mon Mar 05 18:08:14 2007  
**Subject:**

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**From:** Oprison, Christopher G.  
**Sent:** Monday, March 05, 2007 6:47 PM  
**To:** Fielding, Fred F.; Kelley, William K.  
**Cc:** Scudder, Michael Y.  
**Subject:** FW: Letter For Tomorrow's Hearing from HJC  
**Attachments:** LettertoWEMfromHJCreUSA3.5.07.pdf

fyi

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**From:** Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]  
**Sent:** Monday, March 05, 2007 6:45 PM  
**To:** Oprison, Christopher G.  
**Subject:** FW: Letter For Tomorrow's Hearing from HJC

fyi

---

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

<<LettertoWEMfromHJCreUSA3.5.07.pdf>>

Catalina Cabral  
U.S. DEPARTMENT OF JUSTICE  
Office of Legislative Affairs

(202) 514-

**U.S. House of Representatives  
Committee on the Judiciary**

Washington, DC 20515-6216  
One Hundred Tenth Congress

**FAX COVER SHEET**

DATE: 3/5/07

TO: Mr. William Moschella c/o OLA

FAX NO.: 514-

FROM: \_\_\_\_\_ Fax No.: (202) 225-

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

COMMENTS: \_\_\_\_\_  
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PLEASE CALL IF THERE ARE ANY PROBLEMS WITH THIS TRANSMISSION  
(202) 225-

**U.S. House of Representatives**  
**Committee on the Judiciary**

Washington, DC 20515-6216

One Hundred Tenth Congress

March 5, 2007

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

Dear Mr. Moschella:

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

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

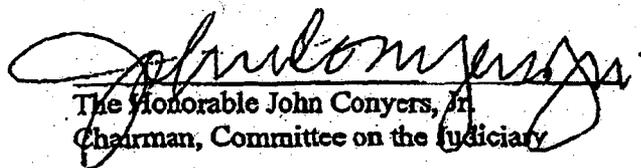
Mr. William Moschella

Page Two

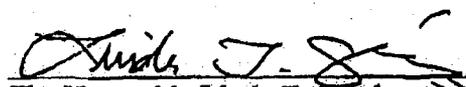
March 5, 2007

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

Sincerely,



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



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

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

---

**From:** Gibbs, Landon M.  
**Sent:** Monday, March 05, 2007 7:32 PM  
**To:** Oprison, Christopher G.  
**Subject:** RE: Letter For Tomorrow's Hearing from HJC

I have told OMB not to clear. OMB would like to know if DOJ plans to circulate a revised version through the LRM process?

---

**From:** Oprison, Christopher G.  
**Sent:** Monday, March 05, 2007 7:30 PM  
**To:** Gibbs, Landon M.  
**Subject:** FW: Letter For Tomorrow's Hearing from HJC

letter still being cleared internally at DOJ

---

**From:** Hertling, Richard  
**Sent:** Monday, March 05, 2007 7:25 PM  
**To:** Sampson, Kyle  
**Cc:** Oprison, Christopher G.  
**Subject:** RE: Letter For Tomorrow's Hearing from HJC

Chris: we have circulated a draft revision still being cleared within DOJ. I do not think anyone here has alerted OMB not to clear the previously submitted testimony as we were under the impression you all had given that message to OMB.

---

**From:** Sampson, Kyle  
**Sent:** Monday, March 05, 2007 7:24 PM  
**To:** Hertling, Richard  
**Cc:** 'Oprison, Christopher G.'  
**Subject:** RE: Letter For Tomorrow's Hearing from HJC  
**Importance:** High

Richard, I think you're the man to answer Chris' questions, set forth below. What say you?

---

**From:** Oprison, Christopher G. [mailto:Christopher\_G.\_Oprison@who.eop.gov]  
**Sent:** Monday, March 05, 2007 7:15 PM  
**To:** Sampson, Kyle  
**Subject:** RE: Letter For Tomorrow's Hearing from HJC

not trying to pressure this, by the way. just curious if it would come tonight so that I could let our front office know, and they could pass along to OMB

---

**From:** Oprison, Christopher G.  
**Sent:** Monday, March 05, 2007 7:12 PM  
**To:** 'Sampson, Kyle'  
**Subject:** RE: Letter For Tomorrow's Hearing from HJC

Kyle - do you know when we should be receiving the revised Moschella testimony for tomorrow's hearing? Also, has someone notified OMB that the prior testimony should not be cleared?

---

**From:** Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]  
**Sent:** Monday, March 05, 2007 6:45 PM  
**To:** Oprison, Christopher G.  
**Subject:** FW: Letter For Tomorrow's Hearing from HJC

fyi

---

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

<<LettertoWEMfromHJCreUSA3.5.07.pdf>>

Catalina Cabral  
U.S. DEPARTMENT OF JUSTICE  
Office of Legislative Affairs

(202) 514

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**From:** Bakke, Mary Beth  
**Sent:** Tuesday, March 06, 2007 9:06 AM  
**To:** Oprison, Christopher G.  
**Subject:** RE: Letter For Tomorrow's Hearing from HJC

Sure

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**From:** Oprison, Christopher G.  
**Sent:** Tuesday, March 06, 2007 9:01 AM  
**To:** Bakke, Mary Beth  
**Subject:** FW: Letter For Tomorrow's Hearing from HJC

Mary Beth - can you please print the attachment for Mr. Fielding?

---

**From:** Oprison, Christopher G.  
**Sent:** Monday, March 05, 2007 6:47 PM  
**To:** Fielding, Fred F.; Kelley, William K.  
**Cc:** Scudder, Michael Y.  
**Subject:** FW: Letter For Tomorrow's Hearing from HJC

fyi

---

**From:** Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]  
**Sent:** Monday, March 05, 2007 6:45 PM  
**To:** Oprison, Christopher G.  
**Subject:** FW: Letter For Tomorrow's Hearing from HJC

fyi

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

<<LettertoWEMfromHJCreUSA3.5.07.pdf>>

Catalina Cabral  
U.S. DEPARTMENT OF JUSTICE  
Office of Legislative Affairs

(202) 514-

---

**From:** Gibbs, Landon M.  
**Sent:** Monday, March 05, 2007 7:03 PM  
**To:** Oprison, Christopher G.  
**Subject:** DOJ Testimony: U.S. Attorney's

How are you looking?

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

From: Jordan, Myriah L.  
Sent: Monday, March 05, 2007 7:43 PM  
To: Kaplan, Joel  
Cc: Dryden, Logan E.  
Subject: FW: Moschella Oral Testimony  
Importance: High

DOJ reworked Moschella's oral statement after our meeting.



Moschella Oral  
Statement.doc (...)

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

From: Kelley, William K.  
Sent: Monday, March 05, 2007 7:33 PM  
To: Perino, Dana M.; Martin, Catherine; Oprison, Christopher G.; Scudder, Michael Y.;  
Jordan, Myriah L.  
Cc: Fielding, Fred F.  
Subject: Fw: Moschella Oral Testimony  
Importance: High

Attached is the revised version of the oral statement as promised by DOJ. Thx.

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

From: Sampson, Kyle  
To: Kelley, William K.  
CC: Oprison, Christopher G.  
Sent: Mon Mar 05 19:25:15 2007  
Subject: Moschella Oral Testimony

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

<<Moschella Oral Statement.doc>>

Kyle Sampson  
Chief of Staff  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
(202) 514-2001 wk.

(202) 305- cell  
kyle.sampson@usdoj.gov

William E. Moschella  
Opening Statement

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

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

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

U.S. Attorneys in the field (as well as Assistant Attorneys General here in Washington) are tasked with making prosecutorial decisions – but that responsibility does not change or alter in any way the fact that they serve at the pleasure of the President and report to the Attorney General in the discharge of their offices. Nor does it change or alter the fact that if they are not executing their responsibilities in a manner that furthers the management and policy goals of departmental leadership, then it is appropriate that they be asked to resign so that they can be replaced by other individuals who will.

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

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

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

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

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

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

In conclusion, let me make three points: First, although the Department stands by the decision to ask these U.S. Attorneys to resign, it would have been much better to have addressed the relevant issues up front with each of them. Second, the Department has not taken any action to influence any public corruption case – and would never do so. Third, the Administration did not intend to circumvent the confirmation process.

I would be happy to take your questions.

**From:** Scudder, Michael Y.  
**Sent:** Monday, March 05, 2007 8:06 PM  
**To:** Oprison, Christopher G.  
**Subject:** RE: Moschella Oral Testimony

**Attachments:** Moschella Oral Statement - MYS.doc



Moschella  
Statement - N

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

**From:** Kelley, William K.  
**Sent:** Monday, March 05, 2007 7:33 PM  
**To:** Perino, Dana M.; Martin, Catherine; Oprison, Christopher G.; Scudder, Michael Y.; Jordan, Myriah L.  
**Cc:** Fielding, Fred F.  
**Subject:** Fw: Moschella Oral Testimony  
**Importance:** High

Attached is the revised version of the oral statement as promised by DOJ. Thx.

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**CC:** Oprison, Christopher G.  
**Sent:** Mon Mar 05 19:25:15 2007  
**Subject:** Moschella Oral Testimony

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<<Moschella Oral Statement.doc>>

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

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

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

Deleted: But

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

Deleted: are tasked with

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Deleted: in the discharge of their offices

Deleted: Nor does it change or alter the fact that if

Deleted: To be sure,

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

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

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**From:** Scudder, Michael Y.  
**Sent:** Monday, March 05, 2007 8:21 PM  
**To:** Kelley, William K.; Perino, Dana M.; Martin, Catherine; Oprison, Christopher G.; Jordan, Myriah L.  
**Cc:** Fielding, Fred F.  
**Subject:** RE: Moschella Oral Testimony

**Attachments:** Moschella Oral Statement - MYS.doc



**Moschella  
Statement - M**

I have suggested a few edits in the attached. My only concern is with paragraph 3. I do not believe it says with enough clarity that US Attorneys are obliged not only to make prosecutorial decisions, but also to implement the Administration and AG's priorities and policy decisions. I also believe DOJ should say about the need for a judgment to be made if a particular USA is not performing satisfactorily.

For those on a blackberry, here is the DOJ language and my suggested edits:

DOJ language:

U.S. Attorneys in the field (as well as Assistant Attorneys General here in Washington) are tasked with making prosecutorial decisions - but that responsibility does not change or alter in any way the fact that they serve at the pleasure of the President and report to the Attorney General in the discharge of their offices. Nor does it change or alter the fact that if they are not executing their responsibilities in a manner that furthers the management and policy goals of departmental leadership, then it is appropriate that they be asked to resign so that they can be replaced by other individuals who will.

Proposed revision:

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

Chris Oprison will collect the comments and clear with DOJ.

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**From:** Kelley, William K.  
**Sent:** Monday, March 05, 2007 7:33 PM  
**To:** Perino, Dana M.; Martin, Catherine; Oprison, Christopher G.; Scudder, Michael Y.; Jordan, Myriah L.  
**Cc:** Fielding, Fred F.  
**Subject:** Fw: Moschella Oral Testimony  
**Importance:** High

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To: Kelley, William K.  
CC: Oprison, Christopher G.  
Sent: Mon Mar 05 19:25:15 2007  
Subject: Moschella Oral Testimony

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<<Moschella Oral Statement.doc>>

Kyle Sampson  
Chief of Staff  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
(202) 514-2001 wk.  
(202) 305-2222 ell  
kyle.sampson@usdoj.gov

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Opening Statement

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

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

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

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

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

In conclusion, let me make three points: First, although the Department stands by the decision to ask these U.S. Attorneys to resign, it would have been much better to have addressed the relevant issues up front with each of them. Second, the Department has not taken any action to influence any public corruption case – and would never do so. Third, the Administration did not intend to circumvent the confirmation process.

I would be happy to take your questions.

**From:** Jordan, Myriah L.  
**Sent:** Monday, March 05, 2007 9:24 PM  
**To:** Kaplan, Joel  
**Subject:** Re: Moschella Oral Testimony

No. I think it's fine now. It doesn't lay out the arguments as much as we ultimately need to, but everyone agreed it was most "respectful" to reference the fact that we should have stated the legitimate reasons for getting rid of these people, and then get some R's to ask specific questions, so that we're not just laying those out on our own. KR, Cathie, and Bill all agreed to this. As a result, DOJ changed the testimony for those references, and Mike Scudder has made additional changes, below, to reflect more of the fact that these were political appointees.

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

**From:** Kaplan, Joel  
**To:** Jordan, Myriah L.  
**Sent:** Mon Mar 05 21:16:31 2007  
**Subject:** RE: Moschella Oral Testimony

Do you have comments?

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

**From:** Jordan, Myriah L.  
**Sent:** Monday, March 05, 2007 9:16 PM  
**To:** Kaplan, Joel  
**Subject:** Fw: Moschella Oral Testimony

Joel - Did you want to comment on this draft oral testimony? It has been altered to reference the fact that they should have laid out reasons for the firings, but it doesn't get into specifics. The plan was to reference the reasons, and then prepare to get into details when questioned. Cathie thought that was a good idea. If you don't have anything further, I'll tell them to clear it.

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

**From:** Scudder, Michael Y.  
**To:** Kelley, William K.; Perino, Dana M.; Martin, Catherine; Oprison, Christopher G.; Jordan, Myriah L.  
**CC:** Fielding, Fred F.  
**Sent:** Mon Mar 05 20:20:53 2007  
**Subject:** RE: Moschella Oral Testimony

I have suggested a few edits in the attached. My only concern is with paragraph 3. I do not believe it says with enough clarity that US Attorneys are obliged not only to make prosecutorial decisions, but also to implement the Administration and AG's priorities and policy decisions. I also believe DOJ should say about the need for a judgment to be made if a particular USA is not performing satisfactorily.

For those on a blackberry, here is the DOJ language and my suggested edits:

DOJ language:

U.S. Attorneys in the field (as well as Assistant Attorneys General here in Washington) are tasked with making prosecutorial decisions - but that responsibility does not change or alter in any way the fact that they serve at the pleasure of the President and report to the Attorney General in the discharge of their offices. Nor does it change or alter the fact that if they are not executing their responsibilities in a manner that furthers the management and policy goals of departmental leadership, then it is appropriate that they be asked to resign so that they can be replaced by other individuals who will.

Proposed revision:

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

Chris Oprison will collect the comments and clear with DOJ.

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

From: Kelley, William K.  
Sent: Monday, March 05, 2007 7:33 PM  
To: Perino, Dana M.; Martin, Catherine; Oprison, Christopher G.; Scudder, Michael Y.; Jordan, Myriah L.  
Cc: Fielding, Fred F.  
Subject: Fw: Moschella Oral Testimony  
Importance: High

Attached is the revised version of the oral statement as promised by DOJ. Thx.

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

From: Sampson, Kyle  
To: Kelley, William K.  
CC: Oprison, Christopher G.  
Sent: Mon Mar 05 19:25:15 2007  
Subject: Moschella Oral Testimony

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

<<Moschella Oral Statement.doc>>

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

---

**From:** Gibbs, Landon M.  
**Sent:** Monday, March 05, 2007 9:38 PM  
**To:** Oprison, Christopher G.  
**Subject:** Re: Moschella Oral Testimony

That would be nice.

-----Original Message-----  
**From:** Oprison, Christopher G.  
**To:** Gibbs, Landon M.  
**Sent:** Mon Mar 05 21:36:46 2007  
**Subject:** RE: Moschella Oral Testimony

Final from our end - not sure if DOJ will accept all changes, but I suspect they will. I would be happy to send you a clean copy of what as cleared from here.

-----Original Message-----  
**From:** Gibbs, Landon M.  
**Sent:** Monday, March 05, 2007 9:36 PM  
**To:** Oprison, Christopher G.  
**Subject:** Re: Moschella Oral Testimony

I can only send the tracked changes to OMB at this point. Do you expect this to be final?

-----Original Message-----  
**From:** Oprison, Christopher G.  
**To:** Gibbs, Landon M.  
**Sent:** Mon Mar 05 21:33:26 2007  
**Subject:** FW: Moschella Oral Testimony

do you need me to send a clean copy of this as well or can you save all track changes and forward that on to OMB?

---

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

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

Chris

---

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

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

---

**From:** Oprison, Christopher G. [mailto:Christopher\_G.\_Oprison@who.eop.gov]

Sent: Monday, March 05, 2007 8:40 PM  
To: Sampson, Kyle  
Subject: RE: Moschella Oral Testimony

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

---

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

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

<<Moschella Oral Statement.doc>>

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

---

**From:** Oprison, Christopher G.  
**Sent:** Monday, March 05, 2007 9:52 PM  
**To:** Jordan, Myriah L.; Martin, Catherine  
**Subject:** RE: Moschella Oral Testimony

thanks

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

**From:** Jordan, Myriah L.  
**Sent:** Monday, March 05, 2007 9:49 PM  
**To:** Martin, Catherine; Oprison, Christopher G.  
**Subject:** Re: Moschella Oral Testimony

We're good, too, thanks.

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

**From:** Martin, Catherine  
**To:** Oprison, Christopher G.; Jordan, Myriah L.  
**Sent:** Mon Mar 05 21:28:30 2007  
**Subject:** Re: Moschella Oral Testimony

I spoke to Tasia directly earlier tonight on the language re these are discretionary decisions/all presidential appointees including prosecutors serve at the discretion of the president, etc. She was beefing that up a bit so I think I'm okay. Thanks for checking.

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

**From:** Oprison, Christopher G.  
**To:** Martin, Catherine; Jordan, Myriah L.  
**Sent:** Mon Mar 05 21:06:16 2007  
**Subject:** RE: Moschella Oral Testimony

Do either of you have additional comments on this?

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

**From:** Kelley, William K.  
**Sent:** Monday, March 05, 2007 8:39 PM  
**To:** Perino, Dana M.; Scudder, Michael Y.; Martin, Catherine; Oprison, Christopher G.; Jordan, Myriah L.  
**Cc:** Fielding, Fred F.  
**Subject:** Re: Moschella Oral Testimony

Comments should be coordinated through Chris, who will get them to DOJ. Thx.

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

**From:** Perino, Dana M.  
**To:** Kelley, William K.; Scudder, Michael Y.; Martin, Catherine; Oprison, Christopher G.; Jordan, Myriah L.  
**CC:** Fielding, Fred F.  
**Sent:** Mon Mar 05 20:37:45 2007  
**Subject:** Re: Moschella Oral Testimony

Are you in touch with kyle or will to make the changes?

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

**From:** Kelley, William K.  
**To:** Perino, Dana M.; Scudder, Michael Y.; Martin, Catherine; Oprison, Christopher G.; Jordan, Myriah L.  
**CC:** Fielding, Fred F.

Sent: Mon Mar 05 20:36:38 2007  
Subject: Re: Moschella Oral Testimony

So do I.

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

From: Perino, Dana M.  
To: Scudder, Michael Y.; Kelley, William K.; Martin, Catherine; Oprison, Christopher G.; Jordan, Myriah L.  
CC: Fielding, Fred F.  
Sent: Mon Mar 05 20:33:25 2007  
Subject: Re: Moschella Oral Testimony

I agree with your points, mike

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

From: Scudder, Michael Y.  
To: Kelley, William K.; Perino, Dana M.; Martin, Catherine; Oprison, Christopher G.; Jordan, Myriah L.  
CC: Fielding, Fred F.  
Sent: Mon Mar 05 20:20:53 2007  
Subject: RE: Moschella Oral Testimony

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Proposed revision:

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

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From: Kelley, William K.  
Sent: Monday, March 05, 2007 7:33 PM  
To: Perino, Dana M.; Martin, Catherine; Oprison, Christopher G.; Scudder, Michael Y.; Jordan, Myriah L.  
Cc: Fielding, Fred F.  
Subject: Fw: Moschella Oral Testimony  
Importance: High

Attached is the revised version of the oral statement as promised by DOJ. Thx.

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

From: Sampson, Kyle  
To: Kelley, William K.  
CC: Oprison, Christopher G.  
Sent: Mon Mar 05 19:25:15 2007  
Subject: Moschella Oral Testimony

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

<<Moschella Oral Statement.doc>>

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

---

**From:** Oprison, Christopher G.  
**Sent:** Monday, March 05, 2007 10:15 PM  
**To:** Kelley, William K.; Fielding, Fred F.; Scudder, Michael Y.  
**Cc:** Gibbs, Landon M.  
**Subject:** FW: Testimony for Tuesday

**Attachments:** DRAFT Moschella Testimony4.wpd



**DRAFT**  
lla Testimony4

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

**From:** Hertling, Richard [mailto:Richard.Hertling@usdoj.gov]  
**Sent:** Monday, March 05, 2007 8:46 PM  
**To:** Oprison, Christopher G.  
**Subject:** Fw: Testimony for Tuesday

This will be coming to OMB for clearance.

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

**From:** Scott-Finan, Nancy  
**To:** Silas, Adrien  
**CC:** Hertling, Richard; Moschella, William; Elston, Michael (ODAG); Goodling, Monica; Sampson, Kyle; Nowacki, John (USAE0); Mercer, William W; Scolinos, Tasia; Roehrkasse, Brian  
**Sent:** Mon Mar 05 20:45:05 2007  
**Subject:** Testimony for Tuesday

Attached is the revised and edited testimony to be sent to OMB. Adrien, you will notice that in my own ini <<DRAFT Moschella Testimony4.wpd>> <<DRAFT Moschella Testimony4.wpd>> mitable way I managed to strip the seal and header off the cover page. Pls get from OMB a sense of when this will be cleared.

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**STATEMENT**

**OF**

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

**BEFORE THE**

**COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW  
UNITED STATES HOUSE OF REPRESENTATIVES**

**CONCERNING**

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

**PRESENTED ON**

**MARCH 6, 2007**

**Testimony  
of**

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

**Committee on the Judiciary  
Subcommittee on Commercial and Administrative Law  
United States House of Representatives**

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

March 6, 2007

Chairwoman Sanchez, Congressman Cannon, and members of the Subcommittee, thank you for the invitation to discuss the importance of the Justice Department's United States Attorneys.

Although – as previously noted by the Attorney General and the Deputy Attorney General in their testimony, the Department of Justice has concerns about H.R. 580, the "Preserving United States Attorneys Independence Act of 2007," the Department looks forward to working with the Committee in an effort to reach common ground on this important issue.

As the chief federal law-enforcement officers in their districts, our 93 U.S. Attorneys represent the Attorney General and the Department of Justice throughout the

United States. U.S. Attorneys are not just prosecutors; they are government officials charged with managing and implementing the policies and priorities of the President and the Attorney General. The Attorney General has set forth key priorities for the Department of Justice, and in each of their districts, U.S. Attorneys lead the Department's efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families—including child pornography, obscenity, and human trafficking.

United States Attorneys serve at the pleasure of the President and report to the Attorney General in the discharge of their offices. Like any other high-ranking officials in the Executive Branch, they may be removed for any reason or no reason. The Department of Justice—including the office of United States Attorney—was created precisely so that the government's legal business could be effectively managed and carried out through a coherent program under the supervision of the Attorney General. Unlike judges, who are supposed to act independently of those who nominate them, U.S. Attorneys are accountable to the Attorney General.

The Attorney General and the Deputy Attorney General are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their offices effectively. It should come as no surprise to anyone that, in an organization as large as the Justice Department, U.S. Attorneys are removed or asked

or encouraged to resign from time to time. However, in this Administration U.S. Attorneys are never—repeat, never—removed, or asked or encouraged to resign, in an effort to retaliate against them, or interfere with, or inappropriately influence a particular investigation, criminal prosecution, or civil case. Any suggestion to the contrary is unfounded, and it irresponsibly undermines the reputation for impartiality the Department has earned over many years and on which it depends.

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

Given the reality of turnover among the U.S. Attorneys, our system depends on the dedicated service of the career investigators and prosecutors. While a new Administration may articulate new priorities or emphasize different types of cases, the effect of a U.S. Attorney on an ongoing investigation or prosecution 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 U.S. Attorney. Often, the Department looks to the First Assistant U.S. Attorney or another senior manager in the office to serve as U.S. Attorney on an interim basis. When neither the First Assistant nor another senior manager in the office is able or willing to serve as interim U.S. Attorney, or when the appointment of either would not be appropriate in the circumstances, the Department has looked to other, qualified Department employees. For example, in the District of Minnesota and the Northern District of Iowa, the First Assistant took federal retirement at or near the same time that the U.S. Attorney resigned, which required the Department to select another official to lead the office.

At no time, however, has the Administration sought to avoid the confirmation process in the Senate by appointing an interim U.S. Attorney and then refusing to move

forward—in consultation with home-state Senators—on the selection, nomination, confirmation and appointment of a new U.S. Attorney. Not once. In every single case where a vacancy occurs, the Administration is committed to having a Senate-confirmed U.S. Attorney. And the Administration's actions bear this out. Every time a vacancy has arisen, the President either has made a nomination, or the Administration is working to select candidates for nomination. The appointment of U.S. Attorneys by and with the advice and consent of the Senate is unquestionably the appointment method preferred by the Senate, and it is unquestionably the appointment method preferred by the Administration.

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

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

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

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

Two examples demonstrate the shortcomings of the previous system. During President Reagan's Administration, the district court appointed in the Southern District of West Virginia an interim U.S. Attorney who was neither a Justice Department employee nor an individual who had been subject to a FBI background review. The court-appointed U.S. Attorney, who had ties to a political party, sought access to law-enforcement sensitive investigative materials related to the office's most sensitive public corruption investigation, which was targeting a state-wide leader of the same party. The problem was that the interim U.S. Attorney had no clearances and had not

undergone a background investigation so that the Attorney General and the Federal Bureau of Investigation could have complete confidence in the individual or his reasons for making inquiries into the case. The appointment forced the Department to remove the case files from the U.S. Attorney's Office in order to protect the integrity of the investigation and prohibit the U.S. Attorney from making any additional inquiries into the case. To resolve the problem, the Department expedited a nomination for the permanent U.S. Attorney and, with the extraordinary assistance of the Senate, he was confirmed to replace the court-appointed individual within a few weeks.

In a second case, occurring in 2005, the district court attempted to appoint an individual who similarly was not a Department of Justice or federal employee and had never undergone the appropriate background check. As a result, this individual would not have been permitted access to classified information and would not have been able to receive information from his district's anti-terrorism coordinator, its Joint Terrorism Task Force, or its Field Intelligence Group. In a post 9/11 world, this situation was unacceptable. This problem was only resolved when the President recess-appointed a career federal prosecutor to serve as U.S. Attorney until a candidate could be nominated and confirmed.

Notwithstanding these two notorious instances, the district courts in most instances have simply appointed the Attorney General's choice as interim U.S. Attorney, revealing the fact that most judges have recognized the importance of

appointing an interim U.S. Attorney who enjoys the confidence of the Attorney General.

In other words, the most important factor in the selection of past court-appointed interim U.S. Attorneys was the Attorney General's recommendation. By foreclosing the possibility of judicial appointment of interim U.S. Attorneys unacceptable to the Administration, last year's amendment to Section 546 eliminated a procedure that in a minority of cases created unnecessary problems without any apparent benefit.

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

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. In no context is accountability more important to our society than on the front lines of law enforcement and the exercise of prosecutorial discretion. United States Attorneys are, and should be, accountable to the Attorney General.

The Administration has repeatedly demonstrated its commitment to having a Senate-confirmed U.S. Attorney in every federal district, thereby calling into question the need for H.R. 580. 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:** Gibbs, Landon M.  
**Sent:** Monday, March 05, 2007 10:24 PM  
**To:** Oprison, Christopher G.  
**Subject:** Fw: US Atty - ODAG Tstmny

**Attachments:** USAttys01.doc.doc

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

**From:** Silas, Adrien  
**To:** Gibbs, Landon M.  
**CC:** Green, Richard E.; Simms, Angela M.; Hertling, Richard; Moschella, William  
**Sent:** Mon Mar 05 22:18:27 2007  
**Subject:** US Atty - ODAG Tstmny



USAttys01.doc.doc (80 KB)

Please find attached revised Justice Department testimony on the United States Attorneys for tomorrow's hearing. Please advise as to White House clearance. Thank you.

<<USAttys01.doc.doc>>

-- no excuses, get the facts, get it fixed.

Q But isn't it sad that it takes Walter Reed to go back into the V.A. system that has been a problem for so, so many years?

MR. SNOW: Well, again, that's an editorial comment I'm not willing to make. A couple of things. Number one, this administration has been committed to trying to improve things through the '08 budget that the President has proposed. We're talking about a 77 percent increase in V.A. spending, as well as an 83 percent increase in medical spending for the military. But having said that, the point I made before is, they've given us their best, it's time that we make sure we give them our best, when it comes to their care.

Q Tony, we've just come off the weekend where Senators Clinton and Obama generated a lot of news coverage with their trip to Selma. We're sitting here now in practically an empty briefing room. The President has said repeatedly that he believes he has the microphone still. But are you concerned that you are losing the microphone, and the President is losing his microphone?

MR. SNOW: No, if you'd come earlier, it was fuller. (Laughter.) The fact is, Sheryl, the President is not losing his microphone. And when you take a look -- whether it is the conduct of the war on terror or domestic policy, the President is the one who is out there with not only a message, but proposals that are going to shape a lot of what goes on in terms of the domestic political debate, and they ought to. They're good ideas, and contrary to the suspicions of some earlier on, he is somebody who has been bold and not cautious in terms of tackling big problems.

And I think you see, again, with what's going on with Walter Reed and the situation there, we are attacking problems boldly because they're not going to go away, whether it be the war on terror, or whether it be health care, education, immigration, energy. And we have had a number of constructive conversations with Democrats and Republicans. Both parties, I think, have not only an obligation, but a vested interest in showing something for their work this year.

I think what you're really talking about is something bright, shiny, and new every time we have a presidential campaign. And reporters are dispatched to look at it and get the local color and speculate and figure out who is ahead and who is behind. CPAC also had its complement of reporters last week. That's part of the pageantry, but while that's going on, there is serious legislative business that is not going to await the campaign trips of various candidates.

Ken.

Q Tony, back on Chavez, Citgo/Venezuela has a very aggressive TV ad campaign on now where they have lower-income Americans, in effect,

thanking Venezuela for the low-cost heating oil that Venezuela is providing. Is that as it seems, or is that some sort of propaganda effort?

MR. SNOW: I'm not going to comment on those ads.

Q Tony, Michael Battle, the Director of the Executive Office of U.S. Attorneys is resigning. As you know, this comes in the wake of firing of the eight U.S. Attorneys across the country that Congress is now investigating; some Democrats saying they were fired for political reasons. Is the timing of this resignation now all tied with any --

MR. SNOW: Well, as you know, because you've had conversations with them, no. He's made it known for many months that he's wanted to move on. So it's certainly not news. He's wanted to go the private sector.

Q Can you comment on the investigation into the firing of these eight U.S. Attorneys?

MR. SNOW: No, because that, I think, is being done on Capitol Hill.

Q Tony, two quick questions. The major story this weekend, all over the globe, one is, China's military expansion, and second, immigration. And as far immigration is concerned, President leaves for those countries where U.S. has more than 10 million illegals from those countries, and still coming in this country. And people around the country are worried about the illegals in the future. So what really, again, President's chance on this immigration (inaudible), immigration bill, is it going through? (Inaudible) as he has done in the last six years, he's going to push again in the Democratic Congress --

MR. SNOW: Of course. The President is absolutely committed to comprehensive immigration reform because it's the best way not only to guarantee our security, but also balance against that economic needs and urgencies, and America's long tradition of welcoming people who want to be Americans, who want to experience freedom and make the most of it. So all of those things are very important to him, and he will absolutely proceed.

As far as the Chinese military spending, a high rate of expenditure certainly is concerning some of China's neighbors. It's raising concerns. And it is inconsistent with the policy of peaceful development. But the more important issue for everybody, I think, is to have transparency, budgetary and otherwise, so people can actually see what the situation is.

Q (Inaudible) China's neighbors, it's not right (inaudible), because that's what all that (inaudible) -- that whatever China is doing as far as building nuclear (inaudible), is going to (inaudible) the United States because they are --

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**From:** Martin, Catherine  
**Sent:** Wednesday, February 28, 2007 2:29 PM  
**To:** Perino, Dana M.  
**Subject:** RE: Final Talking Points on NM US Atty issue

No problem. When you come up for air, give me a call and let's catch up...

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

**From:** Perino, Dana M.  
**Sent:** Wednesday, February 28, 2007 2:28 PM  
**To:** Martin, Catherine  
**Subject:** Re: Final Talking Points on NM US Atty issue

Thanks - sorry I missed the call due to the briefing and, unfortunately, the aftermath

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

**From:** Martin, Catherine  
**To:** Snow, Tony; Sullivan, Kevin F.; Kelley, William K.; Mamo, Jeanie S.; Perino, Dana M.; Kaplan, Joel  
**CC:** Burdick, Amanda K.; Fielding, Fred F.  
**Sent:** Wed Feb 28 14:26:43 2007  
**Subject:** FW: Final Talking Points on NM US Atty issue

These are final per DOJ public affairs.

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**From:** Roehrkassee, Brian  
**Sent:** Wednesday, February 28, 2007 2:23 PM  
**To:** Perino, Dana M.; Mamo, Jeanie S.; Martin, Catherine; Rethmeier, Blain K.  
**Subject:** FW: Final Talking Points

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**From:** Roehrkassee, Brian  
**Sent:** Wednesday, February 28, 2007 2:22 PM  
**To:** Scolinos, Tasia; Sampson, Kyle; Goodling, Monica; Elston, Michael (ODAG); Moschella, William; McNulty, Paul J; Elwood, Courtney; Nowacki, John (USAEO); Hertling, Richard

**Subject:** Final Talking Points

Attached are the final talking points on the allegations by U.S. Attorney David Iglesias.

Talking Points

\* The suggestion that David Iglesias was asked to resign because he failed to bring an indictment over a courthouse construction contract is flatly false.

\* This Administration has never removed a United States Attorney in an effort to retaliate against them or inappropriately interfere with a public integrity investigation. Furthermore, in the last six years, the Department has demonstrated its extremely strong record rooting out public corruption including prosecuting a number of very high profile cases.

\* David Iglesias was confirmed in 2001 to a four-year term as U.S. Attorney in New Mexico and was allowed to extend his service for an additional year and a half. During his 5 ½ years of service, we had a lengthy record from which to evaluate his performance as a manager and we made our decision not to further extend his service based on performance-related concerns.

\* U.S. Attorneys [as directed by the U.S. Attorney Manual] are aware that all Congressional calls are to be directed to the Department of Justice's Office of Legislative Affairs and we are unaware that anyone in Main Justice was notified of any conversations between U.S. Attorney Iglesias and members of the New Mexico Congressional delegation.

If asked ONLY whether the main Justice Department or the White House was contacted about the performance of former U.S. Attorney David Iglesias:

\* The Department is occasionally contacted about the performance of U.S. Attorneys by home-state Senators and gives those comments appropriate consideration. [IF PUSHED] We will not discuss specific conversations between members and the Department on these occasions.

Brian Roehrkas  
Deputy Director of Public Affairs  
U.S. Department of Justice  
(202) 514-

**From:** Sullivan, Kevin F.  
**Sent:** Wednesday, February 28, 2007 2:53 PM  
**To:** Martin, Catherine  
**Subject:** RE: Final Talking Points on NM US Atty issue

thx cath

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**From:** Martin, Catherine  
**Sent:** Wednesday, February 28, 2007 2:27 PM  
**To:** Snow, Tony; Sullivan, Kevin F.; Kelley, William K.; Mamo, Jeanie S.; Perino, Dana M.; Kaplan, Joel  
**Cc:** Burdick, Amanda K.; Fielding, Fred F.  
**Subject:** FW: Final Talking Points on NM US Atty issue

These are final per DOJ public affairs.

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**From:** Roehrkasse, Brian  
**Sent:** Wednesday, February 28, 2007 2:23 PM  
**To:** Perino, Dana M.; Mamo, Jeanie S.; Martin, Catherine; Rethmeier, Blain K.  
**Subject:** FW: Final Talking Points

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**From:** Roehrkasse, Brian  
**Sent:** Wednesday, February 28, 2007 2:22 PM  
**To:** Scollinos, Tasia; Sampson, Kyle; Goodling, Monica; Elston, Michael (ODAG); Moschella, William; McNulty, Paul J; Elwood, Courtney; Nowacki, John (USAEO); Hertling, Richard

**Subject:** Final Talking Points

Attached are the final talking points on the allegations by U.S. Attorney David Iglesias.

### *Talking Points*

- o The suggestion that David Iglesias was asked to resign because he failed to bring an indictment over a courthouse construction contract is flatly false.
- o This Administration has never removed a United States Attorney in an effort to retaliate against them or inappropriately interfere with a public integrity investigation. Furthermore, in the last six years, the Department has demonstrated its extremely strong record rooting out public corruption including prosecuting a number of very high profile cases.
- o David Iglesias was confirmed in 2001 to a four-year term as U.S. Attorney in New Mexico and was allowed to extend his service for an additional year and a half. During his 5 ½ years of service,

we had a lengthy record from which to evaluate his performance as a manager and we made our decision not to further extend his service based on performance-related concerns.

- o U.S. Attorneys [as directed by the U.S. Attorney Manual] are aware that all Congressional calls are to be directed to the Department of Justice's Office of Legislative Affairs and we are unaware that anyone in Main Justice was notified of any conversations between U.S. Attorney Iglesias and members of the New Mexico Congressional delegation.

If asked ONLY whether the main Justice Department or the White House was contacted about the performance of former U.S. Attorney David Iglesias:

- o The Department is occasionally contacted about the performance of U.S. Attorneys by home-state Senators and gives those comments appropriate consideration. [IF PUSHED] We will not discuss specific conversations between members and the Department on these occasions.

Brian Roehrkasse  
Deputy Director of Public Affairs  
U.S. Department of Justice  
(202) 514

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**From:** Oprison, Christopher G.  
**Sent:** Wednesday, February 28, 2007 5:43 PM  
**To:** Fielding, Fred F.; Kelley, William K.  
**Cc:** Bakke, Mary Beth  
**Subject:** FW: 7058154959.pdf

**Attachments:** 7058154959.pdf

Attached is the Feinstein proposed amendment re: US Attorney appointments. Returns to pre-2006 status quo.

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



7058154959.  
pdf (70 KB)

**From:** Looney, Andrea B.  
**Sent:** Wednesday, February 28, 2007 5:39 PM  
**To:** Oprison, Christopher G.  
**Subject:** Fw: 7058154959.pdf

Try this

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

**From:** VP, EOP1 (VP)  
**To:** Looney, Andrea B.  
**Sent:** Wed Feb 28 17:37:42 2007  
**Subject:** 7058154959.pdf

<<7058154959.pdf>>

S.L.C.  
*James Feirstein*

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To amend chapter 35 of title 28, United States Code, to preserve the independence of United States attorneys.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 4

**AMENDMENT No. 0269**

To	By <u>Feinstein</u>	menting
n		sion to
1	To: <u>S. 4</u>	improve
:		
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Ref	<u>3</u> Page(s)	and

GPO: 2008 50-772 (Mae)

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mrs. FEINSTEIN

Viz:

- 1 At the appropriate place, insert the following:
- 2 **SEC. . VACANCIES.**
- 3 (a) IN GENERAL.—Section 546 of title 28, United
- 4 States Code, is amended by striking subsection (c) and
- 5 inserting the following:
- 6 “(c) A person appointed as United States attorney
- 7 under this section may serve until the earlier of—

1           “(1) the qualification of a United States attor-  
2           ney for such district appointed by the President  
3           under section 541 of this title; or

4           “(2) the expiration of 120 days after appoint-  
5           ment by the Attorney General under this section.

6           “(d) If an appointment expires under subsection  
7 (c)(2), the district court for such district may appoint a  
8 United States attorney to serve until the vacancy is filled.  
9 The order of appointment by the court shall be filed with  
10 the clerk of the court.”

11           (b) APPLICABILITY.—

12           (1) IN GENERAL.—The amendments made by  
13 this section shall take effect on the date of enact-  
14 ment of this Act.

15           (2) APPLICATION.—

16           (A) IN GENERAL.—Any person serving as  
17 a United States attorney on the day before the  
18 date of enactment of this Act who was ap-  
19 pointed under section 546 of title 28, United  
20 States Code, may serve until the earlier of—

21           (i) the qualification of a United States  
22 attorney for such district appointed by the  
23 President under section 541 of that title;  
24 or

1                   (ii) 120 days after the date of enact-  
2                   ment of this Act.

3                   (B) EXPIRED APPOINTMENTS.—If an ap-  
4                   pointment expires under subparagraph (A), the  
5                   district court for that district may appoint a  
6                   United States attorney for that district under  
7                   section 546(d) of title 28, United States Code,  
8                   as added by this section.

**From:** Rethmeier, Blain K.  
**Sent:** Wednesday, February 28, 2007 7:12 PM  
**To:** Saliterman, Robert W.  
**Cc:** Martin, Catherine; Witcher, Eryn M.  
**Subject:** DOJ Night Note

AAG Moschella will be testifying before the Senate Judiciary Committee on March 6th regarding the U.S. Attorney issue.

Senator Feinstein has rescheduled her hearing on C&R for March 21st. DOJ has indicated she will focus on the sentencing element of this story.

I.D. Theft Task Force recommendations are scheduled to be released the last week of March/first of April.

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**From:** Kelley, William K.  
**Sent:** Friday, March 02, 2007 8:33 AM  
**To:** Kaplan, Joel  
**Subject:** RE: US Atty next steps

Fred wanted to get more facts from DOJ and organize a meeting for him to participate in, which he wanted to have happen on Monday. If you want this to happen sooner, I can emphasize that to him and improvise. I've told him that we have been tasked with this, but didn't object when he said he wanted to do this on Monday. Maybe I should have, and I will if that is your desire.

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

**From:** Kaplan, Joel  
**Sent:** Friday, March 02, 2007 8:15 AM  
**To:** Kelley, William K.  
**Subject:** FW: US Atty next steps

Did this happen?

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

**From:** Kaplan, Joel  
**Sent:** Thursday, March 01, 2007 10:34 AM  
**To:** Kelley, William K.  
**Subject:** Re: US Atty next steps

That's what I think should happen--pull everyone into a room, lock the door, and figure out everything we need to do to try and stop the bleeding.

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

**From:** Kelley, William K.  
**To:** Kaplan, Joel  
**Sent:** Thu Mar 01 10:32:03 2007  
**Subject:** US Atty next steps

Joel--Fred and I are meeting with McNulty later today to speak frankly about the US Atty situation, and to get a complete download of the facts. After that, he and I will assess next internal steps. Do you have thoughts about what you want to see happen? We can get together with communications, press, leg, and political, and map out a plan going forward.

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**From:** Perino, Dana M.  
**Sent:** Friday, March 02, 2007 11:08 AM  
**To:** Martin, Catherine  
**Subject:** RE: Solomon from the Post

No - they're not having nothin' on it.

Hey - I canceled my lunch due to workload - want to move up our meeting and go to lunch instead?

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

**From:** Martin, Catherine  
**Sent:** Friday, March 02, 2007 11:05 AM  
**To:** Perino, Dana M.  
**Subject:** FW: Solomon from the Post

Talked with Joel about this after Deps and raised my concern that this is not over and getting worse. He asked if Counsel's office is having meetings on this and asked me to follow up with Bill. Wanted to check with you first since they don't always include me just to make sure you haven't been working with them on this already....Let me know. Thx.

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

**From:** Rethmeier, Blain K.  
**Sent:** Friday, March 02, 2007 11:01 AM  
**To:** Martin, Catherine  
**Subject:** FW: Solomon from the Post

FYI ... I've got a call into Brian. Dan wants to find out who our friends are for the March 6th hearing in House Judiciary.

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

**From:** Perino, Dana M.  
**Sent:** Friday, March 02, 2007 10:34 AM  
**To:** Rethmeier, Blain K.  
**Subject:** Fw: Solomon from the Post

Here we go

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

**From:** John Solomon  
**To:** Perino, Dana M.  
**CC:** John Solomon  
**Sent:** Fri Mar 02 10:26:21 2007  
**Subject:** Solomon from the Post

Dana:

John Solomon here, emailing you from my new digs at Wash Post. Hey, I've been asked to help out Dan Eggen for a day on the prosecutor purge story and I got some interesting details this morning I'd like to run by you. It illuminates the White House role, which has been absent from the media coverage but is the true target for the upcoming congressional hearings by Democrats.

Can you give me a quick shout at 202 334 and see what we can get formally confirmed.

I'll go over everything I've been told

Thanks,

John Solomon  
The Washington Post  
w - 202-334-



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**From:** Kelley, William K.  
**Sent:** Friday, March 02, 2007 12:45 PM  
**To:** Scudder, Michael Y.; Oprison, Christopher G.; Flood, Emmet T.  
**Subject:** Fw: Solomon from the Post

**Importance:** High

FYI

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

**From:** Perino, Dana M.  
**To:** Fielding, Fred F.; Kelley, William K.  
**CC:** Bakke, Mary Beth  
**Sent:** Fri Mar 02 12:43:38 2007  
**Subject:** FW: Solomon from the Post

Heads up - I'll let you know what I learn from him once I connect with him.

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

**From:** John Solomon  
**Sent:** Friday, March 02, 2007 10:26 AM  
**To:** Perino, Dana M.  
**Cc:** John Solomon  
**Subject:** Solomon from the Post

Dana:

John Solomon here, emailing you from my new digs at Wash Post. Hey, I've been asked to help out Dan Eggen for a day on the prosecutor purge story and I got some interesting details this morning I'd like to run by you. It illuminates the White House role, which has been absent from the media coverage but is the true target for the upcoming congressional hearings by Democrats.

Can you give me a quick shout at 202 334 I'll go over everything I've been told and see what we can get formally confirmed.

Thanks,

John Solomon  
The Washington Post  
w - 202-334-  
c - 202-236-

---

**From:** Perino, Dana M.  
**Sent:** Friday, March 02, 2007 2:10 PM  
**To:** Martin, Catherine; Rethmeier, Blain K.  
**Subject:** FW: US Atty Story

Heads up

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

**From:** Sara Taylor [mailto:st@gwb43.com]  
**Sent:** Friday, March 02, 2007 2:09 PM  
**To:** Kelley, William K.; Perino, Dana M.; Karl Rove  
**Subject:** RE: US Atty Story

I'd also describe our role as providing input/names when vacancies occur - not the other way around. He may be referring to Tim, specifically but I recall there being discussion for a long time - long before Tim even returned from Iraq and could take a position.

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

**From:** Kelley, William K. [mailto:William\_K\_Kelley@who.eop.gov]  
**Sent:** Friday, March 02, 2007 1:57 PM  
**To:** Perino, Dana M.; Karl Rove; Sara Taylor  
**Subject:** RE: US Atty Story

1. I never spoke one word, or communicated in any way, about any of this with Paul McNulty before it became a public issue in January. (We dealt with Kyle Sampson.)
2. We didn't "vet" or substantively examine any of the decisions. We were told by DOJ that these US Attys had been identified as weak performers or those who wouldn't take management from main Justice. We didn't inquire further and didn't do a single thing to check out whether that management judgment was right. Our view was that these folks serve at the pleasure of the President, and if their boss, the AG, had lost confidence in them, that was enough to justify asking for their resignations. Each were Bush appointees, of course, and had served more than 4 years. It literally never crossed my mind that politics might have been afoot -- which I still don't believe for a nanosecond.
3. It's Kelley, not Kelly.
4. I don't know about any of the rest.

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

**From:** Perino, Dana M.  
**Sent:** Friday, March 02, 2007 1:51 PM  
**To:** Kelley, William K.; 'Karl Rove'; 'staylor@gwb43.com'  
**Subject:** FW: US Atty Story

About to get a call from this reporter...

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

**From:** Roehrkasse, Brian  
**Sent:** Friday, March 02, 2007 1:40 PM  
**To:** Perino, Dana M.  
**Subject:** FW: US Atty Story

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

**From:** John Solomon  
**Sent:** Friday, March 02, 2007 11:47 AM  
**To:** Roehrkasse, Brian  
**Cc:** John Solomon; Dan Eggen  
**Subject:** US Atty Story

Brian:

Thanks for any help you can give on this. I think some tick tock along these lines will bring some perspective to how the process occurred. Of course, the White House counsel's office had to sign off. Of course an administration in its last two years looks for some fresh blood to inject into jobs. Of course, DOJ's analysis of prosecutors goes beyond performance evaluations to achievements or failures on policy issues like immigration.

I think we can get this just right with your help. I'm at 202 334  
Below is what I've been told so far.

Regards,

John

The White House counsel's office signed off on the firings and replacements around the time of the election or shortly afterwards though the discussions began much earlier in the year. McNulty vetted the changes with White House Deputy Counsel Bill Kelly over a series of several days.

The changes however were rooted in a much larger process that began at the start of 2006 when White House political affairs under Sara Taylor identified several GOP supporters who still needed appointments across government before Bush left office. A handful were US Atty types and the list was sent to Justice, eventually going to McNulty.

McNulty asked DOJ offices \_ either OLP or EOUSA \_ to identify which long serving US Attys had the weakest records on pursuing the president's policies on such issues as immigration. The analysis came back. Some of the players on the list were involved in sensitive corruption cases against Republicans and McNulty slowed down the process until after the election to avoid giving Democrats a campaign issue. Some of the US Attys on the list, however, got subtle messages it might be time for them to go out and find better paying private sector jobs and that the White House and DOJ would give them good recommendations.

The process picked up steam as the election was nearing. McNulty finished the vetting with Kelly and then began making the personnel changes.

Ryan out in San Francisco may have been a slightly different case.

He told Justice early in 2006 he wanted to leave because he had two kids in private schools and he needed more money. McCallum asked him to hold off, saying they needed his leadership another year because there were some cases out in SFC on interest to the administration. Ryan obliged and then got caught in the final purge. Dave Margolis may have recommended Ryan to McNulty because of some complaints wasn't listening to his career staff in SFC on decisions.

The sources say Karl Rove was supportive generally of getting new political appointees jobs but was not in the loop on the specifics at DOJ. In fact, Rove has told friends he is unhappy with the one-day purge and believed it should have been handled more gradually.

---

**From:** Sara Taylor  
**Sent:** 3/2/2007 5:13:04 PM  
**To:** Karl Rove /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=KR;  
'Dana\_M.\_Perino'; 'Jeffery\_S.\_Jennings@who.eop.gov'  
Jeffery\_S.\_Jennings@who.eop.gov;  
**Cc:** 'Dan\_Bartlett@who.eop.gov'; Dan\_Bartlett@who.eop.gov ; 'William\_K.\_Kelley@who.eop.gov'  
William\_K.\_Kelley@who.eop.gov ; Scott Jennings /O=REPUBLICAN NATIONAL  
COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=SJennings ;  
**Bcc:**  
**Subject:** RE: SOLOMON

I have no recollection of any such list of US attorneys. Could be any number of lists we produce, but we've never had a "US attorney wish list" -- the way we do for a boards and commissions. I seriously doubt what he claims to have - exists.

Most US attorneys come via the R Senators. We check the folks out with others in the states - make sure Bush leadership concurs. Maybe come up with names via that process if the candidates the R's produce don't pan out with counsel. And, as Karl pointed out, in the case of a commission, we end up appointing their picks.

**From:** Karl Rove  
**Sent:** Friday, March 02, 2007 4:07 PM  
**To:** 'Dana\_M.\_Perino'; Sara Taylor; 'Jeffery\_S.\_Jennings@who.eop.gov'  
**Cc:** 'Dan\_Bartlett@who.eop.gov'; 'William\_K.\_Kelley@who.eop.gov'  
**Subject:** Re: SOLOMON

After the fact and to counsels and not for the slots which are commission recommendations and not for all. He has been told the wrong thing.

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

**From:** Perino, Dana M.  
**To:** Sara Taylor; Jennings, Jeffery S. <Jeffery\_S.\_Jennings@who.eop.gov>; Karl Rove  
**CC:** Bartlett, Dan <Dan\_Bartlett@who.eop.gov>; Kelley, William K. <William\_K.\_Kelley@who.eop.gov>  
**Sent:** Fri Mar 02 15:59:02 2007  
**Subject:** SOLOMON

Reporter's been told that Sara/her office sent a list of names for replacements of the US Attys.

He says this is a SENIOR admin official.

Please advise.

---

**From:** Karl Rove /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=KR;  
**Sent:** 1/1/4501  
**To:** 'Dana\_M\_Perino'; 'Jeffery\_S\_Jennings@who.eop.gov'  
**Cc:** 'Dan\_Bartlett@who.eop.gov'; 'Dan\_Bartlett@who.eop.gov'; 'William\_K\_Kelley@who.eop.gov'  
**Bcc:** William\_K\_Kelley@who.eop.gov ;  
**Subject:** RE: SOLOMON

I will go through my staff to make sure this didn't happen, but as I

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

**From:** Karl Rove  
**Sent:** Friday, March 02, 2007 4:07 PM  
**To:** 'Dana\_M\_Perino'; Sara Taylor; 'Jeffery\_S\_Jennings@who.eop.gov'  
**Cc:** 'Dan\_Bartlett@who.eop.gov'; 'William\_K\_Kelley@who.eop.gov'  
**Subject:** Re: SOLOMON

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**From:** Perino, Dana M.  
**To:** Sara Taylor; Jennings, Jeffery S. <Jeffery\_S\_Jennings@who.eop.gov>; Karl Rove  
**CC:** Bartlett, Dan <Dan\_Bartlett@who.eop.gov>; Kelley, William K. <William\_K\_Kelley@who.eop.gov>  
**Sent:** Fri Mar 02 15:59:02 2007  
**Subject:** SOLOMON

Reporter's been told that Sara/her office sent a list of names for replacements of the US Attys.

She says this is a SENIOR admin official.

Please advise.

**From:** Sara Taylor  
**Sent:** Friday, March 02, 2007 5:04 PM  
**To:** Scott Jennings  
**Cc:** Jane Cherry  
**Subject:** FW: SOLOMON  
**Importance:** High

Did you ever send something like this? I have no recollection of a US attorney's list?

**From:** Perino, Dana M.  
**Sent:** Friday, March 02, 2007 3:59 PM  
**To:** Sara Taylor; Jennings, Jeffery S.; Karl Rove  
**Cc:** Bartlett, Dan; Kelley, William K.  
**Subject:** SOLOMON

Reporter's been told that Sara/her office sent a list of names for replacements of the US Attys.

He says this is a SENIOR admin official.

Please advise.

---

**From:** Martin, Catherine  
**Sent:** Friday, March 02, 2007 11:57 AM  
**To:** Burdick, Amanda K.; Klunk, Kate A.  
**Subject:** FW: DOJ issues

Please make sure to flag this meeting for me on Monday. I need to attend.

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

**From:** Kelley, William K.  
**Sent:** Friday, March 02, 2007 11:52 AM  
**To:** Martin, Catherine  
**Cc:** Perino, Dana M.  
**Subject:** RE: DOJ issues

Of course. Fred is organizing a meeting for Monday on these issues, to which principals from communications, leg, political, and press are being invited. I've told Mary Beth (his assistant) that deputies are welcome. You both should come. Thanks.

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

**From:** Martin, Catherine  
**Sent:** Friday, March 02, 2007 11:40 AM  
**To:** Kelley, William K.  
**Cc:** Perino, Dana M.  
**Subject:** DOJ issues

Bill -

Wanted to touch base with you about the various ongoing and impending DOJ issues. We have a lot of communications concerns and have been dealing with our DOJ communicators but don't feel like we have a full picture. I know there were some discussions about this last night but are you all coordinating any internal meetings on these issues? If so, can you make sure both Dana and I are included. When I mentioned to Joel after deputies, he asked me to check with you about a Monday meeting you all talked about scheduling? Is that still on? Let me know how we can better link up. Happy to stop by and share my concerns with you in person if that would be useful.

Cathie

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

**From:** Rethmeier, Blain K.  
**Sent:** Friday, March 02, 2007 11:01 AM  
**To:** Martin, Catherine  
**Subject:** FW: Solomon from the Post

FYI ... I've got a call into Brian. Dan wants to find out who our friends are for the March 6th hearing in House Judiciary.

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

**From:** Perino, Dana M.  
**Sent:** Friday, March 02, 2007 10:34 AM  
**To:** Rethmeier, Blain K.  
**Subject:** Fw: Solomon from the Post

Here we go

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

**From:** John Solomon  
**To:** Perino, Dana M.  
**CC:** John Solomon  
**Sent:** Fri Mar 02 10:26:21 2007  
**Subject:** Solomon from the Post

Dana:

John Solomon here, emailing you from my new digs at Wash Post. Hey, I've been asked to help out Dan Eggen for a day on the prosecutor purge story and I got some interesting details this morning I'd like to run by you. It illuminates the White House role, which has been absent from the media coverage but is the true target for the upcoming congressional hearings by Democrats.

Can you give me a quick shout at 202 334 . I'll go over everything I've been told and see what we can get formally confirmed.

Thanks,

John Solomon  
The Washington Post  
w - 202-334-  
c - 202-236-

---

**From:** Kaplan, Joel  
**Sent:** Friday, March 02, 2007 12:23 PM  
**To:** Martin, Catherine  
**Subject:** Re: DOJ issues

I think there may be some confusion on issues. I think the Monday mtg referred to here is on the US atty issue only. First question is whether Monday is timely on THAT issue.

I think HSC (with an assist from WHCO) is supposed to be coordinating on the other issue (impending report); AG and Mueller are being called to brief POTUS on impending report on Monday. So, comms and leg plans for that effort probably should not wait till then; but I don't have a sense for how much info we have on that.

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**From:** Martin, Catherine  
**To:** Kaplan, Joel  
**Sent:** Fri Mar 02 12:04:39 2007  
**Subject:** RE: DOJ issues

The incoming from WP is at the bottom of this email chain....

I don't think Monday is soon enough on the impending report but I don't know if we have enough facts yet either. We haven't seen anything from DOJ and if we are concerned about leakage we need more than 24 hours from the meeting. On the immediate issue that Dana is dealing with I told her to be very careful. I worry that we don't have a full picture and that DOJ is in reactive mode instead of proactive planning mode. The sooner the better for press handling/communication reasons.

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Dana and I were just talking about this (she has an incoming call from an investigative reporter at WP). I asked her whether Monday was timely from her perspective. What do you think?

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**From:** Martin, Catherine  
**Sent:** Friday, March 02, 2007 11:57 AM  
**To:** Kaplan, Joel  
**Subject:** FW: DOJ issues

FYI - Sounds like the Monday meeting is on.

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

**From:** Kelley, William K.  
**Sent:** Friday, March 02, 2007 11:52 AM  
**To:** Martin, Catherine  
**Cc:** Perino, Dana M.  
**Subject:** RE: DOJ issues

Of course. Fred is organizing a meeting for Monday on these issues, to which principals from communications, leg, political, and press are being invited. I've told Mary Beth (his assistant) that deputies are welcome. You both should come. Thanks.

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**Sent:** Friday, March 02, 2007 11:40 AM  
**To:** Kelley, William K.  
**Cc:** Perino, Dana M.

Subject: DOJ issues

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Here we go

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To: Perino, Dana M.  
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John Solomon  
The Washington Post  
w - 202-334-  
c - 202-236-

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**From:** Perino, Dana M.  
**Sent:** Friday, March 02, 2007 2:15 PM  
**To:** Perino, Dana M.; Kelley, William K.; Martin, Catherine  
**Cc:** Frech, Christopher W.; Fiddelke, Debbie S.; Rethmeier, Blain K.  
**Subject:** RE: DOJ issues

Sorry - meant to be specific - the US ATTY issue is the one I'm talking about

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

**From:** Perino, Dana M.  
**Sent:** Friday, March 02, 2007 2:10 PM  
**To:** Kelley, William K.; Martin, Catherine  
**Cc:** Frech, Christopher W.; Fiddelke, Debbie S.  
**Subject:** RE: DOJ issues

Wondering if we need to move this meeting to TODAY rather than Monday - there are going to be a lot of stories and posturing over the weekend in the lead up to Tuesday's hearing. Chris, what are you hearing?

We could even do this as a call if Fred/you prefer, Bill.

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John Solomon  
The Washington Post  
w - 202-334-  
c - 202-236-

---

**From:** Frech, Christopher W.  
**Sent:** Friday, March 02, 2007 2:16 PM  
**To:** Perino, Dana M.; Kelley, William K.; Martin, Catherine  
**Cc:** Fiddelke, Debbie S.  
**Subject:** RE: DOJ issues

From my end I know DOJ is having an internal meeting to discuss their strategy. I have been trading calls with committee on strategy, but sounds like your communication needs are the most ripe.

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

**From:** Perino, Dana M.  
**Sent:** Friday, March 02, 2007 2:10 PM  
**To:** Kelley, William K.; Martin, Catherine  
**Cc:** Frech, Christopher W.; Fiddelke, Debbie S.  
**Subject:** RE: DOJ issues

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We could even do this as a call if Fred/you prefer, Bill.

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**Cc:** Perino, Dana M.  
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John Solomon  
The Washington Post  
w - 202-334-  
c - 202-236

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**From:** Kelley, William K.  
**Sent:** Friday, March 02, 2007 2:18 PM  
**To:** Perino, Dana M.; Martin, Catherine  
**Cc:** Frech, Christopher W.; Fiddelke, Debbie S.  
**Subject:** RE: DOJ issues

My problem is that Fred is traveling, and wanted to do this Monday. I'm happy to do whatever I can, but he's not available.

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

**From:** Perino, Dana M.  
**Sent:** Friday, March 02, 2007 2:10 PM  
**To:** Kelley, William K.; Martin, Catherine  
**Cc:** Frech, Christopher W.; Fiddelke, Debbie S.  
**Subject:** RE: DOJ issues

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**Cc:** Perino, Dana M.  
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The Washington Post  
w - 202-334-  
c - 202-236-

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**From:** Martin, Catherine  
**Sent:** Friday, March 02, 2007 2:46 PM  
**To:** Kaplan, Joel  
**Subject:** Re: DOJ issues

Dana weighed in with bill and urged that the us atty discussion be moved to today even if via phone.

I think sooner the better for planning purposes on the impending report. I will talk to dan and hsc.

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

**From:** Kaplan, Joel  
**To:** Martin, Catherine  
**Sent:** Fri Mar 02 12:22:50 2007  
**Subject:** Re: DOJ issues

I think there may be some confusion on issues. I think the Monday mtg referred to here is on the US atty issue only. First question is whether Monday is timely on THAT issue.

I think HSC (with an assist from WHCO) is supposed to be coordinating on the other issue (impending report); AG and Mueller are being called to brief POTUS on impending report on Monday. So, comms and leg plans for that effort probably should not wait till then; but I don't have a sense for how much info we have on that.

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John Solomon  
The Washington Post  
w - 202-334-



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**From:** Kaplan, Joel  
**Sent:** Friday, March 02, 2007 6:50 PM  
**To:** Perino, Dana M.; Martin, Catherine  
**Subject:** Re: Heads up

Did you all end up talking about this today with counsel's ofc etc?

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

**From:** Perino, Dana M.  
**To:** Fielding, Fred F.; Kelley, William K.; Kaplan, Joel; Bartlett, Dan; Martin, Catherine; Rethmeier, Blain K.  
**Sent:** Fri Mar 02 18:49:16 2007  
**Subject:** Heads up

Front page story tomorrow in wash post on the us atty issue. Eggen-solomon are the reporters. Trying to do a tick tock. Don't think it's going to be horrible (but it won't be good). He's including letter from feinstein who made complaints. This is a set up for tuesday's hearing.

---

**From:** Martin, Catherine  
**Sent:** Friday, March 02, 2007 11:48 AM  
**To:** Sullivan, Kevin F.  
**Subject:** week ahead

Overview of POTUS messaging over next couple months -- sustained IRAQ/GWOT message (peppered with International travel which will emphasize other Foreign policy aspects) plus a more focused domestic message on Energy and Education in the short term and immigration and health care over the longer term.

Outline the strategy for Summer Driving Season Challenge. Ask regional and specialty media folks to look for opportunities in their papers and outlets for us to make news on this.

Give a general update on what Hill is doing -- Supp, Education markups, some hint of immigration coming with Kennedy/McCain bill expects to drop soon, etc. and CONTINUED oversight/investigations/hearings....

Update on major stories we are watching and task regional, radio and specialty with coming up with tactics to help mitigate:

DOJ -- US Atty issue  
DOD/VA issue  
SCHIP reauthorization  
Supp/GWOT funding

---

**From:** Kelley, William K.  
**Sent:** Friday, March 02, 2007 2:44 PM  
**To:** Oprison, Christopher G.; Scudder, Michael Y.  
**Subject:** RE:

Early next week. Don't ruin your weekend. Many, many thanks.

---

**From:** Oprison, Christopher G.  
**Sent:** Friday, March 02, 2007 2:24 PM  
**To:** Kelley, William K.; Scudder, Michael Y.  
**Subject:** RE:

Bill - in preparing my memo on US Attorney appointment authority for the Chief's office, I had Monica send me information reflecting all US Attorney appointment and replacement dates, by name and district, for the eight years. I also pulled Kyle's and Grant's archived files and found memos reflecting this office's phased approach in 2001 for replacing Clinton hold-overs. I can pull this information together. When do you need it by?

---

**From:** Kelley, William K.  
**Sent:** Friday, March 02, 2007 2:20 PM  
**To:** Oprison, Christopher G.; Scudder, Michael Y.  
**Subject:**

I think that both of you are now involved to some extent on the US Atty stuff. We need to get information on President Clinton's record of replacing USAs over the course of his 8 years, and whatever public facts surround those decisions. We also need some data on our record of how we went about replacing the USAs in 2001-2002 -- how many Clinton folks were kept on for how long. Can you guys get folks to do this? Thanks.

---

**From:** Martin, Catherine  
**Sent:** Friday, March 02, 2007 4:27 PM  
**To:** Perino, Dana M.  
**Subject:** FW: USA replacement plan

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

**From:** Kelley, William K.  
**Sent:** Tuesday, November 21, 2006 2:14 PM  
**To:** Martin, Catherine  
**Subject:** Re: USA replacement plan

Not resolved. The appearance concern is real, of course, but there is obviously no connection. I'll raise it with DOJ.

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

**From:** Martin, Catherine  
**To:** Kelley, William K.; Fiddelke, Debbie S.; Jennings, Jeffery S.  
**Sent:** Tue Nov 21 14:11:28 2006  
**Subject:** RE: USA replacement plan

Where are we on this? We have some communications concerns about the SD and AZ b/c of their high profile cases and investigations involving Duke Cunningham and Renzi...just want to make sure that we are prepared for some of the criticism that would come:

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

**From:** Kelley, William K.  
**Sent:** Friday, November 17, 2006 12:32 PM  
**To:** Fiddelke, Debbie S.; Jennings, Jeffery S.; Martin, Catherine  
**Subject:** FW: USA replacement plan  
**Importance:** High

The email below, and the attached document, reflect a plan by DOJ to replace several US Attorneys. By statute, US Attorneys serve for four year terms, which are commonly (but not always) extended by inaction -- in practice, they serve until replaced. They serve at the pleasure of the President, but often have very strong home-state political juice, including with their Senators.

Before executing this plan, we wanted to give your offices a heads up and seek input on changes that might reduce the profile or political fallout. Thanks.

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

**From:** Kyle.Sampson@usdoj.gov [mailto:Kyle.Sampson@usdoj.gov]  
**Sent:** Wednesday, November 15, 2006 11:02 AM  
**To:** Miers, Harriet; Kelley, William K.  
**Cc:** Paul.J.McNulty@usdoj.gov  
**Subject:** USA replacement plan  
**Importance:** High

Harriet/Bill, please see the attached. Please note (1) the plan, by its terms, would commence this week; (2) I have consulted with the DAG, but not yet informed others who would need to be brought into the loop, including Acting Associate AG Bill Mercer, EOUSA Director Mike Battle, and AGAC Chair Johnny Sutton (nor have I informed anyone in Karl's shop, another pre-execution necessity I would recommend); and (3) I am concerned that to execute this plan properly we must all be on the same page and be steeled to withstand any political upheaval that might result (see Step 3); if we start caving to complaining U.S.

Attorneys or Senators then we shouldn't do it -- it'll be more trouble than it is worth.

We'll stand by for a green light from you. Upon the green light, we'll (1) circulate the below plan to the list of folks in Step 3 (and ask that you circulate it to Karl's shop), (2) confirm that Kelley is making the Senator/Bush political lead calls, and (3) get Battle making the calls to the USAs. Let us know.

<<USA replacement plan.doc>>

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

**From:** Martin, Catherine  
**Sent:** Friday, March 02, 2007 4:25 PM  
**To:** Perino, Dana M.  
**Subject:** FW: US Atty Plan

---

**From:** Kelley, William K.  
**Sent:** Thursday, November 30, 2006 11:40 AM  
**To:** Jennings, Jeffery S.; Fiddelke, Debbie S.; Martin, Catherine  
**Subject:** US Atty Plan

DOJ would like to go forward with the plan to replace certain US Attorneys. We don't have any reason to believe that the US Attorneys in question in Nevada and Arizona are close or important to the home state Senators, and DOJ is prepared to deal with the public affairs issues that were raised. Before proceeding, however, DOJ asked us to reconfirm that we are ready to stand strong in the face of political pressure on this issue. So -- are we? Also, Scott, can I take your sign-off as Karl's, or should I raise this separately with him?

**From:** Martin, Catherine  
**Sent:** Friday, March 02, 2007 4:21 PM  
**To:** Perino, Dana M.  
**Subject:** FW: USA replacement plan

**Importance:** High

**Attachments:** USA replacement plan.doc



USA replacement  
plan.doc (36 K...

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**From:** Kyle.Sampson@usdoj.gov [mailto:Kyle.Sampson@usdoj.gov]  
**Sent:** Wednesday, November 15, 2006 11:02 AM  
**To:** Miers, Harriet; Kelley, William K.  
**Cc:** Paul.J.McNulty@usdoj.gov  
**Subject:** USA replacement plan  
**Importance:** High

Harriet/Bill, please see the attached. Please note (1) the plan, by its terms, would commence this week; (2) I have consulted with the DAG, but not yet informed others who would need to be brought into the loop, including Acting Associate AG Bill Mercer, EOUSA Director Mike Battle, and AGAC Chair Johnny Sutton (nor have I informed anyone in Karl's shop, another pre-execution necessity I would recommend); and (3) I am concerned that to execute this plan properly we must all be on the same page and be steeled to withstand any political upheaval that might result (see Step 3); if we start caving to complaining U.S. Attorneys or Senators then we shouldn't do it -- it'll be more trouble than it is worth.

We'll stand by for a green light from you. Upon the green light, we'll (1) circulate the below plan to the list of folks in Step 3 (and ask that you circulate it to Karl's shop), (2) confirm that Kelley is making the Senator/Bush political lead calls, and (3) get Battle making the calls to the USAs. Let us know.

<<USA replacement plan.doc>>

Kyle Sampson  
Chief of Staff  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.

Washington, D.C. 20530  
(202) 514-2001 wk.  
(202) 305- cell  
kyle.sampson@usdoj.gov

## PLAN FOR REPLACING CERTAIN UNITED STATES ATTORNEYS

November 15, 2006

### STEP 1

U.S. Attorney calls: On or about November 15-17, Mike Battle contacts the following U.S. Attorneys:

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

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 the end of the year.

### STEP 2

Senator calls: On or about November 15-17 (very important that Senator calls and U.S. Attorney calls happen simultaneously), Bill Kelley or appropriate Associate Counsel contacts the following Republican home-state Senators or, where there is no Republican home-state Senator, the home-state "Bush political lead":

- Jon Kyl (re Charlton)
- John Ensign (re Bogden)
- Pete Domenici (re Iglesias)
- California political lead (re Lam)
- Michigan political lead (re Chiara)
- Washington political lead (re McKay)

Kelley informs the Senators/Bush political leads as follows:

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

### STEP 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 the end of the year (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 November-December 2006, 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.

**From:** Fielding, Fred F.  
**Sent:** Friday, March 02, 2007 6:43 PM  
**To:** Rethmeier, Blain K.  
**Subject:** Re: NM USA

II know nothing about it either.

FFF

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

**From:** Rethmeier, Blain K.  
**To:** Kelley, William K.; Perino, Dana M.; Fiddelke, Debbie S.; 'Brian.Roehrkasse'  
**CC:** Frech, Christopher W.; Mamo, Jeanie S.; Martin, Catherine; Snow, Tony; Stanzel, Scott M.; Fratto, Tony; Looney, Andrea B.; O'Hollaren, Sean B.; Fielding, Fred F.  
**Sent:** Fri Mar 02 18:08:51 2007  
**Subject:** RE: NM USA

Nothing on my end.

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

**From:** Kelley, William K.  
**Sent:** Friday, March 02, 2007 6:07 PM  
**To:** Perino, Dana M.; Fiddelke, Debbie S.; 'Brian.Roehrkasse'  
**Cc:** Frech, Christopher W.; Mamo, Jeanie S.; Rethmeier, Blain K.; Martin, Catherine; Snow, Tony; Stanzel, Scott M.; Fratto, Tony; Looney, Andrea B.; O'Hollaren, Sean B.; Fielding, Fred F.  
**Subject:** Re: NM USA

Don't know anything about it. Copying Fred.

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

**From:** Perino, Dana M.  
**To:** Fiddelke, Debbie S.; 'Brian.Roehrkasse'  
**CC:** Frech, Christopher W.; Mamo, Jeanie S.; Rethmeier, Blain K.; Martin, Catherine; Kelley, William K.; Snow, Tony; Stanzel, Scott M.; Fratto, Tony; Looney, Andrea B.; O'Hollaren, Sean B.  
**Sent:** Fri Mar 02 18:05:13 2007  
**Subject:** RE: NM USA

But not just not "news"-- it's NOT happening...correct?

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

**From:** Fiddelke, Debbie S.  
**Sent:** Friday, March 02, 2007 6:05 PM  
**To:** Perino, Dana M.; 'Brian.Roehrkasse'  
**Cc:** Frech, Christopher W.; Mamo, Jeanie S.; Rethmeier, Blain K.; Martin, Catherine; Kelley, William K.; Snow, Tony; Stanzel, Scott M.; Fratto, Tony; Looney, Andrea B.; O'Hollaren, Sean B.  
**Subject:** Re: NM USA

News to me

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

**From:** Perino, Dana M.  
**To:** 'Roehrkasse, Brian'  
**CC:** Fiddelke, Debbie S.; Frech, Christopher W.; Mamo, Jeanie S.; Rethmeier, Blain K.; Martin, Catherine; Kelley, William K.; Snow, Tony; Stanzel, Scott M.; Fratto, Tony  
**Sent:** Fri Mar 02 18:02:36 2007  
**Subject:** RE: NM USA

I've said no such thing - that is not coming from me nor anyone else I know here. WH  
folks, if I'm wrong and this is true, please say so.

Brian, they should be assured it's not coming from our office.

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

From: Roehrkasse, Brian  
Sent: Friday, March 02, 2007 6:00 PM  
To: Perino, Dana M.  
Subject: Fw: NM USA

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

From: Scott-Finan, Nancy  
To: Moschella, William; Goodling, Monica; Roehrkasse, Brian; Hertling, Richard  
Sent: Fri Mar 02 17:59:01 2007  
Subject: NM USA

I just received a call from Senator Domenici's press secretary who has taken a call from a reporter who advised him that the White House had signed off on the Department's releasing something about Senator Domenici's contacting DOJ about the U.S. Attorney in New Mexico. Do we know what he is talking about? Is there a letter from Domenici about Iglesias that we have given to the press? If so, they would like a copy.

**This Page Intentionally Left Blank**

**From:** Kelley, William K.  
**Sent:** Saturday, March 03, 2007 8:47 AM  
**To:** Fielding, Fred F.  
**Subject:** Re: USA - Post story

Could have been much worse. I didn't talk to any reporter, but I did talk to Dana.

-----Original Message-----  
**From:** Fielding, Fred F.  
**To:** Kelley, William K.  
**Sent:** Sat Mar 03 08:22:37 2007  
**Subject:** Re: USA - Post story

Whew! Could have been worse.  
Did you talk to reporters on this?  
FFF

-----Original Message-----  
**From:** Kelley, William K.  
**To:** Perino, Dana M.; Fiddelke, Debbie S.; 'Brian.Roehrkasse'  
**CC:** Frech, Christopher W.; Mamo, Jeanie S.; Rethmeier, Blain K.; Martin, Catherine; Snow, Tony; Stanzel, Scott M.; Fratto, Tony; Looney, Andrea B.; O'Hollaren, Sean B.; Fielding, Fred F.  
**Sent:** Fri Mar 02 18:06:49 2007  
**Subject:** Re: NM USA

Don't know anything about it. Copying Fred.

-----Original Message-----  
**From:** Perino, Dana M.  
**To:** Fiddelke, Debbie S.; 'Brian.Roehrkasse'  
**CC:** Frech, Christopher W.; Mamo, Jeanie S.; Rethmeier, Blain K.; Martin, Catherine; Kelley, William K.; Snow, Tony; Stanzel, Scott M.; Fratto, Tony; Looney, Andrea B.; O'Hollaren, Sean B.  
**Sent:** Fri Mar 02 18:05:13 2007  
**Subject:** RE: NM USA

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**Sent:** Friday, March 02, 2007 6:05 PM  
**To:** Perino, Dana M.; 'Brian.Roehrkasse'  
**Cc:** Frech, Christopher W.; Mamo, Jeanie S.; Rethmeier, Blain K.; Martin, Catherine; Kelley, William K.; Snow, Tony; Stanzel, Scott M.; Fratto, Tony; Looney, Andrea B.; O'Hollaren, Sean B.  
**Subject:** Re: NM USA

News to me

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**From:** Perino, Dana M.  
**To:** 'Roehrkasse, Brian'  
**CC:** Fiddelke, Debbie S.; Frech, Christopher W.; Mamo, Jeanie S.; Rethmeier, Blain K.; Martin, Catherine; Kelley, William K.; Snow, Tony; Stanzel, Scott M.; Fratto, Tony

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**From:** Martin, Catherine  
**Sent:** Monday, March 05, 2007 12:40 PM  
**To:** Sullivan, Kevin F.; Perino, Dana M.  
**Subject:** Fw: US Attorney Hearing: DRAFT Talking Points

**Attachments:** 1340525209-attorney letter.doc

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

**From:** Scolinos, Tasia  
**To:** Bartlett, Dan; Martin, Catherine  
**CC:** Roehrkasse, Brian  
**Sent:** Mon Mar 05 10:51:44 2007  
**Subject:** US Attorney Hearing: DRAFT Talking Points



attorney letter.doc  
(27 KB)

Dan/Ca hie -

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

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

Draft Talking Points for 3/6 Hearing:

- \* One of the most important responsibilities the Attorney General has is to effectively manage the Department of Justice, including its thousands of employees.
- \* Managers, as you know, often times have to make difficult decisions for the betterment of the organization.
- \* It is vitally important that the Department take all necessary steps to ensure that its policies and priorities are served in a consistent manner. This is especially true of those who have the high privilege of serving as presidential appointees.
- \* DOJ Presidential appointees, both at Main Justice and in the field, are tasked with making prosecutorial decisions but that responsibility does not change or alter in any way the fact that they serve at the pleasure of the President and if they are not executing their responsibilities in a manner that furthers the management and policy goals of departmental leadership it is appropriate that they be replaced with other individuals.
- \* At a time when America's well being is threatened by terrorism, violent gangs, child predators and corruption in business and government, this

responsibility has never been clearer.

\* It is also important to note that the Clinton Administration fired all existing U.S. Attorneys when he took office presumably to put in individuals who understood the priorities of his Administration. Removing our own political appointees is not substantively different than that decision.

\* That said, it is also important that the Department's management actions be prudently executed once a decision is made.

\* The process by which the U.S. attorneys were informed of our decision fell short of this standard. We should have informed the individuals at the time we asked for their resignations of the various matters relating to policy, priorities and management justifying our actions.

\* Our intention in not providing a full explanation initially was to avoid protracted discussions and make these difficult discussions as non-inflammatory as possible for those being asked to resign.

\* In hindsight, although the Department continues to believe our decision to remove these individuals was the correct one, it would have been much better to have addressed the relevant issues up front with them.

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

\* The Department remains focused on making sure that the good work being done by the career lawyers in all of those offices across the country continues uninterrupted and that qualified candidates are nominated as soon as possible for those positions.

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**Sent:** Monday, March 05, 2007 12:40 PM  
**To:** Klunk, Kate A.  
**Subject:** Fw: US Attorney Hearing: DRAFT Talking Points

**Attachments:** 1340525209-attorney letter.doc

Can u print email and attch for 1 pm. Thx

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**CC:** Roehrkasse, Brian  
**Sent:** Mon Mar 05 10:51:44 2007  
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---

**From:** Perino, Dana M.  
**Sent:** Monday, March 05, 2007 3:03 PM  
**To:** Martin, Catherine  
**Subject:** RE: Snow's briefing - US Attys

The one that's supposed to be this afternoon? No...

---

**From:** Martin, Catherine  
**Sent:** Monday, March 05, 2007 3:03 PM  
**To:** Perino, Dana M.  
**Subject:** FW: Snow's briefing - US Attys

Have you heard yet when our next meeting is?

---

**From:** Perino, Dana M.  
**Sent:** Monday, March 05, 2007 1:56 PM  
**To:** Bartlett, Dan; 'Karl Rove'; Kaplan, Joel; Martin, Catherine; Kelley, William K.; Scudder, Michael Y.; Oprison, Christopher G.  
**Subject:** Snow's briefing - US Attys

Well, I don't know why he said what he said in the second question, but he got away with it...

---

**From:** Carleton, Nathan L.  
**Sent:** Monday, March 05, 2007 1:50 PM  
**To:** Perino, Dana M.  
**Subject:** FW: tony snow press briefing, #89, 3/5/07

this was all:

Q Tony, Michael Battle, the Director of the Executive Office of U.S. Attorneys is resigning. As you know, this comes in the wake of firing of the eight U.S. Attorneys across the country that Congress is now investigating; some Democrats saying they were fired for political reasons. Is the timing of this resignation now all tied with any --

MR. SNOW: Well, as you know, because you've had conversations with them, no. He's made it known for many months that he's wanted to move on. So it's certainly not news. He's wanted to go the private sector.

Q Can you comment on the investigation into the firing of these eight U.S. Attorneys?

MR. SNOW: No, because that, I think, is being done on Capitol Hill.

**From:** Eckert, Ellen E.  
**Sent:** Monday, March 05, 2007 1:49 PM  
**Subject:** tony snow press briefing, #89, 3/5/07

THE WHITE HOUSE

Office of the Press Secretary

---

For Immediate Release

March 5, 2007

PRESS BRIEFING

BY

TONY SNOW

White House Conference Center Briefing Room

12:02 P.M. EST

MR. SNOW: The briefing is in order. Questions.

Q My goodness, where is everybody? (Laughter.)

MR. SNOW: You guys have been -- you've been briefing -- I know, we've got the answer to briefing fatigue.

Please, questions. Anybody. Victoria?

Q Is it something the President should do, as Commander-in-Chief, to say, the buck stops here and take responsibility for the scandal at Walter Reed?

MR. SNOW: Well, in a sense, the President, and also everybody within the chain of command are taking responsibility. It's time to shine a bright light on the entire system and find out where the failings may be, and address them. The people who have served have given us their best; it's time for us to make sure that they get our best when it comes to treatment.

You already have ongoing, I think, very swift and definitive action on the part of the Department of Defense, not only on the personnel side, but the Secretary of Defense has put together a team involving medical professionals, and on a bipartisan basis, to take a look specifically at Walter Reed and Bethesda.

Meanwhile, there's an interagency task force working out of the V.A. to take a look at the entire medical system and the care system for veterans. And the President is putting together also a presidential commission that will take an even broader look at the needs, and also possible future needs.

So we take a very exhaustive look at this. It is very important to figure out what's wrong, and get it fixed. And the President is committed to that.

Q But the President hasn't said in any way, shape, or form, this is my responsibility, this is on me?

MR. SNOW: Okay, well, I'll take the rhetorical flourish under advisement.

Q Tony, how important is the President's upcoming trip to Latin America in countering the growing influence of Hugo Chavez in the region?

MR. SNOW: I think the more important thing is, it underscores America's commitment to the region. And you will hear a lot today, when the President talks, that the United States' commitment is not only economic, but we also think it's important to bring to the people of South and Central America the full benefits of democracy, which include representation, but also the basics: health care, help with social programs, education, and so on. The United States is committed to doing what we can to make life better, and we have -- again, I'm not going to steal the thunder from the President's speech, but he outlines a lot of that in his address today.

Q But is the White House concerned about the growing -- Chavez's growing influence in the region?

MR. SNOW: Well, there have been a number of cases in which that government has tried to intervene in elections, and so far is batting zero. I think it's more important to, again, extend the blessings of democracy throughout the region and make it clear that the United States is committed not only to the prospect of free elections, but also the follow on, so that you can continue to provide hope and opportunity for people who live in democratic nations.

Q Tony, back on Walter Reed, the V.A. system. Some have said that the V.A. system is a whole other monster all unto itself. Has the President been hearing from anyone particularly, reaching out, making phone calls, and just asking their thoughts or their personal experiences --

MR. SNOW: What the President is really trying to do right now is to assemble people who can devote their full time and attention to an exhaustive look, as I said, to shine light on the system and to take a comprehensive look at what's going on. I'm not aware -- as you know, April, he had a very busy weekend, and he was on the road Thursday and Friday, as well. I'm not aware of any reach out calls to ask people about personal experiences. But on the other hand, what he has been doing is making sure that people take a good look to find out what the situation is

➤ **“Carol Lam, the former United States attorney for San Diego, is smart and tireless and was very good at her job. . . . In many Justice Departments, her record would have won her awards, and perhaps a promotion to a top post in Washington. In the Bush Justice Department, it got her fired.”**

- Ms. Lam had been subject to a number of complaints, most notably from members of Congress about her performance on immigration issues and her policy of not prosecuting human smugglers and of illegal aliens across the border (i.e. “coyotes”).
- July 30, 2004: 14 House members express concerns to DOJ about Ms. Lam’s policy not to prosecute illegal alien smugglers.
- September 23, 2004: 19 House members voiced concern about need for border U.S. Attorney offices (specifically, Ms. Lam’s office) to prosecute illegal alien smugglers.
- October 13, 2005: California Congressman Darryl Issa, whose Congressional district overlaps with Ms. Lam’s district, wrote to Ms. Lam complaining about her policy against prosecuting illegal alien smugglers, to wit: “Your office has established an appalling record of refusal to prosecute even the worst criminal alien offenders.”
- October 20, 2005: 19 House members wrote to AG Alberto Gonzales to express frustration with Ms. Lam’s policy of prosecuting illegal alien smugglers, to wit: “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.”

➤ **“The Justice Department is claiming that Ms. Lam and other well-regarded prosecutors like John McKay of Seattle, David Iglesias of New Mexico, Daniel Bogden of Nevada and Paul Charlton of Arizona — who all received strong job evaluations — performed inadequately.”**

- Because United States Attorneys are appointed by the President and confirmed by the Senate, they do not have formal evaluations or annual performance reviews by their supervisors like other Department of Justice employees.
- Evaluations are conducted by the Evaluation and Review Staff (“EARS”) of the Executive Office for United States Attorneys (EOUSA). EARS conducts periodic peer reviews of each United States Attorney’s Office (USAO) in order to evaluate the overall performance of the entire USAO, make reports, and allow the USAO to take corrective action where needed.
- EARS does not assess performance of individuals within U.S. Attorney office and should not be construed as a barometer for the individual job performance of the

U.S. Attorney. In other words, an "EARS" report is not an evaluation of the performance of a United States Attorney by his or her supervisor. It is a peer review of the performance and internal controls of the entire United States Attorneys Office that occurs once every three to five years.

- Evaluations assess the legal practice and conduct of the office itself. Such issues evaluated include whether the office has an appropriate indictment review process in place, whether filings are generally done in a timely manner, and whether the office has a process in place to ensure appropriate treatment of security information.
- The EARS program serves as a mechanism by which the USAO and the evaluators – who are neither auditors nor inspectors – can share ideas and innovations, in addition to serving as a means of enhancing communication between EOUSA and the USAO. The evaluation program provides an opportunity for peers to evaluate peers in a relatively objective and constructive manner. Evaluation teams do not include other United States Attorneys.
- **“Although appointed by the president, once in office they are almost never asked to leave until a new president is elected. The Congressional Research Service has confirmed how unprecedented these firings are. It found that of 486 U.S. attorneys confirmed since 1981, perhaps no more than three were forced out in similar ways — three in 25 years, compared with seven in recent months.”**
- U.S. Attorneys are appointed to serve a four year term and may either be removed prior to completion of that term, or may be permitted to extend their respective tenures beyond that four year term.
- Based on information we now have, each of the U.S. Attorneys who was asked to resign in December 2006 had served a full four-year term, with several serving in excess of a four-year term.
- Except for the resignation of Bud Cummins in the Eastern District of Arkansas (discussed below), each of the other U.S. Attorneys were asked in December 2006 to resign based on individual “performance related” issues.
- According to the CRS Report, 54 U.S. Attorneys who were appointed between 1981 and 2006 left office prior to completing their four-year terms and whose terms did not extend beyond one President’s tenure in office. Of those, five were dismissed or resigned after revelations of misconduct under a cloud. For three others who resigned, CRS found no available information regarding the facts and circumstances of their resignations.
- Comparatively, the total number of U.S. Attorneys appointed by President Clinton (122) and by President Bush (128) are nearly identical.

➤ **“[H.E. (“Bud”) Cummins III, U.S. Attorney for Eastern District of Arkansas] was forced out to make room for J. Timothy Griffin, a former Karl Rove deputy with thin legal experience who did opposition research for the Republican National Committee.”**

- Mr. Cummins was confirmed to serve a four-year term in January 2002. He served in excess of his full four year term.
- As early as December 2004, Mr. Cummins expressed his intent to resign 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.”).
- At the time Mr. Griffin was appointed interim U.S. Attorney in December 2006, he had far more prosecution experience – in DOJ’s Criminal Division, the U.S. Attorney’s office as a Special Assistant U.S. Attorney, and a military prosecutor who served in Iraq – than Mr. Cummins did at the time he was appointed U.S. Attorney in January 2002.
- Mr. Cummins himself credited Mr. Griffin with the establishment of the U.S. Attorney office’s successful gun crime prosecution initiative.

➤ **“The Bush administration cleared the way for these personnel changes by slipping a little-noticed provision into the Patriot Act last year that allows the president to appoint interim U.S. attorneys for an indefinite period without Senate confirmation.”**

- Section 502 of the Patriot Act Improvement and Reauthorization Act of 2006, which set forth the changed appointment authority, had been included in a conference report and had been available for review and comment for *months* prior to enactment.
- Prior to the 2006 Amendment, the Attorney General had authority (pursuant to a 1986 Amendment) to fill a vacancy by appointing an interim U.S. Attorney for up to 120 days, unless sooner filled by a permanent appointment following Senate confirmation in the normal course. See 28 U.S.C. § 546(c). If the Attorney General’s appointment expired without permanent appointment by the President, the interim appointment authority would shift to the respective chief judge of the district court. The district court could either appoint an interim U.S. Attorney or refrain from exercising its appointment authority, in which case the Attorney General could make successive 120-day appointments.
- The 1986 Amendment contained no requirement that the district court (1) retain the Attorney General’s appointee, (2) consult with the Attorney General prior to

making the interim appointment, (3) ensure that the prospective interim appointee was qualified prior to appointment, or (4) ensure that the prospective interim appointee had cleared or was capable of clearing an appropriate background investigation prior to appointment.

- The Administration's position has been and continues to be that it is committed to having a Senate-confirmed U.S. Attorney in all 94 federal districts.
- The AG's record in using the interim appointment authority over the last year is defensible and responsible:
  - Since the 2006 Amendments went into effect, 14 vacancies have been created. Of those 14 vacancies, the Administration nominated candidates to fill five of these positions, three of whom have been confirmed to date.
  - The Administration has also interviewed candidates for another seven vacancies, and is awaiting to schedule interviews for two other vacancies, all in consultation with the respective home-state Senators.
  - In connection with five of the vacancies referenced above, the First Assistant U.S. Attorney was selected to lead the office and took over under the Vacancy Reform Act, 5 U.S.C. § 3345(a)(1), for a 210 day term. In several cases, when the First Assistant U.S. Attorney was not available – having resigned or retired prior to assuming control of the office – the Attorney General appointed an interim U.S. Attorney with the expectation that the appointee would undergo the nomination and confirmation process as well.
  - In connection with seven other vacancies, DOJ selected a DOJ employee to serve in an interim capacity under an Attorney General appointment until the nomination and confirmation of another permanent replacement.

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**From:** Fielding, Fred F.  
**Sent:** Monday, February 26, 2007 9:04 PM  
**To:** Lee, Kenneth K.  
**Subject:** Re: Parsky

Thanks...for some reason, I thought we were talking about Marshalls!!!

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

**From:** Lee, Kenneth K.  
**To:** Fielding, Fred F.  
**Sent:** Mon Feb 26 20:47:24 2007  
**Subject:** Parsky

Per our discussion today, you said that you would call Gerry Parsky to discuss who should contact the disappointed candidates for the U.S. Attorney (C.D. Cal.) slot.

As a FYI, below is a brief background summary of the selection process so far (I will submit a hard copy of this e-mail tomorrow as well):

- \* Typically, the Parsky Commission interviews a large pool of candidates, and then selects the top three for second-round interviews with DOJ/WHCO. If a candidate does not get a second-round interview, the Commission notifies him/her. But if the candidate has an interview with DOJ/WHCO, the WHCO relays the "bad news" to any disappointed candidate.
- \* For the US Attorney (C.D. Cal.) slot, the interviewing order was reversed: DOJ jumped the gun and arranged DOJ/WHCO interviews with six candidates -- prior to the Parsky Commission forwarding us any names. The Commission said it would also interview these same candidates, and then forward us three names (though not necessarily from this pool of six candidates).
- \* It turned out that the Commission approved only one of the six candidates that we had interviewed (the Commission also forwarded us two additional names).
- \* The question now is who should contact the five disappointed candidates who had first interviewed with DOJ/WHCO but did not receive the green light from the Commission. My understanding is that the Commission has not contacted these five candidates -- presumably because the Commission thinks the President may still end up nominating one of them. (At least one of the candidates recently contacted DOJ to inquire about his status, suggesting that they haven't been notified yet).
- \* DOJ is in an awkward position because many of these candidates have close relationships with main DOJ. DOJ thus prefers to have the Commission relay the bad news. However, DOJ's main concern is not getting "blamed" for the rejection of these five candidates, so I think DOJ will be fine with us contacting the disappointed candidates as long as we tell them that the Commission did not approve them.
- \* If the Commission is willing to contact these candidates, then the situation has been resolved. But if the Commission is reluctant to do so, I am willing to make the calls and tell the candidates in a somewhat oblique manner that they didn't get the Commission's blessing (e.g., "we thought highly of you, but unfortunately we didn't see eye-to-eye with the Commission"). The one concern is that we need to be sensitive to Gerry Parsky; we don't want to give the impression that we are somehow "blaming" the Commission.

Thanks.

Ken

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**From:** Oprison, Christopher G.  
**Sent:** Tuesday, February 27, 2007 10:02 AM  
**To:** Fielding, Fred F.; Kelley, William K.  
**Cc:** Bakke, Mary Beth  
**Subject:** FW: US Atty leg options  
**Attachments:** usatty.doc

See attached, which I would like to discuss at noon with you.

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**From:** Looney, Andrea B.  
**Sent:** Tuesday, February 27, 2007 9:54 AM  
**To:** Oprison, Christopher G.  
**Subject:** US Atty leg options

Hey Chris . . . Sean asked me to provide this to Fred. Will you please share with him? Also, please review yourself. Unfortunately, we don't have a pretty picture here.

I am at my desk now if you want to chat about Bond. 6-7075

Andrea Becker Looney  
Special Assistant to the President  
White House Office of Legislative Affairs  
(202) 456-

**DRAFT**

February 16, 2007

MEMORANDUM FOR THE FILE

FROM: CHRISTOPHER OPRISON

RE: ATTORNEY GENERAL APPOINTMENT AUTHORITY

This memorandum discusses: (1) the historical background of the authority to appoint United States Attorneys when vacancies arise; (2) the genesis of broadened authority of the Attorney General to appoint U.S. Attorney under Section 502 of the USA PATRIOT Improvement and Reauthorization Act of 2006 ("Act"); (3) legislative efforts to eliminate this Attorney General appointment authority and the position of the Office of Counsel to the President on this legislation; and (4) a brief comparative analysis of appointment and replacement of U.S. Attorneys during the Clinton and Bush Administrations.

**I. HISTORIAL BACKGROUND OF INTERIM APPOINTMENT AUTHORITY**

Historically, when a U.S. Attorney vacancy occurred, the Attorney General had the authority to appoint an interim U.S. Attorney for up to 120 days. The Attorney General appointment expired if the President did not appoint a U.S. Attorney within 120 days. In such cases, appointment authority shifted to the respective chief judge of the district court, who could then either appoint a U.S. Attorney to serve until a permanent replacement was confirmed by the Senate, or refrain from exercising the authority and, in turn, permit the Attorney General to appoint an interim U.S. Attorney for a subsequent 120-day period.

**II. THE ATTORNEY GENERAL'S EXPANDED APPOINTMENT AUTHORITY**

Section 502 of the Act, enacted in March 2006, included a provision that authorized the Attorney General to make appointments to U.S. Attorney vacancies for an unlimited duration, or until the President makes an appointment. Under the new law, district courts retained no authority to appoint interim U.S. Attorneys. The Conference Report for the Act explained the change as "address[ing] an inconsistency in the appointment process of United States Attorneys."

This legal change has only recently been criticized – primarily by Democrats – on several fronts, all of which are spurious. For example, it has been alleged that this change was "slipped into the Patriot Act in the dead of night," Sen. Schumer Opg. Stmt., Feb. 6, 2007, in an effort to secretly enable the Bush Administration to appoint Republican partisans and loyalists without having to submit to Senate advice and consent. On the contrary, this provision was included in a conference report and had been available for review and comment for months prior to enactment. See Sen. Specter Opg. Stmt., Feb. 6, 2007 ("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.") Moreover, the legislation is clearly not administration-specific or even political-party specific. See Sen. Hatch Opg. Stmt., Feb. 6, 2007 ("I want to point out that the legislation we are talking about applies to whatever political party is in office."). Far from an opportunistic power grab as alleged by Democrat opponents, the Attorney General's appointment authority was both constitutionally necessary and prudentially appropriate.

It is DOJ's view that vesting federal courts with the authority to appoint a critical Executive Branch officer such as a U.S. Attorney is inconsistent with sound separation of powers principles. Not only had courts been inconsistent in exercising the authority, but the authority, when exercised, necessarily led to tensions between the Executive and Judicial branches and, as a general matter, threatens the notion of a unified Executive branch. To illustrate the first point, some district courts recognized the oddity of this arrangement and simply refused to exercise appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments. District courts that exercised the authority, on the other hand, proceeded to appoint as interim U.S. Attorneys candidates who did not have the appropriate experience or the necessary clearances for such a position. The most notable instance of this judicial-executive tension occurred in the District of South Dakota in 2005. After a contentious set of exchanges with the chief judge of the district court – who appointed his own choice as U.S. Attorney over the objections of the Attorney General – the President recess-appointed a U.S. Attorney pending the identification and confirmation of a permanent U.S. Attorney. And, the inconsistency in application of this authority by courts underscores the notion that prosecutorial authority should be exercised by the Executive Branch in a unified manner, with consistent application of criminal enforcement policy under the supervision of the Attorney General as the chief law enforcement official.

In addition to constitutional and prudential concerns, vesting a court with the authority to appoint prosecutors who might appear before them raises significant conflict of interest questions. Two undesirable conflict scenarios are possible. A court-appointed U.S. Attorney would have authority to litigate the entire federal criminal and civil docket for this period before the very district court to which he was beholden for his appointment. This could compel the judicial appointee either to be overly accommodating to the court, or contrarily, overly contentious, both to the detriment of his client and to the fair administration of justice. Either scenario would tend to undermine the performance of the Executive and Judicial branches, and tarnish the public perception that the U.S. Attorney is able to perform his official duties independently and free from conflicts of interest. The principal concern articulated by Senate Democrats seems to be that U.S. Attorneys, at all times, should remain independent and apolitical in their administration of justice, and that this objective is potentially threatened by the Attorney General having authority to appoint U.S. Attorneys without seeking Senate advice and consent. However, to the extent such a risk exists, it is far more likely to manifest when a U.S. Attorney is appointed by the court before which he must practice on a regular basis.

### **III. LEGISLATIVE EFFORTS TO ELIMINATE ATTORNEY GENERAL APPOINTMENT AUTHORITY**

On January 9, 2007, Senator Feinstein introduced S. 214, entitled "Preserving United States Attorney Independence Act of 2007." As introduced, S. 214 would have stripped the Attorney General of all authority to appoint a U.S. Attorney on an interim basis and would have authorized only the district court to fill a U.S. Attorney vacancy in a district pending an appointment by the President in the normal course following Senate confirmation. On February 6, 2007, the Deputy Attorney General testified before the Senate Judiciary Committee in opposition to S. 214.

Senator Feinstein later introduced a substitute amendment to S. 214 that would have, instead, restored the Attorney General's interim appointment authority as it existed prior to the Act's reauthorization, but also returned to the district courts the power to fill vacancies after 120 days. The amended bill was reported out of the Senate Judiciary Committee on February 8, 2007, by a vote of 13-6, with Senators Specter, Hatch, and Grassley joining the Democrats in favor of the amendment. Senator Specter has signed on as a cosponsor of the bill as reported. It is worth repeating here that the bill voted out of the Senate Judiciary Committee would restore the status quo as it existed prior to the Act.

Senator Kyl has also considered introducing an amendment to S. 214 on the Senate floor that would, among other things, impose a precatory obligation on the President to nominate a U.S. Attorney within 180 days of a vacancy's arising and, failing that, to authorize the local district court to fill the vacancy with an interim appointment. The amendment would limit the court's authority by (1) requiring it to appoint a current employee of the DOJ or a federal law enforcement officer, (2) requiring it to give the Attorney General seven days' notice of the identity of an appointee, and (3) prohibiting the appointment of any person under investigation by the inspector general of a federal department or agency. Senator Kyl has solicited DOJ's views and assistance in drafting such an amendment.

The Administration has not publicly stated a position on the pending legislative proposals. DOJ's Office of Legal Policy informs us that it is considering offering a legislative compromise along the following lines: (1) the Attorney General would retain appointment authority, but interim appointments would be limited to 210 days, which period is tolled during the time a nomination for permanent replacement is on the floor; (2) upon expiration of the 210-day period, the interim appointment would conclude, at which time the respective chief judge has the authority, in consultation with the Attorney General, to retain or replace the current interim U.S. Attorney; and (3) if the Attorney General-appointed interim U.S. Attorney is nominated, but not confirmed, he or she must resign as interim U.S. Attorney even if the 210-day period has not expired.

In a perfect world, the Administration would oppose any changes to the law. The Act's extension of appointment authority to the Attorney General is good policy – it removes the courts from appointing the prosecutors who practice before them, and ensures that the Executive Branch has the confidence of those who are charged with the responsibility for investigating and prosecuting crimes. These should not be partisan issues. It is also worth noting that the Attorney

General's record in using the appointment authority over the last year is entirely defensible and responsible; upon request, we can provide information on each instance in which the authority has been used, but we haven't lengthened this memorandum to provide those details.

The current political climate makes it appear likely, however, that some change in the law will be enacted. Further work and consultation is, of course, required before the Administration settles upon a position. The worst-case scenario appears currently to be a return to the pre-Act regime, which the Executive Branch – including this Administration – tolerated for many years.

#### IV. CLINTON V. BUSH

Comparing the Clinton and Bush Administration approaches to appointing and replacing U.S. Attorneys suggests the Bush Administration has been less aggressive and, more importantly, less political in practice.

Our information from DOJ reveals that, upon taking office, President Clinton directed that all ninety-three U.S. Attorneys then in office be forced to resign immediately. According to DOJ, this action caused an uproar in light of the multitude of investigations and prosecutions being handled by incumbent U.S. Attorneys that had not yet been resolved. Although the departure of incumbent U.S. Attorneys occurred over a matter of months, the aggressive approach of the Clinton Administration stands in contrast with the more measured and deliberative approach of the Bush Administration. Upon taking office, President Bush approved in March 2001 a phased resignation approach proposed by Judge Gonzales, then-Counsel to the President. The majority of Clinton-appointed U.S. Attorneys were separately requested to resign at three milestones – as of March 31, 2001, April 30, 2001, and May 31, 2001. However, the Bush Administration considered and agreed to hold over twelve incumbent U.S. Attorneys either at the request of a home state Senator, pending confirmation of a successor, or pending completion of a sensitive investigation. As a result, a percentage of Clinton appointees actually served as U.S. Attorneys under President Bush and Attorney General John Ashcroft well into 2001, 2002 and some even 2003 before being replaced.

One other comparative note also suggests that this Administration has not been unusually aggressive in replacing U.S. Attorneys. During his two terms in office, President Clinton appointed a total of 122 U.S. Attorneys. We do not have access to information about the facts and circumstances of the Clinton U.S. Attorney departures beyond the initial replacement of all U.S. Attorneys en masse. To date, President Bush has appointed 128 U.S. Attorneys. We are informed that the vast majority of U.S. Attorney departures during President Bush's terms have come through normal attrition, though there have been occasions when the Attorney General has sought a resignation for management reasons.

---

**From:** Oprison, Christopher G.  
**Sent:** Tuesday, February 27, 2007 1:59 PM  
**To:** Kelley, William K.  
**Subject:** FW: Kennedy & Schumer QFR's to DAG McNulty

Bill - can we discuss later today. I would like to get Kyle and Rich on the phone and have them explain what will be discussed with Conyers and his crew tomorrow. Also, would like to know why they did not inform us of this briefing and hearing.

I have to head over to Dept of Ed on two FOIA matters and should be back by 4. Can we talk then?

---

**From:** Hertling, Richard [mailto:Richard.Hertling@usdoj.gov]  
**Sent:** Tuesday, February 27, 2007 1:56 PM  
**To:** Oprison, Christopher G.  
**Cc:** Sampson, Kyle; Kelley, William K.  
**Subject:** RE: Kennedy & Schumer QFR's to DAG McNulty

briefing is tomorrow afternoon; hearing is next Wednesday, March 6.

---

**From:** Oprison, Christopher G. [mailto:Christopher\_G.\_Oprison@who.eop.gov]  
**Sent:** Tuesday, February 27, 2007 1:47 PM  
**To:** Sampson, Kyle  
**Cc:** Hertling, Richard; Kelley, William K.  
**Subject:** RE: Kennedy & Schumer QFR's to DAG McNulty

can we discuss sometime later today the impending House Judiciary briefing and hearing? is there a date certain for each yet?

---

**From:** Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]  
**Sent:** Monday, February 26, 2007 10:59 AM  
**To:** Kelley, William K.  
**Cc:** Oprison, Christopher G.; Hertling, Richard  
**Subject:** FW: Kennedy & Schumer QFR's to DAG McNulty

Gents, wanted to you see the flavor of the QFRs we've received on the U.S. Attorneys matter. We obviously will need to clear answers through you all.

---

**From:** Scott-Finan, Nancy  
**Sent:** Monday, February 26, 2007 10:49 AM  
**To:** Sampson, Kyle  
**Cc:** Hertling, Richard  
**Subject:** FW: Kennedy & Schumer QFR's to DAG McNulty

Attached are the QFRs

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**From:** Kelley, William K.  
**Sent:** Tuesday, February 27, 2007 4:50 PM  
**To:** Oprison, Christopher G.  
**Subject:** RE: Kennedy & Schumer QFR's to DAG McNulty

You should schedule and I'll try to get on if I can.

---

**From:** Oprison, Christopher G.  
**Sent:** Tuesday, February 27, 2007 4:38 PM  
**To:** Kelley, William K.  
**Subject:** FW: Kennedy & Schumer QFR's to DAG McNulty

do you want to be on this call? I can do it after 5 today

---

**From:** Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]  
**Sent:** Tuesday, February 27, 2007 2:56 PM  
**To:** Oprison, Christopher G.  
**Cc:** Hertling, Richard; Kelley, William K.  
**Subject:** RE: Kennedy & Schumer QFR's to DAG McNulty

I'm available anytime except 4-5pm. Let us know.

---

**From:** Oprison, Christopher G. [mailto:Christopher\_G.\_Oprison@who.eop.gov]  
**Sent:** Tuesday, February 27, 2007 1:47 PM  
**To:** Sampson, Kyle  
**Cc:** Hertling, Richard; Kelley, William K.  
**Subject:** RE: Kennedy & Schumer QFR's to DAG McNulty

can we discuss sometime later today the impending House Judiciary briefing and hearing? is there a date certain for each yet?

---

**From:** Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]  
**Sent:** Monday, February 26, 2007 10:59 AM  
**To:** Kelley, William K.  
**Cc:** Oprison, Christopher G.; Hertling, Richard  
**Subject:** FW: Kennedy & Schumer QFR's to DAG McNulty

Gents, wanted to you see the flavor of the QFRs we've received on the U.S. Attorneys matter. We obviously will need to clear answers through you all.

---

**From:** Scott-Finan, Nancy  
**Sent:** Monday, February 26, 2007 10:49 AM  
**To:** Sampson, Kyle  
**Cc:** Hertling, Richard  
**Subject:** FW: Kennedy & Schumer QFR's to DAG McNulty

Attached are the QFRs

**From:** Perino, Dana M.  
**Sent:** Wednesday, February 28, 2007 10:46 AM  
**To:** Snow, Tony; Kelley, William K.; Kaplan, Joel; Wolff, Candida P.; Martin, Catherine; Rethmeier, Blain K.  
**Cc:** Fielding, Fred F.  
**Subject:** RE: DOJ US Atty Issue

Agree...would add that it's NOT news that those two USAs were leaving...what will be news is their replacements, and since they're career DOJ attys, I think that won't get as much attention.

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

**From:** Snow, Tony  
**Sent:** Wednesday, February 28, 2007 10:28 AM  
**To:** Perino, Dana M.; Kelley, William K.; Kaplan, Joel; Wolff, Candida P.; Martin, Catherine; Rethmeier, Blain K.  
**Cc:** Fielding, Fred F.  
**Subject:** RE: DOJ US Atty Issue

I think they need to take the lead on any explanations about why they have made changes -- or to offer no explanation other than that USAs serve at the pleasure of the president, and they are committed to putting together a first-rate team. They also need to be ready for predictable pushback -- political pressure, etc. -- from departing USAs and members of Congress. Finally, they need to get this wired on the Hill, so they don't run into an unexpected torrent of criticism.

We should keep a proper distance from the matter. We do need clear and complete answers about what if any participation White House officials had in making the original decisions. I don't want any of us to commit an inadvertent error because we weren't fully looped in.

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

**From:** Perino, Dana M.  
**Sent:** Wednesday, February 28, 2007 10:01 AM  
**To:** Kelley, William K.; Kaplan, Joel; Wolff, Candida P.; Snow, Tony; Martin, Catherine; Rethmeier, Blain K.  
**Cc:** Fielding, Fred F.  
**Subject:** Re: DOJ US Atty Issue

Adding wh comms...will respond post-gaggle

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

**From:** Kelley, William K.  
**To:** Kaplan, Joel; Wolff, Candida P.; Snow, Tony; Perino, Dana M.  
**CC:** Fielding, Fred F.  
**Sent:** Wed Feb 28 09:58:49 2007  
**Subject:** DOJ US Atty Issue

Here's a surprise -- a DOJ issue relating to US Attorneys. DOJ informed me this morning that today is the last day of service for the ousted US Attys in New Mexico and Nevada. Thus they have to name an acting US Atty in both offices who will serve until the next US Atty is nominated and confirmed. DOJ's internal management judgment is that none of the senior folks in those offices is suitable to serve as acting US Atty -- which they say is not surprising in light of the office weaknesses that led to the initial decision to make changes in the first place. Their intention, accordingly, is to make two career main justice attorneys the acting US Atty in these offices. One is a deputy assistant AG in the tax division, and the other is a senior prosecutor in the counterespionage section. I'm assured that neither could (fairly) be painted as political or a crony.

DOJ's plan was to do this today and make the normal legislative notifications today. I pushed back, saying that we needed to make sure that the leg and communications aspects of this are handled carefully. They agreed to hold off until we confer. I told them that at

a minimum they have to do leg consultation (as opposed to just notification) -- being explicit with the Senators as to why no local person would work, and showing them why the acting person isn't a DOJ "insider". And from a communications standpoint, they have to have talking points and a story worked out ahead of time.

So--I'm looking for direction from y'all on how much WH input and involvement there should be on these points, or others you might raise. (By the way, I don't think we are in a position to question their management judgment about the lack of suitability of any of the local AUSAs to become acting.) They are quite willing, of course, to coordinate with our leg and press/communications folks.

---

**From:** Oprison, Christopher G.  
**Sent:** Wednesday, February 28, 2007 10:30 AM  
**To:** Kelley, William K.; Fielding, Fred F.  
**Subject:** FW: NM USATTY - urgent issue  
**Importance:** High

this implicates Congress, not the White House.

Would you like to discuss contingent plans for the communications folks in the event this issue makes its way to the White House?

---

**From:** Jennings, Jeffery S.  
**Sent:** Wednesday, February 28, 2007 10:26 AM  
**To:** Oprison, Christopher G.  
**Subject:** FW: NM USATTY - urgent issue  
**Importance:** High

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**From:** Jennings, Jeffery S.  
**Sent:** Wednesday, February 28, 2007 10:17 AM  
**To:** 'KR@georgewbush.com'; Fielding, Fred F.; Sullivan, Kevin F.; Perino, Dana M.; 'kyle.sampson@usdoj.gov'  
**Cc:** 'Sara Taylor'  
**Subject:** NM USATTY - urgent issue  
**Importance:** High

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J. Scott Jennings

**Special Assistant to the President and  
Deputy Director, Office of Political Affairs  
(202) 456**

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**From:** Mamo, Jeanie S.  
**Sent:** Wednesday, February 28, 2007 1:03 PM  
**To:** Sullivan, Kevin F.; Wolff, Candida P.; Kelley, William K.; Kaplan, Joel; Martin, Catherine; Fielding, Fred F.; Rethmeier, Blain K.; Snow, Tony; Bartlett, Dan; Fiddelke, Debbie S.; Perino, Dana M.  
**Subject:** RE: NM USATTY - urgent issue

## **U.S. attorney: Politics drove me from office**

By Michael Gisick  
Wednesday, February 28, 2007

### *Albuquerque Tribune*

The prosecution of politicians and the politics of prosecution.

The not-entirely successful pursuit of the former defined the final two years of David Iglesias' stint as U.S. attorney in New Mexico.

The latter, Iglesias said as he prepared to leave office today, cost him his job.

"I know that my performance was not the real issue," Iglesias said Tuesday, less than a month after Paul McNulty, the deputy U.S. attorney general, told a Senate hearing the opposite.

"That only leaves one possibility," Iglesias continued, "and that's politics."

In an e-mail to a friend that wound up this week on the New Mexico politics blog run by Joe Monahan, Iglesias described his dismissal as a political "fragging" - a reference from the military in which an officer is killed by a subordinate.

Though he said the term wasn't one he would have chosen for public comments, Iglesias confirmed Tuesday that he wrote the e-mail. He said it accurately reflected his frustration over the Justice Department's handling of his dismissal.

"This was not a respectful way to treat someone who has served this administration for five years," he said.

"I would have had no objection to someone calling me and saying I'd lost my political support. Instead, they said it was performance, and I've got lots of data showing that's not the case."

The New York Times last week reported six of eight recently dismissed U.S. attorneys - all Republicans appointed during President Bush's first term - had received positive evaluations from the Justice Department.

Iglesias said he was one of those six.

He also cited statistics showing an increase in prosecution of immigration and criminal cases and a 95

percent overall conviction rate during his stint as U.S. attorney in Albuquerque.

But for Iglesias, whose tenure will almost certainly be remembered for high-profile corruption cases involving prominent New Mexico Democrats, the irony is that his undoing came, by his account, at the hands of his own party.

And if the man who served as a model for the defense attorney played by Tom Cruise in the movie "A Few Good Men" was fragged, Iglesias insisted he doesn't know which fellow Republican threw the grenade, or why.

Was it a member of New Mexico's congressional delegation, upset over his handling of the cases against former Democratic state Treasurers Robert Vigil and Michael Montoya?

Was the final straw Iglesias' decision not to seek indictments ahead of November's elections in another corruption investigation - this one involving rumored kickbacks to powerful Democrats and other officials during the construction of several Albuquerque courthouses?

Or was it someone in Washington upset about something else?

"It could have been someone at the White House, someone at Justice or someone in Congress," Iglesias said. "All political roads lead back to Washington, but no one has reached out to me to tell me what the problem was. I wish they had."

A spokesman for U.S. Sen. Pete Domenici, an Albuquerque Republican, did not return a message Tuesday evening.

A spokesman for U.S. Rep. Heather Wilson, an Albuquerque Republican, also didn't return a call after being asked whether Wilson played a role in Iglesias' ouster.

The removal of Iglesias and the other U.S. attorneys has already prompted some odd political music in the nation's capital. Senate Democrats have launched an investigation into why the Republican attorneys were forced out by the Bush administration, saying the moves appear politically motivated.

Iglesias said he might be called to testify before Congress as part of that investigation.

But the contentious exit of a prosecutor once seen as a rising political star also underscored the infighting that has long hampered the state GOP and has increasingly affected the national party.

"From a political standpoint, why would they let go an evangelical, Hispanic veteran?" Iglesias said. "I represent three major voting groups."

Iglesias also took some parting shots at one Democrat, former state attorney general and congressional candidate Patricia Madrid.

Iglesias has previously said problems with the Vigil case likely contributed to his dismissal, and partly blamed Madrid for those problems.

Vigil's first trial ended in a deadlock after a single juror held out against convictions on 24 counts including extortion, racketeering and conspiracy. A retrial in the fall netted only a single conviction on one count of attempted extortion.

Between trials, Madrid indicted several cooperating federal witnesses on state charges, and one of those witnesses refused to testify at Vigil's second trial.

Monday, Iglesias called Madrid's move a "terrible misstep."

"It amounted to a legalized form of obstruction of justice," he said. "It was shocking, it was unprecedented, and there was no legitimate law enforcement reason for doing what she did."

Still, Iglesias said he was pleased with the outcome of the case. Vigil, who has appealed his conviction, was sentenced to three years in prison. Montoya, who pleaded guilty to a single count of extortion, hasn't been sentenced.

"Ultimately, sending (Vigil) away for 40 years wouldn't have been just either," Iglesias said. "I feel three years is an appropriate sentence. People forget that he took a lot less money than Montoya did."

Iglesias said there was nothing major he would change about his handling of the case, which he said set a precedent for prosecution of public corruption in New Mexico.

"We put corruption cases back on the front burner," he said. "For 20 years, this office hadn't done any."

As for the investigation of a kickback scheme reportedly involving construction of Albuquerque's Metro Court and several other buildings - a corruption case rumored to dwarf the Vigil and Montoya cases - Iglesias said he expected indictments to come up "very soon."

But as he prepared for a news conference today in which he expected to focus on a defense of his tenure, Iglesias said those indictments would not come under his watch.

"I wish I would have that honor," he said. "But it will have to wait for my successor."

Instead, Iglesias, 49, said he will take a month off to mull his future. He has two job opportunities in the private sector, he said, and four kids to put through college.

And still a lawyer with the Naval Reserve, he said he has some military duty coming up in April.

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**From:** Sullivan, Kevin F.  
**Sent:** Wednesday, February 28, 2007 11:38 AM  
**To:** Mamo, Jeanie S.  
**Subject:** FW: NM USATTY - urgent issue

**From:** Kelley, William K.  
**Sent:** Wednesday, February 28, 2007 11:31 AM  
**To:** Sullivan, Kevin F.; Wolff, Candida P.; Kaplan, Joel; Martin, Catherine; Fielding, Fred F.; Rethmeier, Blain K.; Snow, Tony; Bartlett, Dan; Fiddelke, Debbie S.; Perino, Dana M.  
**Subject:** RE: NM USATTY - urgent issue

Fred and I just talked to the DAG about this. They are preparing to respond to this, and have assured us that the

WH won't own the story; they will keep our press and communications offices updated, though, about what they intend to say.

They are planning to deny that the investigation in question played any role in DOJ's decision, and to deny that any Member contacted main Justice to complain about the conduct (or not) of any particular investigation. (It is true that Sen. Domenici had expressed dissatisfaction with the US Atty, but no particular investigation or case was every brought up.)

In light of these developments, DOJ has decided to abandon their plan to import an outsider as acting US Atty, and instead just to live with the 1st Assistant taking over as acting.

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**Sent:** Wednesday, February 28, 2007 11:00 AM  
**To:** Wolff, Candida P.; Kelley, William K.; Kaplan, Joel; Martin, Catherine; Fielding, Fred F.; Rethmeier, Blain K.; Snow, Tony; Bartlett, Dan; Fiddelke, Debbie S.; Perino, Dana M.  
**Subject:** FW: NM USATTY - urgent issue  
**Importance:** High

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**Sent:** Wednesday, February 28, 2007 10:17 AM  
**To:** 'KR@georgewbush.com'; Fielding, Fred F.; Sullivan, Kevin F.; Perino, Dana M.; 'kyle.sampson@usdoj.gov'  
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**(202) 456-**

**From:** Mamo, Jeanie S.  
**Sent:** Wednesday, February 28, 2007 11:24 AM  
**To:** Sullivan, Kevin F.  
**Subject:** RE: NM USATTY - urgent issue

Thanks for heads up..

**From:** Sullivan, Kevin F.  
**Sent:** Wednesday, February 28, 2007 11:16 AM  
**To:** Mamo, Jeanie S.  
**Subject:** FW: NM USATTY - urgent issue  
**Importance:** High

see below - yikes

**From:** Jennings, Jeffery S.  
**Sent:** Wednesday, February 28, 2007 10:17 AM  
**To:** 'KR@georgewbush.com'; Fielding, Fred F.; Sullivan, Kevin F.; Perino, Dana M.; 'kyle.sampson@usdoj.gov'  
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**From:** Kelley, William K.  
**Sent:** Wednesday, February 28, 2007 11:31 AM  
**To:** Sullivan, Kevin F.; Wolff, Candida P.; Kaplan, Joel; Martin, Catherine; Fielding, Fred F.; Rethmeier, Blain K.; Snow, Tony; Bartlett, Dan; Fiddelke, Debbie S.; Perino, Dana M.  
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**To:** Wolff, Candida P.; Kelley, William K.; Kaplan, Joel; Martin, Catherine; Fielding, Fred F.; Rethmeier, Blain K.; Snow, Tony; Bartlett, Dan; Fiddelke, Debbie S.; Perino, Dana M.  
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---

**From:** Fiddelke, Debbie S.  
**Sent:** Wednesday, February 28, 2007 11:40 AM  
**To:** O'Hollaren, Sean B.  
**Subject:** RE: NM USATTY - urgent issue

My view - let OPA and DOJ own this one....unless we're asked to do something

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

**From:** O'Hollaren, Sean B.  
**Sent:** Wednesday, February 28, 2007 11:37 AM  
**To:** Fiddelke, Debbie S.  
**Subject:** Re: NM USATTY - urgent issue

Should we be taking any action in the Senate?

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

**From:** Fiddelke, Debbie S.  
**To:** Looney, Andrea B.; Frech, Christopher W.  
**CC:** Conklin, Brian C.; O'Hollaren, Sean B.; Wolff, Candida P.  
**Sent:** Wed Feb 28 11:31:28 2007  
**Subject:** FW: NM USATTY - urgent issue

fyi

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**Sent:** Wednesday, February 28, 2007 11:31 AM  
**To:** Sullivan, Kevin F.; Wolff, Candida P.; Kaplan, Joel; Martin, Catherine; Fielding, Fred F.; Rethmeier, Blain K.; Snow, Tony; Bartlett, Dan; Fiddelke, Debbie S.; Perino, Dana M.  
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(202) 456-

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**From:** Martin, Catherine  
**Sent:** Wednesday, February 28, 2007 2:04 PM  
**To:** Mamo, Jeanie S.; Sullivan, Kevin F.; Rethmeier, Blain K.  
**Subject:** FW: Updated Draft Talking Points and McClatchy story  
**Importance:** High

---

**From:** Kelley, William K.  
**Sent:** Wednesday, February 28, 2007 1:55 PM  
**To:** Snow, Tony; Martin, Catherine; Perino, Dana M.; Mamo, Jeanie S.; Kaplan, Joel  
**Cc:** Fielding, Fred F.  
**Subject:** FW: Updated Draft Talking Points and McClatchy story  
**Importance:** High

Please see below for DOJ's tps on the New Mexico issue.

---

**From:** McNulty, Paul J [mailto:Paul.J.McNulty@usdoj.gov]  
**Sent:** Wednesday, February 28, 2007 1:54 PM  
**To:** Kelley, William K.  
**Subject:** FW: Updated Draft Talking Points and McClatchy story  
**Importance:** High

Bill, here is the latest: our draft talking points and the most recent article. Strange thing is that Iglesias is quoted in an Albuquerque Tribune story today as saying that he expects indictments in the corruption case "very soon," an obvious violation of Department policy in an ongoing investigation. Paul

---

**From:** Roehrkasse, Brian  
**Sent:** Wednesday, February 28, 2007 1:31 PM  
**To:** McNulty, Paul J  
**Subject:** FW: Updated Draft Talking Points and McClatchy story  
**Importance:** High

Updated w/ the story.

---

**From:** Roehrkasse, Brian  
**Sent:** Wednesday, February 28, 2007 1:26 PM  
**To:** Goodling, Monica; Moschella, William; Hertling, Richard  
**Cc:** Elwood, Courtney; Sampson, Kyle; Scolinos, Tasia  
**Subject:** Updated Draft Talking Points and McClatchy story  
**Importance:** High

I just spoke to Kyle on the plane and have incorporated his input as well as edits from Courtney and Tasia. The McClatchy story is below -- I think it comes from an interview rather than a press conference.

Please send me you final comments now so I can begin to use these talking points. Thanks.

**DRAFT Talking Points**

The suggestion that David Iglesias was asked to resign because he failed to bring an indictment over a courthouse construction contract is flatly false.

This Administration has never removed a United States Attorneys in an effort to retaliate against them or interfere with or inappropriately influence a public integrity investigation. Furthermore, in the last six years, the Department has demonstrated its extremely strong record rooting out public corruption including prosecuting a number of very high profile cases.

David Iglesias served since 2001 as U.S. Attorney in New Mexico and had a lengthy record from which to evaluate his performance. Our decision was based on performance-related concerns including issues associated with the overall management of the office among others during his 5 ½ years as U.S. Attorney in New Mexico.

U.S. Attorneys [as directed by the U.S. Attorney Manual] are aware that all Congressional calls are to be directed to the Department of Justice's Office of Legislative Affairs and no one in the Department was aware of the details of the conversation between U.S. Attorney Iglesias and members of the New Mexico Congressional delegation.

If asked ONLY whether the main Justice Department or the White House was contacted about the performance of former U.S. Attorney David Iglesias:

The Department is occasionally contacted about the performance of U.S. Attorneys by home-state Senators and gives those comments the appropriate consideration. [IF PUSHED] We will not discuss specific conversations between members and the Department on these occasions.

---

**From:** Taylor, Marisa  
**Sent:** Wednesday, February 28, 2007 1:10 PM  
**To:** Roehrkasse, Brian; Schwartz, Arthur  
**Subject:** this is what I called about

I can still add a response from the department and update the story.

Marisa Taylor  
 National Correspondent  
 McClatchy Newspapers  
 (202)-383-

Visit McClatchy's 32 daily newspapers, including the Miami Herald, Sacramento Bee, Minneapolis Star Tribune, Kansas City Star, Raleigh News & Observer and others, at [www.mcclatchy.com](http://www.mcclatchy.com).

Posted on Wed, Feb. 28, 2007

Political interference alleged in sacking of a U.S. attorney

**By Marisa Taylor**  
**McClatchy Newspapers**

**WASHINGTON** - The U.S. attorney from New Mexico who was recently fired by the Bush administration

said Wednesday that he believes he was forced out because he refused to rush an indictment in an ongoing probe of local Democrats a month before November's Congressional elections.

David Iglesias said two members of Congress separately called in mid October to inquire about the timing of an ongoing probe of a kickback scheme and appeared eager for an indictment to be issued on the eve of the elections in order to benefit the Republicans. He refused to name the members of Congress because he said he feared retaliation.

Two months later, on Dec. 7, Iglesias became one of six U.S. attorneys ordered to step down for what administration officials have termed "performance-related issues." Two other U.S. attorneys also have been asked to resign.

Iglesias, who received a positive performance review before he was fired, said he suspected he was forced out because of his refusal to be pressured to hand down an indictment in the ongoing probe.

"I believe that because I didn't play ball, so to speak, I was asked to resign," said Iglesias, who officially stepped down Wednesday.

Iglesias acknowledged that he had no proof that the pressure from the Congress members prompted his forced resignation. But he said the contact in of itself violated one of the most important tenants of a U.S. attorney's office: Don't mix politics with prosecutions.

U.S. attorneys are appointed by the president in a political process that includes Senate confirmation. But as soon as they assume office they are expected to refrain from being politically active and to resist the urge to allow their political leanings to affect the outcome of a case.

Democrats have described the mid-term firings of the Republican-appointed U.S. attorneys as unprecedented and questioned whether the firings were politically motivated to root out moderates and install candidates loyal to the administration.

Justice department officials have defended the firings as legitimate administrative decisions meant to improve the workings of the Justice Department. Deputy Attorney General Paul McNulty told the Senate that most of the forced resignations were motivated by "performance-related" reasons.

Iglesias' allegation raises new questions about the nature of the firings and seems to undermine the theory that the administration only singled out moderate Republicans. Iglesias, a former military lawyer whose work helped inspired the Tom Cruise character in a "Few Good Men," describes himself as a social conservative who strove to loyally implement the administration's policies. Iglesias also was the first Hispanic to serve as U.S. attorney in his state in decades.

"I represent three huge voting blocks of the Republican party," he said. "I don't know why they would let someone go with those political credentials who has demonstratively done a good job."

Iglesias said the two members of Congress not only contacted him directly but also proceeded to try to wrest details about the case from him. Iglesias would not comment on the case to McClatchy, but the local media has reported on aspects of the ongoing investigation, including allegations that a former Democratic state senator took money to ensure an \$82 million courthouse contract would go to specific company.

Congressional questions about ongoing cases are supposed to go through a special office within the Justice Department to avoid the appearance of impropriety. Corruption cases in particular are treated as especially

sensitive.

"I was appalled by the inappropriateness of those contacts," Iglesias said of the calls.

Iglesias said they called during the lead up to the Congressional elections that gave the Democrats control of the House and Senate. The Republican Party loss was blamed in part on several ongoing criminal corruption cases against Republican members of Congress.

Jude McCartin, a spokeswoman for New Mexico's Democratic Senator Jeff Bingaman, said she had not heard of the allegations and could not comment on them.

"It wasn't us - that's all I can say," she said.

Bingaman worked with Iglesias on crafting certain legislation, but McCartin said Bingaman would never attempt to push an ongoing case for political purposes.

"U.S. attorneys have a job to do and he does not want to interfere," she said. "He's a senator and his job is to craft legislation, not involve himself in ongoing cases."

Other members of the New Mexico delegation could not be immediately reached for comment.

Senator Pete Domenici was not facing re-election, but the state's two other Republicans, U.S. Representatives Heather Wilson and Steve Pearce were up for election. Both won, but Wilson beat her opponent by 875 votes out of nearly 211,000.

Local media reports had speculated that Iglesias' office might issue an indictment before the elections.

But Iglesias said he refused to tell the members of Congress when it would be issued, although he had decided the investigation needed more time.

"You never rush any case to trial, especially political corruption cases," he said. "There is always the charge that the real basis of the prosecutions is politics and you want to avoid that."

He said he now regrets that he did not report the calls to the Justice Department as required by policy.

"I thought it would blow over," he said. "But I was wrong."

In the last several weeks, other U.S. attorneys have spoken out against the administration to dispute that they were fired because of the way they handled their job.

The administration has only acknowledged that politics played a part in the firing of former U.S. Attorney Bud Cummins in Little Rock Arkansas. In his case, officials have said he was removed to make way for Tim Griffin, a former aide to Rove. Griffin has since said he will not seek Senate confirmation because of the controversy.

The firings have put Justice Department officials in the unusual position of having to defend the ouster of Republican-appointees against Democratic criticism.

Similar to six other U.S. attorneys, Iglesias said when he was called and fired December 7, he was not given any reason other than that said the order "came from on high."

Iglesias and several other U.S. attorneys have been contacted by the House's Subcommittee on Commercial and Administrative Law about possibly testifying before Congress on the firings. Iglesias said would only testify if he were subpoenaed.

U.S. Attorney Daniel Bogden, who also stepped down Wednesday after being asked to leave in December, said he had no idea why he was asked to resign.

Like Iglesias, he received a positive performance evaluation. But unlike him, he said he never clashed with elected officials about an ongoing investigation. Bogden, a prosecutor with more than 16 years of experience, prosecuted county officials in a case connected to a San Diego indictment of several local elected officials. Carol Lam, the U.S. attorney in San Diego, was also asked to step down in December.

"As an office we thought we were functioning at a very high level," Bogden said. "You would think that if you're doing the job you should be doing you should remain in your place."

---

**From:** Martin, Catherine  
**Sent:** Wednesday, February 28, 2007 2:05 PM  
**To:** Kelley, William K.; Snow, Tony; Perino, Dana M.; Mamo, Jeanie S.; Kaplan, Joel; Sullivan, Kevin F.  
**Cc:** Fielding, Fred F.  
**Subject:** RE: Updated Draft Talking Points and McClatchy story

I am talking to DOJ PA and they say these aren't final yet. Should have the final version shortly and will re-circulate.

---

**From:** Kelley, William K.  
**Sent:** Wednesday, February 28, 2007 1:55 PM  
**To:** Snow, Tony; Martin, Catherine; Perino, Dana M.; Mamo, Jeanie S.; Kaplan, Joel  
**Cc:** Fielding, Fred F.  
**Subject:** FW: Updated Draft Talking Points and McClatchy story  
**Importance:** High

Please see below for DOJ's tps on the New Mexico issue.

---

**From:** McNulty, Paul J [mailto:Paul.J.McNulty@usdoj.gov]  
**Sent:** Wednesday, February 28, 2007 1:54 PM  
**To:** Kelley, William K.  
**Subject:** FW: Updated Draft Talking Points and McClatchy story  
**Importance:** High

Bill, here is the latest: our draft talking points and the most recent article. Strange thing is that Iglesias is quoted in an Albuquerque Tribune story today as saying that he expects indictments in the corruption case "very soon," an obvious violation of Department policy in an ongoing investigation. Paul

---

**From:** Roehrkaase, Brian  
**Sent:** Wednesday, February 28, 2007 1:31 PM  
**To:** McNulty, Paul J.  
**Subject:** FW: Updated Draft Talking Points and McClatchy story  
**Importance:** High

Updated w/ the story.

---

**From:** Roehrkaase, Brian  
**Sent:** Wednesday, February 28, 2007 1:26 PM  
**To:** Goodling, Monica; Moschella, William; Hertling, Richard  
**Cc:** Elwood, Courtney; Sampson, Kyle; Scolinos, Tasia  
**Subject:** Updated Draft Talking Points and McClatchy story  
**Importance:** High

I just spoke to Kyle on the plane and have incorporated his input as well as edits from Courtney and Tasia. The McClatchy story is below -- I think it comes from an interview rather than a press conference.

Please send me your final comments now so I can begin to use these talking points. Thanks.

### ***DRAFT Talking Points***

The suggestion that David Iglesias was asked to resign because he failed to bring an indictment over a courthouse construction contract is flatly false.

This Administration has never removed a United States Attorney in an effort to retaliate against them or interfere with or inappropriately influence a public integrity investigation. Furthermore, in the last six years, the Department has demonstrated its extremely strong record rooting out public corruption including prosecuting a number of very high profile cases.

David Iglesias served since 2001 as U.S. Attorney in New Mexico and had a lengthy record from which to evaluate his performance. Our decision was based on performance-related concerns including issues associated with the overall management of the office among others during his 5 ½ years as U.S. Attorney in New Mexico.

U.S. Attorneys [as directed by the U.S. Attorney Manual] are aware that all Congressional calls are to be directed to the Department of Justice's Office of Legislative Affairs and no one in the Department was aware of the details of the conversation between U.S. Attorney Iglesias and members of the New Mexico Congressional delegation.

If asked ONLY whether the main Justice Department or the White House was contacted about the performance of former U.S. Attorney David Iglesias:

The Department is occasionally contacted about the performance of U.S. Attorneys by home-state Senators and gives those comments the appropriate consideration. [IF PUSHED] We will not discuss specific conversations between members and the Department on these occasions.

---

**From:** Taylor, Marisa  
**Sent:** Wednesday, February 28, 2007 1:10 PM  
**To:** Roehrka, Brian; Schwartz, Arthur  
**Subject:** this is what I called about

I can still add a response from the department and update the story.

Marisa Taylor  
National Correspondent  
McClatchy Newspapers  
(202)-383-XXXX

visit McClatchy's 32 daily newspapers, including the Miami Herald, Sacramento Bee, Minneapolis Star Tribune, Kansas City Star, Raleigh News & Observer and others, at [www.mcclatchy.com](http://www.mcclatchy.com).

Posted on Wed, Feb. 28, 2007

Political interference alleged in sacking of a U.S. attorney

By Marisa Taylor

## McClatchy Newspapers

**WASHINGTON** - The U.S. attorney from New Mexico who was recently fired by the Bush administration said Wednesday that he believes he was forced out because he refused to rush an indictment in an ongoing probe of local Democrats a month before November's Congressional elections.

David Iglesias said two members of Congress separately called in mid October to inquire about the timing of an ongoing probe of a kickback scheme and appeared eager for an indictment to be issued on the eve of the elections in order to benefit the Republicans. He refused to name the members of Congress because he said he feared retaliation.

Two months later, on Dec. 7, Iglesias became one of six U.S. attorneys ordered to step down for what administration officials have termed "performance-related issues." Two other U.S. attorneys also have been asked to resign.

Iglesias, who received a positive performance review before he was fired, said he suspected he was forced out because of his refusal to be pressured to hand down an indictment in the ongoing probe.

"I believe that because I didn't play ball, so to speak, I was asked to resign," said Iglesias, who officially stepped down Wednesday.

Iglesias acknowledged that he had no proof that the pressure from the Congress members prompted his forced resignation. But he said the contact in of itself violated one of the most important tenants of a U.S. attorney's office: Don't mix politics with prosecutions.

U.S. attorneys are appointed by the president in a political process that includes Senate confirmation. But as soon as they assume office they are expected to refrain from being politically active and to resist the urge to allow their political leanings to affect the outcome of a case.

Democrats have described the mid-term firings of the Republican-appointed U.S. attorneys as unprecedented and questioned whether the firings were politically motivated to root out moderates and install candidates loyal to the administration.

Justice department officials have defended the firings as legitimate administrative decisions meant to improve the workings of the Justice Department. Deputy Attorney General Paul McNulty told the Senate that most of the forced resignations were motivated by "performance-related" reasons.

Iglesias' allegation raises new questions about the nature of the firings and seems to undermine the theory that the administration only singled out moderate Republicans. Iglesias, a former military lawyer whose work helped inspired the Tom Cruise character in a "Few Good Men," describes himself as a social conservative who strove to loyally implement the administration's policies. Iglesias also was the first Hispanic to serve as U.S. attorney in his state in decades.

"I represent three huge voting blocks of the Republican party," he said. "I don't know why they would let someone go with those political credentials who has demonstratively done a good job."

Iglesias said the two members of Congress not only contacted him directly but also proceeded to try to wrest details about the case from him. Iglesias would not comment on the case to McClatchy, but the local media has reported on aspects of the ongoing investigation, including allegations that a former

Democratic state senator took money to ensure an \$82 million courthouse contract would go to specific company.

Congressional questions about ongoing cases are supposed to go through a special office within the Justice Department to avoid the appearance of impropriety. Corruption cases in particular are treated as especially sensitive.

"I was appalled by the inappropriateness of those contacts," Iglesias said of the calls.

Iglesias said they called during the lead up to the Congressional elections that gave the Democrats control of the House and Senate. The Republican Party loss was blamed in part on several ongoing criminal corruption cases against Republican members of Congress.

Jude McCartin, a spokeswoman for New Mexico's Democratic Senator Jeff Bingaman, said she had not heard of the allegations and could not comment on them.

"It wasn't us - that's all I can say," she said.

Bingaman worked with Iglesias on crafting certain legislation, but McCartin said Bingaman would never attempt to push an ongoing case for political purposes.

"U.S. attorneys have a job to do and he does not want to interfere," she said. "He's a senator and his job is to craft legislation, not involve himself in ongoing cases."

Other members of the New Mexico delegation could not be immediately reached for comment.

Senator Pete Domenici was not facing re-election, but the state's two other Republicans, U.S. Representatives Heather Wilson and Steve Pearce were up for election. Both won, but Wilson beat her opponent by 875 votes out of nearly 211,000.

Local media reports had speculated that Iglesias' office might issue an indictment before the elections.

But Iglesias said he refused to tell the members of Congress when it would be issued, although he had decided the investigation needed more time.

"You never rush any case to trial, especially political corruption cases," he said. "There is always the charge that the real basis of the prosecutions is politics and you want to avoid that."

He said he now regrets that he did not report the calls to the Justice Department as required by policy.

"I thought it would blow over," he said. "But I was wrong."

In the last several weeks, other U.S. attorneys have spoken out against the administration to dispute that they were fired because of the way they handled their job.

The administration has only acknowledged that politics played a part in the firing of former U.S. Attorney Bud Cummins in Little Rock Arkansas. In his case, officials have said he was removed to make way for Tim Griffin, a former aide to Rove. Griffin has since said he will not seek Senate confirmation because of the controversy.

The firings have put Justice Department officials in the unusual position of having to defend the ouster of Republican-appointedes against Democratic criticism.

Similar to six other U.S. attorneys, Iglesias said when he was called and fired December 7, he was not given any reason other than that said the order "came from on high."

Iglesias and several other U.S. attorneys have been contacted by the House's Subcommittee on Commercial and Administrative Law about possibly testifying before Congress on the firings. Iglesias said would only testify if he were subpoenaed.

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---

**From:** Kelley, William K.  
**Sent:** Wednesday, February 28, 2007 2:07 PM  
**To:** Fielding, Fred F.  
**Subject:** FW: Updated Draft Talking Points and McClatchy story

FYI, Sen. Ensign appears to be okay with bringing in an outsider.

---

**From:** McNulty, Paul J [mailto:Paul.J.McNulty@usdoj.gov]  
**Sent:** Wednesday, February 28, 2007 2:06 PM  
**To:** Kelley, William K.  
**Subject:** RE: Updated Draft Talking Points and McClatchy story

On the outside replacements issue, we are going to stay with the NM First Assistant, but I spoke to Sen Ensign's chief-of-staff and they are open to an outsider coming in. We are working with them on this today and will see how it progresses. I'll keep you posted.

---

**From:** Kelley, William K. [mailto:William\_K.\_Kelley@who.eop.gov]  
**Sent:** Wednesday, February 28, 2007 1:55 PM  
**To:** McNulty, Paul J  
**Subject:** RE: Updated Draft Talking Points and McClatchy story

Thanks.

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**To:** Goodling, Monica; Moschella, William; Hertling, Richard  
**Cc:** Elwood, Courtney; Sampson, Kyle; Scolinos, Tasia  
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**Subject:** this is what I called about

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Marisa Taylor  
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Posted on Wed, Feb. 28, 2007

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---

**From:** Eckert, Paul R.  
**Sent:** Friday, February 23, 2007 6:47 AM  
**To:** Oprison, Christopher G.  
**Cc:** Eckert, Paul R.  
**Subject:** FW: Revised Draft

Chris: I think that this email and the draft letter concern the recent USAO controversies. I can't remember if you were handling this issue generally, but let's talk once this draft arrives from DOJ this morning. PAUL

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

**From:** Eckert, Paul R.  
**Sent:** Friday, February 23, 2007 6:43 AM  
**To:** 'Richard.Hertling@usdoj.gov'  
**Cc:** Kelley, William K.; Eckert, Paul R.; Oprison, Christopher G.  
**Subject:** RE: Revised Draft

Richard: Would you please resend the letter to me and to Chris Oprison, who is also copied. It did not come through in Bill's email. Thanks. PAUL

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

**From:** Kelley, William K.  
**Sent:** Thursday, February 22, 2007 9:48 PM  
**To:** 'Richard.Hertling@usdoj.gov'  
**Cc:** Eckert, Paul R.  
**Subject:** Re: Revised Draft

Richard--I am out of the office through the weekend. (I jsut retrieved my email after a long flight.). Can you please coordinate these letters through Paul Eckert? (Also, I have to say that sending us these with so little time to respond puts us in a difficult position; just as there are a lot of balls in the air over there, there are just as many being juggled over here!)

Paul -- if Chris is better situated on this, just pass it on to him. Thanks.

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

**From:** Hertling, Richard  
**To:** Kelley, William K.  
**CC:** Sampson, Kyle  
**Sent:** Thu Feb 22 19:40:17 2007  
**Subject:** FW: Revised Draft

Bill: attached is another letter to which we would like your concurrence and approval to send on Friday morning. Senators Levin and Stabenow have written asking that no changes be made in the Michigan US Attorneys without advance notice to them. USA Chiara has spoken to both Senators today and intends to announce her departure publicly tomorrow. We need to send this letter to them tomorrow morning in advance of her public announcement. Please let us know if you have any comments or concerns at your earliest convenience tomorrow, but we do need this one approved as early as possible to get it off to the Senators first-thing in the morning. Thanks.

---

**From:** Elston, Michael (ODAG)  
**Sent:** Thursday, February 22, 2007 7:35 PM  
**To:** Hertling, Richard  
**Cc:** Goodling, Monica; Moschella, William; Sampson, Kyle; McNulty, Paul J

Subject: Revised Draft

<<Senator Levin and Senator Stabenow.doc>>

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**From:** Oprison, Christopher G.  
**Sent:** Friday, February 23, 2007 4:10 PM  
**To:** Fielding, Fred F.  
**Cc:** Bakke, Mary Beth  
**Subject:** FW: Version 2 of Reid Letter re Cummins-Griffin  
**Importance:** High  
**Attachments:** reid letter re cummins-griffin v.3.doc

Sir - attached is the latest draft of Kyle's letter to Sen Reid, et al. I direct you specifically to the second bullet on page two. Let me know if you would like to discuss. Kyle would like to send this letter tonight if possible.

---

**From:** Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]  
**Sent:** Friday, February 23, 2007 2:59 PM  
**To:** Oprison, Christopher G.  
**Subject:** RE: Version 2 of Reid Letter re Cummins-Griffin  
**Importance:** High

Chris, please review this version 3.

<<reid letter re cummins-griffin v.3.doc>>

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**From:** Sampson, Kyle  
**Sent:** Friday, February 23, 2007 2:56 PM  
**To:** 'Oprison, Christopher G.'  
**Subject:** Version 2 of Reid Letter re Cummins-Griffin  
**Importance:** High

Chris, please review and (hopefully) clear at your earliest. Thanks!

<< File: reid letter re cummins-griffin v.2.doc >>

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

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). The Department of Justice rejects any suggestion that U.S. Attorneys were asked or encouraged to resign for the inappropriate "political reason" of interfering with any public corruption case or retaliating against a U.S. Attorney who oversaw such a case.

Second, 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 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. Moreover, it was well-known, as early as December 2004, that Mr. Cummins intended to leave the office and seek employment in the private sector. See "The Insider Dec. 30," *Ark. Times* (Dec. 30, 2004) ("Cummins, 45, said that, with four children to put through college someday, he'll likely begin exploring career options. It wouldn't be 'shocking,' he said, for there to be a change in his office before the end of Bush's second term.").

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

In answer to your specific questions:

- Although the decision to appoint Mr. Griffin to replace Mr. Cummins was first contemplated in the spring or summer of 2006, the final decision to appoint Mr. Griffin to be interim U.S. Attorney in the Eastern District of Arkansas was made on or about December 15, 2006, after the Attorney General's telephone conversation with Senator Pryor.
- The Department of Justice is not aware of anyone lobbying for Mr. Griffin's appointment. The question of whether Mr. Griffin (who then was on active military duty in Iraq) might be considered for appointment as U.S. Attorney upon his return was addressed by the Department of Justice and the White House consistent with prior practice.
- As the Deputy Attorney General testified, Mr. Cummins's continued service as U.S. Attorney was not considered at the same time as the other U.S. Attorneys that the Deputy Attorney General acknowledged were asked to resign for reasons related to their performance. As the Deputy Attorney General testified, the request that Mr. Cummins resign was "related to the opportunity to provide a fresh start with a new person in that position."
- The Department is not aware of Karl Rove playing any role in the decision to appoint Mr. Griffin.

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

We appreciate the opportunity to respond to your inquiry.

Sincerely,

Richard A. Hertling  
Acting Assistant Attorney General

**cc: The Honorable Mitch McConnell  
The Honorable Arlen Specter**

---

**From:** Fielding, Fred F.  
**Sent:** Friday, February 23, 2007 5:50 PM  
**To:** Oprison, Christopher G.  
**Subject:** RE: Version 2 of Reid Letter re Cummins-Griffin

Many thanks!

---

**From:** Oprison, Christopher G.  
**Sent:** Friday, February 23, 2007 5:40 PM  
**To:** Fielding, Fred F.  
**Subject:** RE: Version 2 of Reid Letter re Cummins-Griffin

June 23, 2006

---

**From:** Fielding, Fred F.  
**Sent:** Friday, February 23, 2007 5:24 PM  
**To:** Oprison, Christopher G.  
**Subject:** RE: Version 2 of Reid Letter re Cummins-Griffin

I do not want that question to be passed out of this building in writing, but we should be sure before they send a letter....maybe Kyle knows the answer from his participation on the JSC.

---

**From:** Oprison, Christopher G.  
**Sent:** Friday, February 23, 2007 5:20 PM  
**To:** Fielding, Fred F.  
**Subject:** RE: Version 2 of Reid Letter re Cummins-Griffin

in light of the question you raised about POTUS approval that is currently being explored, should I ask that Kyle hold off sending this letter until Monday?

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**From:** Fielding, Fred F.  
**Sent:** Friday, February 23, 2007 5:04 PM  
**To:** Oprison, Christopher G.  
**Subject:** RE: Version 2 of Reid Letter re Cummins-Griffin

Chris:

My only concern in this draft is to insure that it is absolutely consistent with the facts and that it does not add to the controversy surrounding this issue.

FFF

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**From:** Oprison, Christopher G.  
**Sent:** Friday, February 23, 2007 4:10 PM  
**To:** Fielding, Fred F.  
**Cc:** Bakke, Mary Beth  
**Subject:** FW: Version 2 of Reid Letter re Cummins-Griffin  
**Importance:** High

Sir - attached is the latest draft of Kyle's letter to Sen Reid, et al. I direct you specifically to the second bullet on page two. Let me know if you would like to discuss. Kyle would like to send this letter tonight if possible.

---

**From:** Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]  
**Sent:** Friday, February 23, 2007 2:59 PM  
**To:** Oprison, Christopher G.  
**Subject:** RE: Version 2 of Reid Letter re Cummins-Griffin  
**Importance:** High

Chris, please review this version 3.

<<reid letter re cummins-griffin v.3.doc>>

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**From:** Sampson, Kyle  
**Sent:** Friday, February 23, 2007 2:56 PM  
**To:** 'Oprison, Christopher G.'  
**Subject:** Version 2 of Reid Letter re Cummins-Griffin  
**Importance:** High

Chris, please review and (hopefully) clear at your earliest. Thanks!

<< File: reid letter re cummins-griffin v.2.doc >>

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

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**From:** Fielding, Fred F.  
**Sent:** Monday, February 26, 2007 7:07 AM  
**To:** Oprison, Christopher G.; Kelley, William K.  
**Cc:** Bakke, Mary Beth  
**Subject:** RE: US Attorneys

Thanks.  
I'll raise at Senior Staff.

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**From:** Oprison, Christopher G.  
**Sent:** Monday, February 26, 2007 6:58 AM  
**To:** Fielding, Fred F.; Kelley, William K.  
**Cc:** Bakke, Mary Beth  
**Subject:** US Attorneys

See below - if you have time, I would be happy to discuss finalizing the US Attorney memo for distribution to COS's office.

### **Why Have So Many U.S. Attorneys Been Fired? It Looks a Lot Like Politics** By ADAM COHEN

Carol Lam, the former United States attorney for San Diego, is smart and tireless and was very good at her job. Her investigation of Representative Randy Cunningham resulted in a guilty plea for taking more than \$2 million in bribes from defense contractors and a sentence of more than eight years. Two weeks ago, she indicted Kyle Dustin Foggo, the former No. 3 official in the C.I.A. The defense-contracting scandal she pursued so vigorously could yet drag in other politicians.

In many Justice Departments, her record would have won her awards, and perhaps a promotion to a top post in Washington. In the Bush Justice Department, it got her fired.

Ms. Lam is one of at least seven United States attorneys fired recently under questionable circumstances. The Justice Department is claiming that Ms. Lam and other well-regarded prosecutors like John McKay of Seattle, David Iglesias of New Mexico, Daniel Bogden of Nevada and Paul Charlton of Arizona — who all received strong job evaluations — performed inadequately.

It is hard to call what's happening anything other than a political purge. And it's another shameful example of how in the Bush administration, everything — from rebuilding a hurricane-ravaged city to allocating homeland security dollars to invading Iraq — is sacrificed to partisan politics and winning elections.

U.S. attorneys have enormous power. Their decision to investigate or indict can bankrupt a business or destroy a life. They must be, and long have been, insulated from political pressures. Although appointed by the president, once in office they are almost never asked to leave until a new president is elected. The Congressional Research Service has confirmed how unprecedented these firings are. It found that of 486 U.S. attorneys confirmed since 1981, perhaps no more than three were forced out in similar ways — three in 25 years, compared with seven in recent months.

It is not just the large numbers. The firing of H. E. Cummins III is raising as many questions as Ms. Lam's. Mr. Cummins, one of the most distinguished lawyers in Arkansas, is respected by Republicans and Democrats alike. But he was forced out to make room for J. Timothy Griffin, a former Karl Rove deputy with thin legal experience who did opposition research for the Republican National Committee. (Mr. Griffin recently bowed to the inevitable and said he will not try for a permanent appointment. But he remains in office indefinitely.)

The Bush administration cleared the way for these personnel changes by slipping a little-noticed provision into the Patriot Act last year that allows the president to appoint interim U.S. attorneys for an indefinite period without Senate confirmation.

Three theories are emerging for why these well-qualified U.S. attorney were fired — all political, and all disturbing.

1. Helping friends. Ms. Lam had already put one powerful Republican congressman in jail and was investigating other powerful politicians. The Justice Department, unpersuasively, claims that it was unhappy about Ms. Lam's failure to bring more immigration cases. Meanwhile, Ms. Lam has been replaced with an interim prosecutor whose résumé shows almost no criminal law experience, but includes her membership in the Federalist Society, a conservative legal group.

2. Candidate recruitment. U.S. attorney is a position that can make headlines and launch political careers. Congressional Democrats suspect that the Bush administration has been pushing out long-serving U.S. attorneys to replace them with promising Republican lawyers who can then be run for Congress and top state offices.

3. Presidential politics. The Justice Department concedes that Mr. Cummins was doing a good job in Little Rock. An obvious question is whether the administration was more interested in his successor's skills in opposition political research — let's not forget that Arkansas has been lucrative fodder for Republicans in the past — in time for the 2008 elections.

The charge of politics certainly feels right. This administration has made partisanship its lodestar. The Washington Post reporter Rajiv Chandrasekaran revealed in his book, "Imperial Life in the Emerald City," that even applicants to help administer post-invasion Iraq were asked whom they voted for in 2000 and what they thought of *Roe v. Wade*.

Congress has been admirably aggressive about investigating. Senator Charles Schumer, Democrat of New York, held a tough hearing. And he is now talking about calling on the fired U.S. attorneys to testify and subpoenaing their performance evaluations — both good ideas.

The politicization of government over the last six years has had tragic consequences — in New Orleans, Iraq and elsewhere. But allowing politics to infect U.S. attorney offices takes it to a whole new level. Congress should continue to pursue the case of the fired U.S. attorneys vigorously, both to find out what really happened and to make sure that it does not happen again.

Christopher G. Oprison  
Associate Counsel to the President  
phone: (202) 456-  
fax: (202) 456-

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**From:** Oprison, Christopher G.  
**Sent:** Monday, February 26, 2007 10:53 AM  
**To:** Fielding, Fred F.; Kelley, William K.  
**Cc:** Bakke, Mary Beth  
**Subject:** US Attorney talking points  
**Attachments:** Talking Pts re Cohen article.doc

Attached are talking points addressing certain assertions in Cohen's article. Please let me know if you have any changes and whether I should forward these to Tony.

Christopher G. Oprison  
Associate Counsel to the President  
phone: (202) 456-  
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➤ **“Carol Lam, the former United States attorney for San Diego, is smart and tireless and was very good at her job. . . . In many Justice Departments, her record would have won her awards, and perhaps a promotion to a top post in Washington. In the Bush Justice Department, it got her fired.”**

- Ms. Lam had been subject to a number of complaints, most notably from members of Congress about her performance on immigration issues and her policy of not prosecuting human smugglers and of illegal aliens across the border (i.e. “coyotes”).
- July 30, 2004: 14 House members express concerns to DOJ about Ms. Lam’s policy not to prosecute illegal alien smugglers.
- September 23, 2004: 19 House members voiced concern about need for border U.S. Attorney offices (specifically, Ms. Lam’s office) to prosecute illegal alien smugglers.
- October 13, 2005: California Congressman Darryl Issa, whose Congressional district overlaps with Ms. Lam’s district, wrote to Ms. Lam complaining about her policy against prosecuting illegal alien smugglers, to wit: “Your office has established an appalling record of refusal to prosecute even the worst criminal alien offenders.”
- October 20, 2005: 19 House members wrote to AG Alberto Gonzales to express frustration with Ms. Lam’s policy of prosecuting illegal alien smugglers, to wit: “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.”

➤ **“The Justice Department is claiming that Ms. Lam and other well-regarded prosecutors like John McKay of Seattle, David Iglesias of New Mexico, Daniel Bogden of Nevada and Paul Charlton of Arizona — who all received strong job evaluations — performed inadequately.”**

- Because United States Attorneys are appointed by the President and confirmed by the Senate, they do not have formal evaluations or annual performance reviews by their supervisors like other Department of Justice employees.
- Evaluations are conducted by the Evaluation and Review Staff (“EARS”) of the Executive Office for United States Attorneys (EOUSA). EARS conducts periodic peer reviews of each United States Attorney’s Office (USAO) in order to evaluate the overall performance of the entire USAO, make reports, and allow the USAO to take corrective action where needed.
- EARS does not assess performance of individuals within U.S. Attorney office and should not be construed as a barometer for the individual job performance of the

U.S. Attorney. In other words, an "EARS" report is not an evaluation of the performance of a United States Attorney by his or her supervisor. It is a peer review of the performance and internal controls of the entire United States Attorneys Office that occurs once every three to five years.

- Evaluations assess the legal practice and conduct of the office itself. Such issues evaluated include whether the office has an appropriate indictment review process in place, whether filings are generally done in a timely manner, and whether the office has a process in place to ensure appropriate treatment of security information.
- The EARS program serves as a mechanism by which the USAO and the evaluators – who are neither auditors nor inspectors – can share ideas and innovations, in addition to serving as a means of enhancing communication between EOUSA and the USAO. The evaluation program provides an opportunity for peers to evaluate peers in a relatively objective and constructive manner. Evaluation teams do not include other United States Attorneys.

➤ **“Although appointed by the president, once in office they are almost never asked to leave until a new president is elected. The Congressional Research Service has confirmed how unprecedented these firings are. It found that of 486 U.S. attorneys confirmed since 1981, perhaps no more than three were forced out in similar ways — three in 25 years, compared with seven in recent months.”**

- U.S. Attorneys are appointed to serve a four year term and may either be removed prior to completion of that term, or may be permitted to extend their respective tenures beyond that four year term.
- Based on information we now have, each of the U.S. Attorneys who was asked to resign in December 2006 had served a full four-year term, with several serving in excess of a four-year term. And, for each, individual “performance related” issues were pivotal in the decision to request resignation.
- According to the CRS Report, 54 U.S. Attorneys who were appointed between 1981 and 2006 left office prior to completing their four-year terms and whose terms did not extend beyond one President’s tenure in office. Of those, five were dismissed or resigned after revelations of misconduct under a cloud. For three others who resigned, CRS found no available information regarding the facts and circumstances of their resignations.
- Comparatively, the total number of U.S. Attorneys appointed by President Clinton (122) and by President Bush (128) are nearly identical.

➤ **“[H.E. (“Bud”) Cummins III, U.S. Attorney for Eastern District of Arkansas] was forced out to make room for J. Timothy Griffin, a former Karl Rove deputy with**

**thin legal experience who did opposition research for the Republican National Committee.”**

- Mr. Cummins was confirmed to serve a four-year term in January 2002. He served in excess of his full four year term.
- As early as December 2004, Mr. Cummins expressed his intent to resign 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.”).
- At the time Mr. Griffin was appointed interim U.S. Attorney in December 2006, he had far more prosecution experience – in DOJ’s Criminal Division, the U.S. Attorney’s office as a Special Assistant U.S. Attorney, and a military prosecutor who served in Iraq – than Mr. Cummins did at the time he was appointed U.S. Attorney in January 2002.
- Mr. Cummins himself credited Mr. Griffin with the establishment of the U.S. Attorney office’s successful gun crime prosecution initiative.

➤ **“The Bush administration cleared the way for these personnel changes by slipping a little-noticed provision into the Patriot Act last year that allows the president to appoint interim U.S. attorneys for an indefinite period without Senate confirmation.”**

- Section 502 of the Patriot Act Improvement and Reauthorization Act of 2006, which set forth the changed appointment authority, had been included in a conference report and had been available for review and comment for *months* prior to enactment.
- The Administration’s position has been and continues to be that it is committed to having a Senate-confirmed U.S. Attorney in all 94 federal districts.
- The AG’s record in using the interim appointment authority over the last year is defensible and responsible:
  - Since the 2006 Amendments went into effect, 14 vacancies have been created. Of those 14 vacancies, the Administration nominated candidates to fill five of these positions, three of whom have been confirmed to date.
  - The Administration has also interviewed candidates for another seven vacancies, and is awaiting to schedule interviews for two other vacancies, all in consultation with the respective home-state Senators.

- In connection with five of the vacancies referenced above, the First Assistant U.S. Attorney was selected to lead the office and took over under the Vacancy Reform Act, 5 U.S.C. § 3345(a)(1), for a 210 day term. In several cases, when the First Assistant U.S. Attorney was not available – having resigned or retired prior to assuming control of the office – the Attorney General appointed an interim U.S. Attorney with the expectation that the appointee would undergo the nomination and confirmation process as well.
  
- In connection with seven other vacancies, DOJ selected a DOJ employee to serve in an interim capacity under an Attorney General appointment until the nomination and confirmation of another permanent replacement.

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**From:** Oprison, Christopher G.  
**Sent:** Monday, February 26, 2007 11:01 AM  
**To:** Fielding, Fred F.; Kelley, William K.  
**Cc:** Bakke, Mary Beth  
**Subject:** RE: US Attorney talking points  
**Attachments:** Talking Pts re Cohen article.doc

Please use this version instead. I added two additional bullet points re: the AG's authority under the 1986 amendments, that are highlighted in yellow

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**From:** Oprison, Christopher G.  
**Sent:** Monday, February 26, 2007 10:53 AM  
**To:** Fielding, Fred F.; Kelley, William K.  
**Cc:** Bakke, Mary Beth  
**Subject:** US Attorney talking points

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Christopher G. Oprison  
Associate Counsel to the President  
phone: (202) 456-  
fax: (202) 456-

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➤ **“The Bush administration cleared the way for these personnel changes by slipping a little-noticed provision into the Patriot Act last year that allows the president to appoint interim U.S. attorneys for an indefinite period without Senate confirmation.”**

- Section 502 of the Patriot Act Improvement and Reauthorization Act of 2006, which set forth the changed appointment authority, had been included in a conference report and had been available for review and comment for *months* prior to enactment.
- Prior to the 2006 Amendment, the Attorney General had authority (pursuant to a 1986 Amendment) to fill a vacancy by appointing an interim U.S. Attorney for up to 120 days, unless sooner filled by a permanent appointment following Senate confirmation in the normal course. See 28 U.S.C. § 546(c). If the Attorney General’s appointment expired without permanent appointment by the President, the interim appointment authority would shift to the respective chief judge of the district court. The district court could either appoint an interim U.S. Attorney or refrain from exercising its appointment authority, in which case the Attorney General could make successive 120-day appointments.
- The 1986 Amendment contained no requirement that the district court (1) retain the Attorney General’s appointee, (2) consult with the Attorney General prior to making the interim appointment, (3) ensure that the prospective interim appointee was qualified prior to appointment, or (4) ensure that the prospective interim

appointee had cleared or was capable of clearing an appropriate background investigation prior to appointment.

- The Administration's position has been and continues to be that it is committed to having a Senate-confirmed U.S. Attorney in all 94 federal districts.
- The AG's record in using the interim appointment authority over the last year is defensible and responsible:
  - Since the 2006 Amendments went into effect, 14 vacancies have been created. Of those 14 vacancies, the Administration nominated candidates to fill five of these positions, three of whom have been confirmed to date.
  - The Administration has also interviewed candidates for another seven vacancies, and is awaiting to schedule interviews for two other vacancies, all in consultation with the respective home-state Senators.
  - In connection with five of the vacancies referenced above, the First Assistant U.S. Attorney was selected to lead the office and took over under the Vacancy Reform Act, 5 U.S.C. § 3345(a)(1), for a 210 day term. In several cases, when the First Assistant U.S. Attorney was not available – having resigned or retired prior to assuming control of the office – the Attorney General appointed an interim U.S. Attorney with the expectation that the appointee would undergo the nomination and confirmation process as well.
  - In connection with seven other vacancies, DOJ selected a DOJ employee to serve in an interim capacity under an Attorney General appointment until the nomination and confirmation of another permanent replacement.

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**From:** Oprison, Christopher G.  
**Sent:** Monday, February 26, 2007 11:18 AM  
**To:** Fielding, Fred F.; Kelley, William K.  
**Subject:** US Attorney  
**Attachments:** Talking Pts re Cohen article.doc

revised talking points attached

Also, I spoke with Andrea Looney this morning about what Leg Affairs' involvement in this debate should be. Can we talk about this?

Christopher G. Oprison  
Associate Counsel to the President  
phone: (202) 456-  
fax: (202) 456-

---

**From:** Kelley, William K.  
**Sent:** Friday, February 16, 2007 1:49 PM  
**To:** Kaplan, Joel  
**Subject:** Update on US Atty Meeting

Joel--You asked me to coordinate with Fred a meeting between us, Candi, Karl, and any others with equities (which I deemed to be press), to address a way forward on the US Atty issue generally, and specifically on what our legislative posture should be. Candi and Karl are unavailable today or tomorrow, and Fred will be in Florida through Monday. It was his judgment that this needed the principals, and that Congress's going out removed the urgency to respond on the legislative front today, so he scheduled the meeting for Tuesday.

The memos you requested on the other aspects of the issue are in process, and should be to you today.

---

**From:** Martin, Catherine  
**Sent:** Friday, February 16, 2007 6:06 PM  
**To:** Sullivan, Kevin F.  
**Subject:** RE: Anything?

Just got out of a bunch of meetings. . .

Card check -- Even though we already have a general veto out on the overall bill, deputies are going to recommend a specific veto threat on three separate provisions in the bill that are not related to the secret ballot initiative -- just in case the D's strip out the card check piece and send any of these provisions as free standing provisions. Expect there will be a principals meeting next week.

OMB is trying to figure out how to deal with the \$ and programs that we asked congress to cut but that congress didn't approve or specifically reject in the CR. A couple strategies I need to review with you and Dan next week.

Working on border closing messaging in the event of avian flu for a deps meeting next week.

Free trade, TPA outreach and communications planning and interagency coordination is underway under Dave McCormack.

We need to talk about TAA in the context of TPA and the larger income inequality issue. Need to figure out how to drive a broader discussion of these issues. Remind me to fill you in next week. Probably should talk to you and Dan and include Fratto.

Not much else from my end. Have a good weekend.

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

**From:** Sullivan, Kevin F.  
**Sent:** Friday, February 16, 2007 3:58 PM  
**To:** Martin, Catherine  
**Subject:** Anything?

We need to talk about? Missed you this am...only thing from senior staff besides resolutions, al masri, etc was us attys (kr says not true that harriet intervned - dan spoke to tony, then I don't believe it came up in briefing)...and as u know, mexican trucks next week - expected to leak as their events get closer...

Everything ok on your end?

---

**From:** Kelley, William K.  
**Sent:** Friday, February 16, 2007 5:33 PM  
**To:** Oprison, Christopher G.  
**Subject:** RE: US Attorney Appointments  
**Attachments:** USAAttorney.COSmemo.doc

Please see the attached document and clean it up for me. I've been summoned to a meeting. After you've cleaned it up, can you email it to Fred and give him a hard copy, please? Thanks. Also, ask him how he wants to do the to/from portion. Thanks.

**DRAFT**

February 16, 2007

**MEMORANDUM FOR THE FILES**

**FROM: CHRISTOPHER OPRISON**

**RE:**

This memorandum discusses the following: (1) historical background of the authority to appoint United States Attorneys ("USA") when vacancies arise; (2) genesis of broadened authority of the Attorney General to appoint USAs under Section 502 of the revised USA PATRIOT Act; (3) legislative efforts to eliminate this Attorney General appointment authority and the position of the Office of Counsel to the President on this legislation; and (4) a brief comparative analysis of appointment and replacement of USAs during the Clinton and Bush Administrations.

**I. HISTORICAL BACKGROUND OF INTERIM APPOINTMENT AUTHORITY**

Historically, when a USA vacancy occurred, the Attorney General had the authority to appoint an interim USA for up to 120 days. The Attorney General appointment expired if the President did not appoint a USA within 120 days. In such cases, appointment authority shifted to the respective chief judge of the district court, who could then appoint a USA to serve until a permanent replacement was confirmed by the Senate, or the district court could refrain from exercising the authority and, in turn, permit the Attorney General to appoint an interim USA for a subsequent 120-day period.

**II. THE ATTORNEY GENERAL'S EXPANDED APPOINTMENT AUTHORITY**

In March 2006, Congress enacted the USA PATRIOT Improvement and Reauthorization Act of 2006 ("Act"). Section 502 of the Act included a provision that authorized the Attorney General to make appointments to USA vacancies for an unlimited period, or until the President makes an appointment, and district courts retained no authority to appoint USAs. The Conference Report for the Act explained the change as "address[ing] an inconsistency in the appointment process of United States Attorneys."

This legal change has only recently been criticized – primarily by Democrats – on several fronts, all of which are spurious. For example, it has been alleged that this change was "slipped into the Patriot Act in the dead of night," Sen Schumer Opg. Stmt., Feb. 6, 2007, in an effort to secretly enable the Bush Administration to appoint Republican loyalists without having to submit to Senate advice and consent. On the contrary, this provision was included in a conference report and had been available for review and comment for months prior to enactment. See Sen. Specter Opg. Stmt., Feb. 6, 2007 ("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.") Moreover, the legislation does not apply only to the Bush administration and is not political-party specific. See Sen. Hatch Opg. Stmt., Feb. 6, 2007 ("I want to point out that the legislation we are talking about applies to whatever political part is in office."). Far from an opportunistic power grab as alleged by Democrat opponents, the Attorney General's appointment authority was both constitutionally necessary and prudentially appropriate.

It is DOJ's view that vesting federal courts with the authority to appoint a critical Executive Branch officer such as a USA is inconsistent with sound separation of powers principles. Not only had courts been inconsistent in exercising the authority, but the authority, if exercised, necessarily led to tensions between the Executive and Judicial branches. Indeed, some district courts recognized the oddity of this arrangement and simply refused to exercise appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments. District courts who exercised the authority, on the other hand, proceeded to appoint as interim USAs candidates who did not have the appropriate experience or the necessary clearances for such a position. The most notable instance occurred in of this judicial-executive tension occurred in the District of South Dakota in 2005. After a contentious set of exchanges with the chief judge of the district court – who appointed his own choice as USA over the objections of the Attorney General – the President recess-appointed a USA pending the identification and confirmation of a permanent USA.

In addition to constitutional and prudential concerns, vesting a court with the authority to appoint prosecutors who might appear before them raises significant conflict of interest questions. Two undesirable conflict scenarios are possible. After being appointed by the court, the court's appointee would have authority for litigating the entire federal criminal and civil docket for this period before the very district court to which he was beholden for his appointment. This could compel the judicial appointee either to be overly accommodating to the court, or contrarily, overly contentious, both to the detriment of his client and to the administration of justice. Either scenario would tend to undermine the performance of the Executive and Judicial branches, and tarnish the public perception that the USA is able to perform his official duties independently and free from conflicts of interest. If the core concern of Senate Democrats is that USAs may relinquish their independence and become unable to seek justice fairly and impartially, this is far more likely to occur when a USA is appointed by the court before which he must practice. Finally, prosecutorial authority should be exercised by the Executive Branch in a unified manner, with consistent application of criminal enforcement policy under the supervision of the Attorney General.

### **III. LEGISLATIVE EFFORTS TO ELIMINATE ATTORNEY GENERAL APPOINTMENT AUTHORITY**

On January 9, 2007, Senator Feinstein introduced S. 214, entitled the "Preserving United States Attorney Independence Act of 2007." As introduced, S. 214 would have stripped the Attorney General of all authority to appoint USA on an interim basis and would have authorized only the district court to fill a USA vacancy in a district pending an appointment by the President in the normal course following Senate confirmation. On February 6, 2007, the

Deputy Attorney General testified before the Senate Judiciary Committee in opposition to S. 214.

Senator Feinstein later introduced a substitute amendment to S. 214 that would have, instead, restored the Attorney General's interim appointment authority as it existed prior to the Act's reauthorization, but also returned to the district courts the power to fill vacancies after 120 days. The amended bill was reported out of the Senate Judiciary Committee on February 8, 2007, by a vote of 13-6, with Senators Specter, Hatch, and Grassley joining the Democrats in favor of the amendment. Senator Specter has signed on as a cosponsor of the bill as reported. To repeat: The bill voted out of Committee would restore the status quo ante prior to the enactment of the revised PATRIOT Act.

Senator Kyl is considering introducing an amendment to S. 214 on the Senate floor that would, among other things, impose a precatory obligation on the President to nominate a USA within 180 days of a vacancy's arising and, failing that, to authorize the local district court to fill the vacancy with an interim appointment. The amendment would limit the court's authority by (1) requiring it to appoint a current employee of the DOJ or a federal law enforcement officer, (2) requiring it to give the Attorney General seven days' notice of the identity of an appointee, and (3) prohibiting the appointment of any person under investigation by the inspector general of a federal department or agency. Senator Kyl has solicited DOJ's views and assistance in drafting such an amendment.

The Administration has not weighed in on the pending legislative proposals. DOJ's Office of Legal Policy informs us that they are considering offering a legislative compromise along the following lines: (1) The Attorney General would retain appointment authority, but interim appointments would be limited to 210 days, which period is tolled during the time a nomination for permanent replacement is on the floor; (2) upon expiration of the 210-day period, the interim appointment would expire, at which time the respective chief judge has the authority, in consultation with the Attorney General, to retain or replace the current interim USA; and (3) if the Attorney General-appointed interim USA is nominated, but not confirmed, he or she must resign as interim USA even if the 210 appointment has not expired.

In a perfect world, the Administration would oppose any changes to the law. The PATRIOT Act's extension of appointment authority to the Attorney General is good policy – it removes the courts from appointing the prosecutors who practice before them, and ensures that the Executive Branch has the confidence of those who are charged with the responsibility for investigating and prosecuting crime. These should not be partisan issues. It is also worth noting that the Attorney General's record in using the appointment authority over the last year is entirely defensible and responsible; upon request, we can provide information on each instance in which the authority has been used, but we haven't lengthened this memorandum to provide those details.

The current political climate makes it appear likely, however, that some change in the law will be enacted. Further work and consultation needs to be done, of course, before the Administration settles upon a position. The worst-case scenario appears currently to be a return

to the pre-PATRIOT Act regime, which the Executive Branch – including this Administration – tolerated for many years.

#### **IV. CLINTON V. BUSH**

Upon taking office, President Clinton directed that all ninety-three USAs then in office be forced to resign. According to DOJ, this action caused an uproar in light of many investigations and prosecutions being handled by incumbent USAs that had not been resolved. In contrast, upon taking office, President Bush approved in March 2001 a phased resignation approach proposed by Judge Gonzales, then-Counsel to the President. Requesting a Clinton-appointed USA resignation involved replacing the incumbent USAs in three phases (as of March 31, 2001, April 30, 2001, and May 31, 2001), as well as considering overarching reasons to hold over twelve incumbent USAs either at the request of a home state Senator, pending confirmation of a successor, or pending completion of a sensitive investigation. As a result, a handful of Clinton appointees actually served as USAs in the Bush Administration well into 2001, 2002 and even 2003 before being replaced.

One other comparative note suggests that this Administration has not been unusually aggressive in replacing USAs. During his two terms in office, President Clinton appointed a total of 122 USAs. We do not have access to information about the facts and circumstances of the Clinton USA departures beyond the initial replacement of all USAs en masse. To date, President Bush has appointed 128 USAs. We are informed that the vast majority of USA departures during President Bush's terms have come through normal attrition, though there have been occasions when the Attorney General has sought a resignation for management reasons.

---

**From:** Oprison, Christopher G.  
**Sent:** Friday, February 16, 2007 7:25 PM  
**To:** Fielding, Fred F.; Kelley, William K.  
**Cc:** Bakke, Mary Beth  
**Subject:** AG Appointment Authority  
**Attachments:** COS - USAtty Appt Final.doc

Gentlemen - attached is a draft memo briefly discussing the historical background and current status of the AG's authority to appoint US Attorneys, proposed legislation, and a comparison of Clinton/Bush approaches. I will bring over a hard copy as well.

Christopher G. Oprison  
Associate Counsel to the President  
phone: (202) 456-  
fax: (202) 456-

**DRAFT**

February 16, 2007

MEMORANDUM FOR THE FILE

FROM: CHRISTOPHER OPRISON

RE: ATTORNEY GENERAL APPOINTMENT AUTHORITY

This memorandum discusses: (1) the historical background of the authority to appoint United States Attorneys when vacancies arise; (2) the genesis of broadened authority of the Attorney General to appoint U.S. Attorney under Section 502 of the USA PATRIOT Improvement and Reauthorization Act of 2006 ("Act"); (3) legislative efforts to eliminate this Attorney General appointment authority and the position of the Office of Counsel to the President on this legislation; and (4) a brief comparative analysis of appointment and replacement of U.S. Attorneys during the Clinton and Bush Administrations.

**I. HISTORIAL BACKGROUND OF INTERIM APPOINTMENT AUTHORITY**

Historically, when a U.S. Attorney vacancy occurred, the Attorney General had the authority to appoint an interim U.S. Attorney for up to 120 days. The Attorney General appointment expired if the President did not appoint a U.S. Attorney within 120 days. In such cases, appointment authority shifted to the respective chief judge of the district court, who could then either appoint a U.S. Attorney to serve until a permanent replacement was confirmed by the Senate, or refrain from exercising the authority and, in turn, permit the Attorney General to appoint an interim U.S. Attorney for a subsequent 120-day period.

**II. THE ATTORNEY GENERAL'S EXPANDED APPOINTMENT AUTHORITY**

Section 502 of the Act, enacted in March 2006, included a provision that authorized the Attorney General to make appointments to U.S. Attorney vacancies for an unlimited duration, or until the President makes an appointment. Under the new law, district courts retained no authority to appoint interim U.S. Attorneys. The Conference Report for the Act explained the change as "address[ing] an inconsistency in the appointment process of United States Attorneys."

This legal change has only recently been criticized – primarily by Democrats – on several fronts, all of which are spurious. For example, it has been alleged that this change was "slipped into the Patriot Act in the dead of night," Sen. Schumer Opg. Stmt., Feb. 6, 2007, in an effort to secretly enable the Bush Administration to appoint Republican partisans and loyalists without having to submit to Senate advice and consent. On the contrary, this provision was included in a conference report and had been available for review and comment for months prior to enactment. See Sen. Specter Opg. Stmt., Feb. 6, 2007 ("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.") Moreover, the legislation is clearly not administration-specific or even political-party specific. See Sen. Hatch Opg. Stmt., Feb. 6, 2007 ("I want to point out that the legislation we are talking about applies to whatever political party is in office."). Far from an opportunistic power grab as alleged by Democrat opponents, the Attorney General's appointment authority was both constitutionally necessary and prudentially appropriate.

It is DOJ's view that vesting federal courts with the authority to appoint a critical Executive Branch officer such as a U.S. Attorney is inconsistent with sound separation of powers principles. Not only had courts been inconsistent in exercising the authority, but the authority, when exercised, necessarily led to tensions between the Executive and Judicial branches and, as a general matter, threatens the notion of a unified Executive branch. To illustrate the first point, some district courts recognized the oddity of this arrangement and simply refused to exercise appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments. District courts that exercised the authority, on the other hand, proceeded to appoint as interim U.S. Attorneys candidates who did not have the appropriate experience or the necessary clearances for such a position. The most notable instance of this judicial-executive tension occurred in the District of South Dakota in 2005. After a contentious set of exchanges with the chief judge of the district court – who appointed his own choice as U.S. Attorney over the objections of the Attorney General – the President recess-appointed a U.S. Attorney pending the identification and confirmation of a permanent U.S. Attorney. And, the inconsistency in application of this authority by courts underscores the notion that prosecutorial authority should be exercised by the Executive Branch in a unified manner, with consistent application of criminal enforcement policy under the supervision of the Attorney General as the chief law enforcement official.

In addition to constitutional and prudential concerns, vesting a court with the authority to appoint prosecutors who might appear before them raises significant conflict of interest questions. Two undesirable conflict scenarios are possible. A court-appointed U.S. Attorney would have authority to litigate the entire federal criminal and civil docket for this period before the very district court to which he was beholden for his appointment. This could compel the judicial appointee either to be overly accommodating to the court, or contrarily, overly contentious, both to the detriment of his client and to the fair administration of justice. Either scenario would tend to undermine the performance of the Executive and Judicial branches, and tarnish the public perception that the U.S. Attorney is able to perform his official duties independently and free from conflicts of interest. The principal concern articulated by Senate Democrats seems to be that U.S. Attorneys, at all times, should remain independent and apolitical in their administration of justice, and that this objective is potentially threatened by the Attorney General having authority to appoint U.S. Attorneys without seeking Senate advice and consent. However, to the extent such a risk exists, it is far more likely to manifest when a U.S. Attorney is appointed by the court before which he must practice on a regular basis.

### III. LEGISLATIVE EFFORTS TO ELIMINATE ATTORNEY GENERAL APPOINTMENT AUTHORITY

On January 9, 2007, Senator Feinstein introduced S. 214, entitled "Preserving United States Attorney Independence Act of 2007." As introduced, S. 214 would have stripped the Attorney General of all authority to appoint a U.S. Attorney on an interim basis and would have authorized only the district court to fill a U.S. Attorney vacancy in a district pending an appointment by the President in the normal course following Senate confirmation. On February 6, 2007, the Deputy Attorney General testified before the Senate Judiciary Committee in opposition to S. 214.

Senator Feinstein later introduced a substitute amendment to S. 214 that would have, instead, restored the Attorney General's interim appointment authority as it existed prior to the Act's reauthorization, but also returned to the district courts the power to fill vacancies after 120 days. The amended bill was reported out of the Senate Judiciary Committee on February 8, 2007, by a vote of 13-6, with Senators Specter, Hatch, and Grassley joining the Democrats in favor of the amendment. Senator Specter has signed on as a cosponsor of the bill as reported. It is worth repeating here that the bill voted out of the Senate Judiciary Committee would restore the status quo as it existed prior to the Act.

Senator Kyl has also considered introducing an amendment to S. 214 on the Senate floor that would, among other things, impose a precatory obligation on the President to nominate a U.S. Attorney within 180 days of a vacancy's arising and, failing that, to authorize the local district court to fill the vacancy with an interim appointment. The amendment would limit the court's authority by (1) requiring it to appoint a current employee of the DOJ or a federal law enforcement officer, (2) requiring it to give the Attorney General seven days' notice of the identity of an appointee, and (3) prohibiting the appointment of any person under investigation by the inspector general of a federal department or agency. Senator Kyl has solicited DOJ's views and assistance in drafting such an amendment.

The Administration has not publicly stated a position on the pending legislative proposals. DOJ's Office of Legal Policy informs us that it is considering offering a legislative compromise along the following lines: (1) the Attorney General would retain appointment authority, but interim appointments would be limited to 210 days, which period is tolled during the time a nomination for permanent replacement is on the floor; (2) upon expiration of the 210-day period, the interim appointment would conclude, at which time the respective chief judge has the authority, in consultation with the Attorney General, to retain or replace the current interim U.S. Attorney; and (3) if the Attorney General-appointed interim U.S. Attorney is nominated, but not confirmed, he or she must resign as interim U.S. Attorney even if the 210-day period has not expired.

In a perfect world, the Administration would oppose any changes to the law. The Act's extension of appointment authority to the Attorney General is good policy – it removes the courts from appointing the prosecutors who practice before them, and ensures that the Executive Branch has the confidence of those who are charged with the responsibility for investigating and prosecuting crimes. These should not be partisan issues. It is also worth noting that the Attorney

General's record in using the appointment authority over the last year is entirely defensible and responsible; upon request, we can provide information on each instance in which the authority has been used, but we haven't lengthened this memorandum to provide those details.

The current political climate makes it appear likely, however, that some change in the law will be enacted. Further work and consultation is, of course, required before the Administration settles upon a position. The worst-case scenario appears currently to be a return to the pre-Act regime, which the Executive Branch – including this Administration – tolerated for many years.

#### **IV. CLINTON V. BUSH**

Comparing the Clinton and Bush Administration approaches to appointing and replacing U.S. Attorneys suggests the Bush Administration has been less aggressive and, more importantly, less political in practice.

Our information from DOJ reveals that, upon taking office, President Clinton directed that all ninety-three U.S. Attorneys then in office be forced to resign immediately. According to DOJ, this action caused an uproar in light of the multitude of investigations and prosecutions being handled by incumbent U.S. Attorneys that had not yet been resolved. Although the departure of incumbent U.S. Attorneys occurred over a matter of months, the aggressive approach of the Clinton Administration stands in contrast with the more measured and deliberative approach of the Bush Administration. Upon taking office, President Bush approved in March 2001 a phased resignation approach proposed by Judge Gonzales, then-Counsel to the President. The majority of Clinton-appointed U.S. Attorneys were separately requested to resign at three milestones – as of March 31, 2001, April 30, 2001, and May 31, 2001. However, the Bush Administration considered and agreed to hold over twelve incumbent U.S. Attorneys either at the request of a home state Senator, pending confirmation of a successor, or pending completion of a sensitive investigation. As a result, a percentage of Clinton-appointees actually served as U.S. Attorneys under President Bush and Attorney General John Ashcroft well into 2001, 2002 and some even 2003 before being replaced.

One other comparative note also suggests that this Administration has not been unusually aggressive in replacing U.S. Attorneys. During his two terms in office, President Clinton appointed a total of 122 U.S. Attorneys. We do not have access to information about the facts and circumstances of the Clinton U.S. Attorney departures beyond the initial replacement of all U.S. Attorneys en masse. To date, President Bush has appointed 128 U.S. Attorneys. We are informed that the vast majority of U.S. Attorney departures during President Bush's terms have come through normal attrition, though there have been occasions when the Attorney General has sought a resignation for management reasons.

---

**From:** Oprison, Christopher G.  
**Sent:** Monday, February 19, 2007 11:09 AM  
**To:** Fielding, Fred F.  
**Subject:** RE: AG Appointment Authority

Sir - if you would like to call me or fax me any changes, I would be happy to make those and finalize the memo.

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

**From:** Fielding, Fred F.  
**Sent:** Saturday, February 17, 2007 8:35 AM  
**To:** Oprison, Christopher G.; Kelley, William K.  
**Cc:** Bakke, Mary Beth  
**Subject:** Re: AG Appointment Authority

**Chris:**  
Thanks for a nice job. I have a few minor suggestions and changes to propose, which will have to await my access to a computer.  
Thanks again for your good work.  
FFF

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

**From:** Oprison, Christopher G.  
**To:** Fielding, Fred F.; Kelley, William K.  
**CC:** Bakke, Mary Beth  
**Sent:** Fri Feb 16 19:24:55 2007  
**Subject:** AG Appointment Authority

Gentlemen - attached is a draft memo briefly discussing the historical background and current status of the AG's authority to appoint US Attorneys, proposed legislation, and a comparison of Clinton/Bush approaches. I will bring over a hard copy as well.

Christopher G. Oprison  
Associate Counsel to the President  
phone: (202) 456-  
fax: (202) 456-

**From:** Karl Rove  
**Sent:** Sunday, February 18, 2007 8:30 PM  
**To:** Scott Jennings  
**Subject:** Re: US Attorney Issue: Generally and Legislation

May not have happened.

**From:** Scott Jennings <SJennings@gwb43.com>  
**Date:** Sun, 18 Feb 2007 20:14:58 -0500  
**To:** Karl Rove <KR@georgewbush.com>, <Taylor\_A.\_Hughes@who.eop.gov>  
**Conversation:** US Attorney Issue: Generally and Legislation  
**Subject:** Re: US Attorney Issue: Generally and Legislation

I did not attend this mtg.  
Was not invited.

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

**From:** Karl Rove  
**To:** Taylor A. Hughes <Taylor\_A.\_Hughes@who.eop.gov>  
**CC:** Scott Jennings  
**Sent:** Sun Feb 18 20:14:15 2007  
**Subject:** Re: US Attorney Issue: Generally and Legislation

Ask Jennings if he attended

---

**From:** "Hughes, Taylor A." <Taylor\_A.\_Hughes@who.eop.gov>  
**Date:** Fri, 16 Feb 2007 13:21:09 -0500  
**To:** Karl Rove <KR@georgewbush.com>  
**Conversation:** US Attorney Issue: Generally and Legislation  
**Subject:** FW: US Attorney Issue: Generally and Legislation

They're trying to set this up for this afternoon but I said you were on a plane and asked if perhaps Jennings could participate if you're not able to call in, whenever they set this up.

---

**From:** Bakke, Mary Beth  
**Sent:** Friday, February 16, 2007 12:42 PM  
**To:** Hughes, Taylor A.; Herzog, John T.; Paola, Lindsey N.; Perino, Dana M.  
**Subject:** US Attorney Issue: Generally and Legislation

Mr. Fielding would like to convene a meeting as soon as possible to discuss the above referenced subject. He will need 20 minutes for the following participants:

Karl Rove

Candi Wolfe  
Dand Perino  
Bill Kelley

Please let me know your availability. Thank you.  
Mary Beth

---

**From:** Kelley, William K.  
**Sent:** Monday, February 19, 2007 12:49 PM  
**To:** Oprison, Christopher G.  
**Subject:** RE: US Attorney - Subcommittee Testimony

By the way, I'm not suggesting anything critical by these questions.

---

**From:** Oprison, Christopher G.  
**Sent:** Monday, February 19, 2007 12:48 PM  
**To:** Kelley, William K.  
**Subject:** RE: US Attorney - Subcommittee Testimony

I was

---

**From:** Kelley, William K.  
**Sent:** Monday, February 19, 2007 12:46 PM  
**To:** Oprison, Christopher G.  
**Subject:** RE: US Attorney - Subcommittee Testimony

Chris--Were you on the LRM of Paul's testimony?

---

**From:** Oprison, Christopher G.  
**Sent:** Monday, February 19, 2007 12:28 PM  
**To:** Fielding, Fred F.; Kelley, William K.  
**Subject:** US Attorney - Subcommittee Testimony

Below, are some interesting passages from the Schumer-McNulty colloquy that occurred during the recent subcommittee hearing. During this hearing, Schumer pressed McNulty to attend a followup closed door session with the subcommittee to discuss various issues. The questions raised about the US Attorney vacancy in Arkansas (Bud Cummins replaced by Tim Griffin), along with a discussion about the US Attorney EAR evaluations and the "performance related issues" underlying the departures of various US Attorneys, were issues to be addressed at this followup closed door meeting, which occurred last week. It was purportedly at that closed door meeting that the DAG disclosed Harriet's name as the individual within the WH who directed the firing of Bud Cummins to make way for Tim Griffin.

I have not yet reached out to Harriet on this. Bill, we discussed calling her about this. I would be happy to do that with you today if you have time. However, I raise this to spotlight that, to my knowledge, the White House was not consulted at any time about issues that McNulty was asked to address at the followup meeting. Such issues appear to implicate protected presidential communications. At a minimum, then, well before McNulty went into the followup meeting, his office could/should have provided us notice that such communications might be discussed and afforded us an opportunity to verify what actually transpired. I believe, but have not yet confirmed, that what McNulty communicated to the subcommittee at the followup meeting misconstrued Harriet's conversation of June 2006 with Kyle regarding Bud Cummins' departure.

HJC 10262

HEARING OF SENATE JUDICIARY COMMITTEE, ADMINISTRATIVE LAW AND COURT SUBCOMMITTEE,  
February 6, 2007

SEN. SCHUMER: 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.

\* \* \* \* \*

SEN. SCHUMER: 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.

Christopher G. Oprison  
Associate Counsel to the President

phone: (202) 456-  
fax: (202) 456-

---

**From:** Oprison, Christopher G.  
**Sent:** Monday, February 19, 2007 12:55 PM  
**To:** Kelley, William K.  
**Subject:** RE: US Attorney - Subcommittee Testimony

no mention of any performance critiques in the draft opening remarks by the DAG. His remarks were focused more on the Department's support for the AG-appointment authority, why it was necessary, and why it opposed the Feinstein amendment.

---

**From:** Kelley, William K.  
**Sent:** Monday, February 19, 2007 12:48 PM  
**To:** Oprison, Christopher G.  
**Subject:** RE: US Attorney - Subcommittee Testimony

Were the performance critiques in the draft testimony?

---

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SEN. SCHUMER: Okay. Again, I would ask that you get back to us on that.

Christopher G. Oprison  
Associate Counsel to the President  
phone: (202) 456-  
fax: (202) 456-

---

**From:** Martin, Catherine  
**Sent:** Tuesday, February 20, 2007 8:26 AM  
**To:** Klunk, Kate A.; Rethmeier, Blain K.  
**Subject:** Re: US attorney meeting

Kate - pls see if you can get blain invited.

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

**From:** Klunk, Kate A.  
**To:** Rethmeier, Blain K.; Martin, Catherine  
**Sent:** Tue Feb 20 08:22:41 2007  
**Subject:** RE: US attorney meeting

I never received an email about it.

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

**From:** Rethmeier, Blain K.  
**Sent:** Tuesday, February 20, 2007 8:09 AM  
**To:** Klunk, Kate A.; Martin, Catherine  
**Subject:** US attorney meeting

Understand there is a us attorney meeting at 9:00. Dana will go but wasn't sure if you we going. Dan thought we should have someone there. I wasn't aware of the meeting.

Thanks.

---

**From:** Rethmeier, Blain K.  
**Sent:** Tuesday, February 20, 2007 10:20 AM  
**To:** Bartlett, Dan; Sullivan, Kevin F.  
**Cc:** Martin, Catherine; Perino, Dana M.  
**Subject:** US Attorney Meeting

Without putting too much in an email, leg is doing an assessment to evaluate our positioning should we revert back to the status quo or agree to changes in the current statute. We also have an answer for you on your question from the 8 am regarding the timeline.

Thanks,  
Blain

---

**From:** Klunk, Kate A.  
**Sent:** Tuesday, February 20, 2007 8:38 AM  
**To:** Bakke, Mary Beth  
**Cc:** Rethmeier, Blain K.; Martin, Catherine  
**Subject:** US Attorneys Meeting Today at 9am

Mary Beth,

I work in Communications for Cathie Martin (DAP for Communications). In this morning's staff meeting, Dana Perino (Press Office) brought to the group that a meeting was taking place at 9am today with Mr. Fielding on US Attorneys. Dan Bartlett asked that our communications staff get looped into this issue. Cathie Martin would like to send Blain Rethmeier to this meeting if possible for Communications. Please let me know if Blain would be able to attend this morning's meeting.

Thanks,  
Kate Klunk

From: "Karl Rove" <kcrmail@georgewbush.com>  
Date: Tuesday, February 20, 2007, 2:24:37 PM  
To: griffinjag@comcast.net  
Subject: Re: Geez - Cummins just won't stop!

---

Did Cummins ever say publicly he was looking to leave - something that was picked up by the press well before he left?

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

From: griffinjag@comcast.net <griffinjag@comcast.net>  
To: Karl Rove; Sara Taylor; Scott Jennings  
Sent: Sun Feb 18 22:22:26 2007  
Subject: Fw: Geez - Cummins just won't stop!

Fyi. From tomorrow. I don't understand the shock that the White House has input on political appointments.

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

From: "barbara" <barbara@corallocomstock.com>  
Date: Sun, 18 Feb 2007 22:05:14  
To: "Tim Griffin" <griffinjag@comcast.net.>  
Subject: Geez - Cummins just won't stop!

#### 6 of 7 Dismissed U.S. Attorneys Had Positive Job Evaluations

By Dan Eggen  
Washington Post Staff Writer  
Sunday, February 18, 2007; A11

All but one of the U.S. attorneys recently fired by the Justice Department had positive job reviews before they were dismissed, but many ran into political trouble with Washington over issues ranging from immigration to the death penalty, according to prosecutors, congressional aides and others familiar with the cases.

Two months after the firings first began to make waves on Capitol Hill, it has also become clear that most of the prosecutors were overseeing significant public-corruption investigations at the time they were asked to leave. Four of the probes target Republican politicians or their supporters, prosecutors and other officials said.

The emerging details stand in contrast to repeated statements from the Justice Department that six of the Republican-appointed prosecutors were dismissed because of poor performance. In one of the most prominent examples, agency officials pointed to widely known management and morale problems surrounding then-U.S. Attorney Kevin Ryan in San Francisco.

But the assertions enraged the rest of the group, some of whom feel betrayed after staying silent about the way they have been shoved from office.

Bud Cummins, the former U.S. attorney in Little Rock, who was asked to resign earlier than the others to make way for a former White House aide, said Justice Department officials crossed a line by publicly criticizing the performance of his well-regarded colleagues.

"They're entitled to make these changes for any reason or no reason or even for an idiotic reason," Cummins said. "But if they are trying to suggest that people have inferior performance to hide whatever their true agenda is, that is wrong. They should retract those statements."

The decision by Cummins and some of the others to speak out underscores the extent to which the firings have spiraled out of the Justice Department's control. Officials initially sought to obscure the firings even from some senators, and have since issued confusing signals and contradictory information about the episode.

For example, one source who was familiar with the episode said last week that an eighth U.S. attorney was asked to resign in December along with the others. The unidentified prosecutor is negotiating to stay in the job, said the source, who spoke on the condition of anonymity because of the delicacy of those discussions.

The end result is an unusual spectacle in which Democratic lawmakers are bemoaning the firings of Republican-appointed prosecutors. The political pressure has become so great that Cummins's successor in Arkansas, former White House aide J. Timothy Griffin, announced on Friday that he had decided not to submit his name to the Senate for a permanent appointment.

Lawmakers from both parties are pushing to strip Attorney General Alberto R. Gonzales of his power to name replacement U.S. attorneys for an indefinite period, although Republicans blocked that proposal in the Senate last week. The House Judiciary Committee is planning hearings on similar legislation in March.

"I don't know how they could have mishandled this any worse," said one of the fired U.S. prosecutors, who declined to be quoted by name because he feared repercussions.

"There always have traditionally been tensions between main Justice and U.S. attorneys in the districts," said Carl W. Tobias, a law professor at the University of Richmond. "But it does seem like there's an effort to centralize authority in Washington more than there has been in the past and in prior administrations."

Most of the firings came on Dec. 7, when senior Justice Department official Michael A. Battle -- a former U.S. attorney himself -- called at least six prosecutors to inform them that they were being asked to resign. Battle was apologetic but offered little in the way of explanations, telling some that the order had come from "on high," according to sources familiar with the calls.

In addition to Ryan in San Francisco, the prosecutors who were called that day included Carol S. Lam in San Diego, John McKay in Seattle, David C. Iglesias in New Mexico, Daniel G. Bogden in Nevada and Paul K. Charlton in Arizona. Cummins had been informed of his dismissal last summer but stayed until December.

The breaking point for Cummins and the others was testimony this month by Deputy Attorney General Paul J. McNulty, who told the Senate Judiciary Committee that the six U.S. attorneys in the West and Southwest had been dismissed for "performance-related" reasons and that Cummins had been pushed out to make room for Griffin.

That testimony "was the moment the gloves came off," said one fired prosecutor who declined to be identified.

Five of the dismissed prosecutors -- Bogden, Charlton, Cummins, Iglesias and McKay -- told reporters that they were not given any reason for their firings and had not been told of any performance problems. Only one of the fired prosecutors, Ryan in San Francisco, faced substantive complaints about turnover or other management-related issues, officials said.

Justice Department officials in recent days have sought to clarify the performance comments, saying the dispute is mired in "semantics." The officials said McNulty was referring to policy differences between the Bush administration and some of its employees. One official also said that the department had not made a list of replacements ahead of time.

"When you are setting national policy, you cannot have U.S. attorneys setting their own policies," said a Justice Department official who spoke on the condition of anonymity.

Bogden and Lam are among a handful of declared independents who worked as U.S. attorneys in the Bush administration. The rest of the group are viewed as moderate Republicans who have sometimes been at odds with their Washington bosses or more conservative Republicans.

In Seattle, for example, local Republicans complained to Gonzales about McKay's decision not to intervene in the disputed Washington gubernatorial race in 2006, which a Democrat eventually won by 129 votes.

Lam was the target of repeated complaints from conservative House Republicans, who asserted that she was lax in enforcing immigration laws. The Justice Department also points to drops in the number of firearms cases filed by her office.

Charlton in Arizona clashed with the Justice Department's headquarters on at least two occasions over murder cases in which he opposed seeking the death penalty, including one that prompted an outcry from Navajo groups opposed to the use of capital punishment. He was overruled in both cases, officials said.

"There was no public controversy about any of these; any controversy was within the Justice Department," said J. Grant Woods, a Republican and former Arizona attorney general.

But the cases that have gotten most of the attention among Democrats in Congress involve public-corruption investigations. In San Diego, Lam oversaw the probe that resulted in the guilty plea of then-Rep. Randy "Duke" Cunningham, a Republican. Two others connected to that case, including a former senior CIA official, were indicted two days before Lam left the job on Thursday.

Bogden in Nevada and Charlton in Arizona were also in the midst of investigations targeting current or former Republican members of Congress when they were fired. And in New Mexico, Iglesias's office had been examining alleged wrongdoing involving state Democrats.

Gonzales, McNulty and other Justice Department officials have strongly denied that those investigations played a role in the dismissals.

"The department's commitment to pursuing prosecuting public-corruption cases is clear," said spokeswoman Tasia Scolinos. "Any suggestion that removal of these particular U.S. attorneys was political or in any way would harm ongoing investigations is 100 percent false."

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**From:** Karl Rove [KR@georgewbush.com]  
**Sent:** Tuesday, February 20, 2007 9:38 AM  
**To:** Kelley, William K.  
**Subject:** Here's the answer

Many thought he was going to leave in dec of 2005 when his four years was up. Of course, he didn't leave.

Justice sources said that at some point he stood up at a DOJ U.S. Attorney's conference over a year ago and asked a question about post us attorney employment restrictions. It was well known he was looking.

Here is an Arkansas Times piece below from August of 2006. In it the Arkansas Times recalls that Bud has saying he was going to be leaving for a while:

The final days  
Arkansas Times Staff  
Updated: 8/24/2006

U.S. Attorney Bud Cummins of Little Rock says he'll likely be leaving his job in "the next few weeks or months," but almost certainly by the end of the year. He'd earlier told us he didn't intend to serve out the entirety of the Bush administration's second term and that he'd be looking for private sector work.

More newsy, perhaps, is who Cummins' successor might be. Informed sources say one possibility for a White House nomination is Tim Griffin, an Arkansas native who has worked in top jobs at both the Republican National Committee and the White House on hard-charging political opposition research.

Though Griffin, currently finishing a military obligation, spent one year in Little Rock as an assistant U.S. attorney, his political work would likely get more attention < and Democratic opposition < in the Senate confirmation process. He'd likely have to endure some questioning about his role in massive Republican projects in Florida and elsewhere by which Republicans challenged tens of thousands of absentee votes. Coincidentally, many of those challenged votes were concentrated in black precincts.

If not Griffin, state Rep. Marvin Childers is another Arkansas lawyer whose name has been mentioned by prominent Republicans to serve out Cummins' term.

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**From:** Mamo, Jeanie S.  
**Sent:** Tuesday, February 20, 2007 8:09 PM  
**To:** Perino, Dana M.  
**Subject:** RE: Cummins

OK.. this issue is driving me NUTS!!

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

**From:** Perino, Dana M.  
**Sent:** Tuesday, February 20, 2007 8:07 PM  
**To:** Mamo, Jeanie S.  
**Subject:** Re: Cummins

I guess he's trying to keep him in the loop. But he needs to provide full not half info, which we can do tomorrow morning.

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

**From:** Mamo, Jeanie S.  
**To:** Perino, Dana M.  
**Sent:** Tue Feb 20 20:01:50 2007  
**Subject:** RE: Cummins

I'm with DAN on this!! Would be careful.. WHY did he send that to Dan?

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

**From:** Perino, Dana M.  
**Sent:** Tuesday, February 20, 2007 8:00 PM  
**To:** Mamo, Jeanie S.  
**Subject:** Fw: Cummins

Driving me batty.

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

**From:** Perino, Dana M.  
**To:** Rethmeier, Blain K.  
**Sent:** Tue Feb 20 19:58:12 2007  
**Subject:** Re: Cummins

We can do this in the morning - I've not gotten any press calls on this.

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

**From:** Rethmeier, Blain K.  
**To:** Perino, Dana M.  
**Sent:** Tue Feb 20 19:10:15 2007  
**Subject:** FW: Cummins

FYI ...

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**From:** Bartlett, Dan  
**Sent:** Tuesday, February 20, 2007 7:10 PM  
**To:** Rethmeier, Blain K.; Sullivan, Kevin F.; Martin, Catherine  
**Subject:** RE: Cummins

be careful; let's discuss before we use this with the press.

From: Rethmeier, Blain K.  
Sent: Tuesday, February 20, 2007 6:38 PM  
To: Bartlett, Dan; Sullivan, Kevin F.; Martin, Catherine  
Subject: FW: Cummins

FYI ... previous press that indicated Cummins was looking to leave

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From: Fielding, Fred F.  
Sent: Tuesday, February 20, 2007 5:18 PM  
To: Perino, Dana M.; Kelley, William K.; Rethmeier, Blain K.; O'Hollaren, Sean B.; 'Karl Rove'  
Cc: Snow, Tony; Kaplan, Joel  
Subject: RE: Cummins

Thank you, Dana. This is very helpful...too bad it wasn't provided by DOJ last week as it would have assisted everyone and helped keep the story where it belongs!

FFF

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From: Perino, Dana M.  
Sent: Tuesday, February 20, 2007 1:45 PM  
To: Fielding, Fred F.; Kelley, William K.; Rethmeier, Blain K.; O'Hollaren, Sean B.; 'Karl Rove'  
Cc: Snow, Tony  
Subject: FW: Cummins

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From: Carleton, Nathan L.  
Sent: Tuesday, February 20, 2007 11:21 AM  
To: Perino, Dana M.  
Subject: Cummins

In August, Bud Cummins Publicly Said He Planned To Leave By The End Of The Year And Had "Let It Be Known" Over The Past Year. "Bud Cummins, the U.S. attorney for the Eastern District of Arkansas since December 2001, said Tuesday that he may leave his job by the end of the year. 'My wife and I have just evaluated our situation, and as much as I love this job and would like to do it forever, I've got four kids to put through college,' Cummins said. He said he doesn't have a new job lined up, but he's had some 'preliminary' discussions that may or may not lead to a new job. Although he hasn't formally told the White House that he plans to leave, Cummins, 47, said he has 'let it be known' over the past year that he would soon be bowing out, to give the Bush administration time to find a replacement." (Linda Satter, "U.S. attorney Cummins looking to take new direction," Arkansas Democrat-Gazette, 8/30/06)

In December, Cummins Defended Tim Griffin And Said He Asked DOJ In 2005 To Find His Replacement. "Cummins, a Bush appointee who said he is leaving to pursue other interests, said he told the Justice Department more than a year ago that he would be leaving, to give the department time to find a replacement. He also defended Griffin on Friday,

calling him a friend who is 'very competent' and 'very capable...I'm not being critical of Sen. Pryor,' Cummins said Friday. 'I can certainly understand their position. But I think it will eventually all work out.' He explained, 'It would not surprise me at all if they ultimately put Tim through the normal nomination process.' Cummins, whom Pryor press secretary Teague praised as 'a fantastic U.S. attorney' who 'is respected on both sides of the aisle,' said he is '100 percent confident that Tim understands that we don't do politics at the U.S. attorney's office.' He said the department makes that clear to its incoming prosecutors." (Linda Satter, "New U.S. attorney says job matters, not how he got it," Arkansas Democrat-Gazette, 12/26/06)

## U.S. ATTORNEY VACANCIES

Confidential Status Report

12/20/2006

UNITED STATES ATTORNEYS -- APPOINTMENT SUMMARY				
Vacancy	Vice	Candidate Approved	Current Status	Assoc. Counsel
District of Alaska	Timothy Mark Burgess		Interviewing	KL
Eastern District of Arkansas	H.E. "Bud" Cummins, III	J. Timothy Griffin	Awaiting names- The Arkansas Senators have objected to Tim Griffin, who was approved to move into background for the position. DOJ's plan, endorsed by Scott Jennings, is to move Tim into an AG-Appointed U.S. Attorney position after a period assisting the incumbent. The point has been briefed to Andrea Looney, who indicated she would seek Candi Wolff's views on this course. The proposed course has not been raised at JSC.	CO
District of Columbia	Kenneth L. Wainstein		In Background	JS
Central District of California*	Debra W. Yang		Interviewing	KL
Southern District of Georgia	Lisa Godbey Wood		Georgia's Senators jointly recommended James D. Durham, whom DOJ has interviewed. We are awaiting more names.	JS
Southern District of Illinois	Ronald J. Tenpas	Philip J. Green	Returned 12.11.06	BM
Northern District of Indiana	Joseph S. Van Bokkelen		No affirmative steps taken yet by our office to find a replacement for this vacancy, as the current U.S. Attorney has not yet been nominated to the District Court.	BM
Northern District of Iowa	Charles W. Larson		Interviewing	CO
District of Maine	Jay Patrick McCloskey		Awaiting names- Senators encouraged waiting to make decision until after elections.	LF
Eastern District of Michigan	Steven J. Murphy		Resignation forthcoming (Murphy nominated to 6th Cir.) Given the political sensitivities surrounding Steve Murphy's nomination and the lack of an obvious and discreet Republican contact point in the Eastern District of Michigan, the office has not reached out to the state party to seek names.	BM
Western District of Missouri	Todd Peterson Graves	John Wood	In Background (initiated 11.13.06)	CO
District of Montana	William W. Mercer		Awaiting names	KL
District of Nebraska	Michael Heavican		Interviewing	CO
Eastern District of New York	Rosslyn R. Mausekopf		Resignation forthcoming (Mausekopf nominated to ED NY). Governor Pataki has provided us two candidates for this potential vacancy, and we have received good names from other sources. However, a number of the candidates for this vacancy are also candidates for the Mukasey seat in the Southern District of New York, for which we are awaiting names from the Governor, so we need to discuss how to proceed regarding candidates for both positions.	BM
District of Puerto Rico	Humberto S. Garcia	Rosa Rodriguez-Velez	In Background	LF
Eastern District of Tennessee	Harry S. Mattice, Jr.		Potential candidate not cleared.	BM
Middle District of Tennessee	James K. Vines		Interviewing	BM
Southern District of West Virginia	Karl K. Warner, II		Interviewing- We have agreed to leave the Acting U.S. Attorney in place until after the Nov. election, and then we will reassess.	JB

## U.S. ATTORNEY VACANCIES

Confidential Status Report

1/8/2007

UNITED STATES ATTORNEYS -- APPOINTMENT SUMMARY				
Vacancy	Vice	Candidate Approved	Current Status	Assoc. Counsel
District of Alaska	Timothy Mark Burgess		Interviewing	KL
Eastern District of Arkansas	H.E. "Bud" Cummins, III	J. Timothy Griffin	Awaiting names- The Arkansas Senators have objected to Tim Griffin, who was approved to move into background for the position. DOJ's plan, endorsed by Scott Jennings, is to move Tim into an AG-Appointed U.S. Attorney position after a period assisting the incumbent. The point has been briefed to Andrea Looney, who indicated she would seek Candi Wolff's views on this course. The proposed course has not been raised at JSC.	CO
District of Columbia	Kenneth L. Wainstein	Jeffrey A. Taylor	In Background (initiated 1.4.07)	JS
Central District of California*	Debra W. Yang		Interviewing	KL
Southern District of Georgia	Lisa Godbey Wood		Georgia's Senators jointly recommended James D. Durham, whom DOJ has interviewed. We are awaiting more names.	JS
Southern District of Illinois	Ronald J. Tenpas	Philip J. Green	Returned 12.11.06	BM
Northern District of Indiana	Joseph S. Van Bokkelen		No affirmative steps taken yet by our office to find a replacement for this vacancy, as the current U.S. Attorney has not yet been nominated to the District Court.	BM
Northern District of Iowa	Charles W. Larson		JSC tentatively approved Matt M. Dummermuth	CO
District of Maine	Jay Patrick McCloskey		Awaiting names- Senators encouraged waiting to make decision until after elections.	LF
Eastern District of Michigan	Steven J. Murphy		Resignation forthcoming (Murphy nominated to 6th Cir.) Given the political sensitivities surrounding Steve Murphy's nomination and the lack of an obvious and discreet Republican contact point in the Eastern District of Michigan, the office has not reached out to the state party to seek names.	BM
Western District of Missouri	Todd Peterson Graves	John Wood	In Background (initiated 11.13.06)	CO
District of Montana	William W. Mercer		Awaiting names	KL
District of Nebraska	Michael Heavican		JSC tentatively approved Joe W. Stecher	CO
Eastern District of New York	Roslyn R. Mauskopf		Resignation forthcoming (Mauskopf nominated to ED NY). Governor Pataki has provided us two candidates for this potential vacancy, and we have received good names from other sources. However, a number of the candidates for this vacancy are also candidates for the Mukasey seat in the Southern District of New York, for which we are awaiting names from the Governor, so we need to discuss how to proceed regarding candidates for both positions.	BM
District of Puerto Rico	Humberto S. Garcia	Rosa Rodriguez-Velez	In Background	LF
Eastern District of Tennessee	Harry S. Mattice, Jr.		JSC tentatively approved James R. "Russ" Dedrick	BM
Middle District of Tennessee	James K. Vines		Interviewing	BM
Southern District of West Virginia	Karl K. Warner, II		Interviewing- We have agreed to leave the Acting U.S. Attorney in place until after the Nov. election, and then we will reassess.	JB

## U.S. ATTORNEY VACANCIES

Confidential Status Report

1/10/2007

UNITED STATES ATTORNEYS -- APPOINTMENT SUMMARY				
Vacancy	Vice	Candidate Approved	Current Status	Assoc. Counsel
District of Alaska	Timothy Mark Burgess		Interviewing	KL
District of Arizona	Paul K. Charlton		Interviewing	KL
Eastern District of Arkansas	H.E. "Bud" Cummins, III	J. Timothy Griffin	Awaiting names- The Arkansas Senators have objected to Tim Griffin, who was approved to move into background for the position. DOJ's plan, endorsed by Scott Jennings, is to move Tim into an AG-Appointed U.S. Attorney position after a period assisting the incumbent. The point has been briefed to Andrea Looney, who indicated she would seek Candi Wolff's views on this course. The proposed course has not been raised at JSC.	CO
District of Columbia	Kenneth L. Wainstein	Jeffrey A. Taylor	In Background (initiated 1.4.07)	JS
Central District of California*	Debra W. Yang		Interviewing	KL
Southern District of Georgia	Lisa Godbey Wood		On JSC agenda for discussion	JS
Southern District of Illinois	Ronald J. Tenpas	Philip J. Green	Returned 12.11.06	BM
Northern District of Indiana	Joseph S. Van Bokkelen		No affirmative steps taken yet by our office to find a replacement for this vacancy, as the current U.S. Attorney has not yet been nominated to the District Court.	BM
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District of Montana	William W. Mercer		Awaiting names	KL
District of Nebraska	Michael Heavican		JSC tentatively approved Joe W. Stecher	CO
Eastern District of New York	Rosslyn R. Mauskopf		Resignation forthcoming (Mauskopf nominated to ED NY). Governor Pataki has provided us two candidates for this potential vacancy, and we have received good names from other sources. However, a number of the candidates for this vacancy are also candidates for the Mukasey seat in the Southern District of New York, for which we are awaiting names from the Governor, so we need to discuss how to proceed regarding candidates for both positions.	BM
District of Puerto Rico	Humberto S. Garcia	Rosa Rodriguez-Velez	In Background	LF
Eastern District of Tennessee	Harry S. Mattice, Jr.		JSC tentatively approved James R. "Russ" Dedrick	BM
Middle District of Tennessee	James K. Vines		Interviewing	BM
Southern District of West Virginia	Karl K. Warner, II		Interviewing- We have agreed to leave the Acting U.S. Attorney in place until after the Nov. election, and then we will reassess.	JB

## U.S. ATTORNEY VACANCIES

Confidential Status Report

1/15/2007

UNITED STATES ATTORNEYS -- APPOINTMENT SUMMARY				
Vacancy	Vice	Candidate Approved	Current Status	Assoc. Counsel
District of Alaska	Timothy Mark Burgess		Interviewing	KL
District of Arizona	Paul K. Charlton		Interviewing	KL
Eastern District of Arkansas	H.E. "Bud" Cummins, III	J. Timothy Griffin	Awaiting names (Griffin's BI is here at the WH)- The Arkansas Senators have objected to Tim Griffin, who was approved to move into background for the position. DOJ's plan, endorsed by Scott Jennings, is to move Tim into an AG-Appointed U.S. Attorney position after a period assisting the incumbent. The point has been briefed to Andrea Looney, who indicated she would seek Candi Wolff's views on this course. The proposed course has not been raised at JSC.	CO
District of Columbia	Kenneth L. Wainstein	Jeffrey A. Taylor	In Background (initiated 1.4.07)	JS
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Southern District of Illinois	Ronald J. Tenpas	Philip J. Green	Returned 12.11.06	BM
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Western District of Missouri	Todd Peterson Graves	John Wood	Awaiting nomination	CO
District of Montana	William W. Mercer		Interviewing	KL
District of Nebraska	Michael Heavican		JSC tentatively approved Joe W. Stecher	CO
District of New Mexico	David C. Iglesias		Interviewing	KL
Eastern District of New York	Rosslyn R. Mauskopf		Resignation forthcoming (Mauskopf nominated to ED NY). Governor Pataki has provided us two candidates for this potential vacancy, and we have received good names from other sources. However, a number of the candidates for this vacancy are also candidates for the Mukasey seat in the Southern District of New York, for which we are awaiting names from the Governor, so we need to discuss how to proceed regarding candidates for both positions.	BM
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Eastern District of Tennessee	Harry S. Mattice, Jr.		JSC tentatively approved James R. "Russ" Dedrick	BM
Middle District of Tennessee	James K. Vines		Interviewing	BM
Southern District of West Virginia	Karl K. Warner, II		Interviewing- We have agreed to leave the Acting U.S. Attorney in place until after the Nov. election, and then we will reassess.	JB

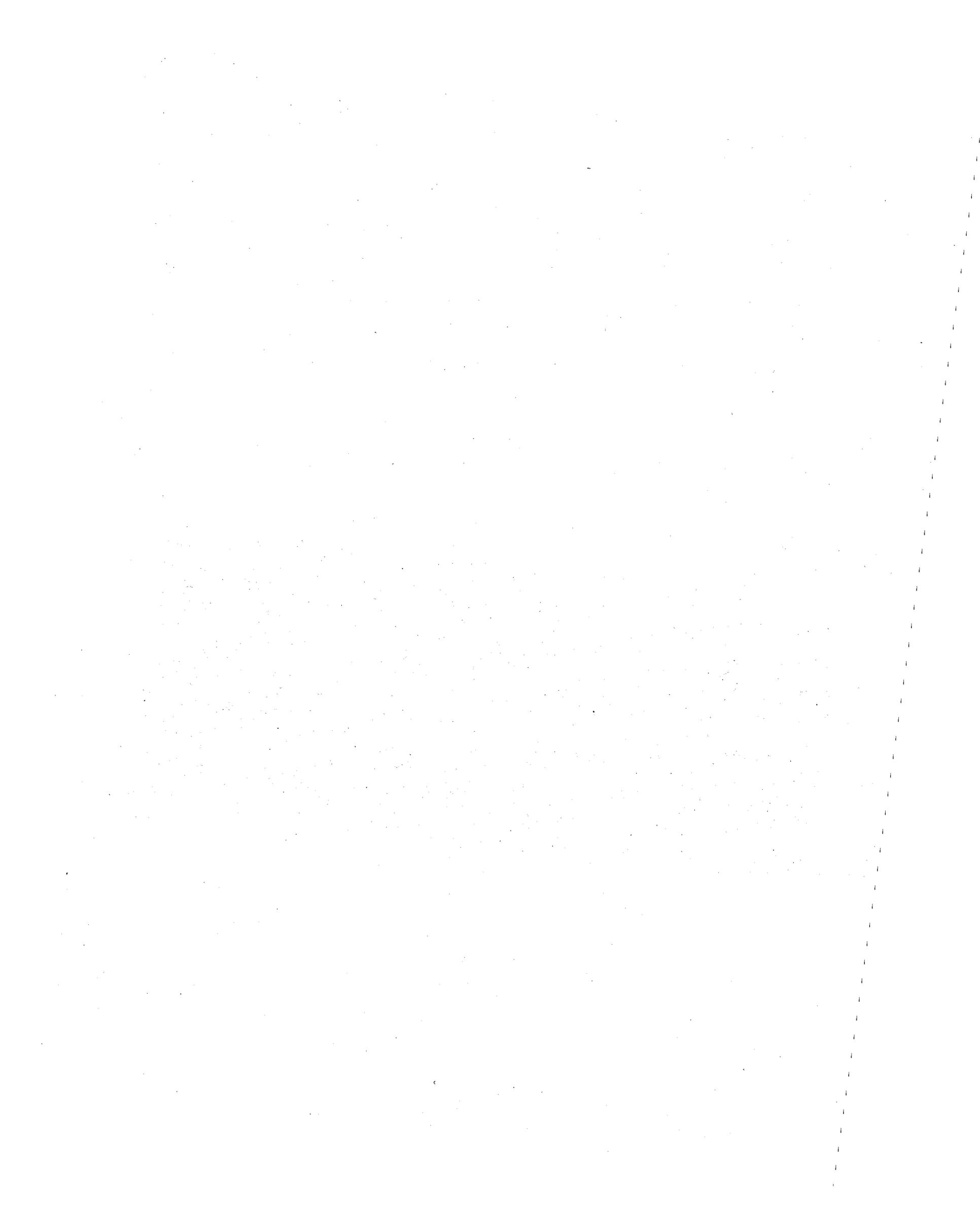
## U.S. ATTORNEY VACANCIES

Confidential Status Report

1/24/2007

UNITED STATES ATTORNEYS -- APPOINTMENT SUMMARY				
<i>Vacancy</i>	<i>Vice</i>	<i>Candidate Approved</i>	<i>Current Status</i>	<i>Assoc. Counsel</i>
District of Alaska	Timothy Mark Burgess		Interviewing	KL
District of Arizona	Paul K. Charlton		Interviewing	KL
Eastern District of Arkansas	H.E. "Bud" Cummins, III	J. Timothy Griffin	Awaiting names (Griffin's BI is here at the WH)- The Arkansas Senators have objected to Tim Griffin, who was approved to move into background for the position. DOJ's plan, endorsed by Scott Jennings, is to move Tim into an AG-Appointed U.S. Attorney position after a period assisting the incumbent. The point has been briefed to Andrea Looney, who indicated she would seek Candi Wolff's views on this course. The proposed course has not been raised at JSC.	CO
District of Columbia	Kenneth L. Wainstein	Jeffrey A. Taylor	In Background (initiated 1.4.07)	JS
Central District of California*	Debra W. Yang		Interviewing	KL
Southern District of Georgia	Lisa Godbey Wood		Awaiting additional names	JS
Southern District of Illinois	Ronald J. Tenpas	Philip J. Green	Returned 12.11.06	BM
Northern District of Indiana	Joseph S. Van Bokkelen		No affirmative steps taken yet by our office to find a replacement for this vacancy, as the current U.S. Attorney has not yet been nominated to the District Court.	BM
Northern District of Iowa	Charles W. Larson	Matt M. Dummermuth	BI Requested 1.24.07	CO
District of Maine	Jay Patrick McCloskey		Awaiting names- Senators encouraged waiting to make decision until after elections.	LF
Eastern District of Michigan	Steven J. Murphy		Resignation forthcoming (Murphy nominated to 6th Cir.) Given the political sensitivities surrounding Steve Murphy's nomination and the lack of an obvious and discreet Republican contact point in the Eastern District of Michigan, the office has not reached out to the state party to seek names.	BM
Western District of Missouri	Todd Peterson Graves	John Wood	Nominated 1.16.07 (In Committee)	CO
District of Montana	William W. Mercer	Kurt G. Alme		KL
District of Nebraska	Michael Heavican	Joe W. Stecher	BI Requested 1.24.07	CO
District of New Mexico	David Claudio Iglesias	James William Bibb	BI Requested 1.24.07	KL
Eastern District of New York	Roslyn R. Mauskopf		Resignation forthcoming (Mauskopf nominated to ED NY). Governor Pataki has provided us two candidates for this potential vacancy, and we have received good names from other sources. However, a number of the candidates for this vacancy are also candidates for the Mukasey seat in the Southern District of New York, for which we are awaiting names from the Governor, so we need to discuss how to proceed regarding candidates for both positions.	BM
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Eastern District of Tennessee	Harry S. Martice, Jr.	James R. Dedrick	BI Requested 1.24.07	BM
Middle District of Tennessee	James K. Vines		Interviewing	BM
Southern District of West Virginia	Karl K. Warner, II		Interviewing- We have agreed to leave the Acting U.S. Attorney in place until after the Nov. election, and then we will reassess.	JB

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**From:** Kelley, William K.  
**Sent:** Wednesday, February 21, 2007 4:08 PM  
**To:** Kaplan, Joel  
**Subject:** FW: Cummins tick-tock  
**Importance:** High

The attached is very helpful. Please let me know what more you would like me to do with it.

---

**From:** Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]  
**Sent:** Wednesday, February 21, 2007 3:43 PM  
**To:** Kelley, William K.  
**Subject:** Cummins tick-tock  
**Importance:** High

<<Arkansas Transition.doc>>

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

## TRANSITIONS IN ARKANSAS

February 2004:

- Tom Gean resigns as U.S. Attorney for the Western District of Arkansas.
- The DOJ/WHCO panel interviews four individuals for the W.D. Ark. vacancy: Bob Balfe, John Threet, Stephen Tabor, and Tim Griffin. Griffin is panel's first choice, and Griffin likely would have been approved by the JSC at that time; however, before he could be selected, Griffin withdrew his name from consideration because he had determined to accept an offer to join the staff of the Bush-Cheney reelection campaign.

December 30, 2004:

- *Arkansas Times* article notes that Cummins had said in 2004 that, with four kids to put through college, he was likely to begin exploring career options. Report states that Cummins said that it wouldn't be "shocking" for there to be a change in his office before the end of President Bush's second term.

February 27, 2006-March 1, 2006:

- At the U.S. Attorneys Conference, Cummins openly discusses his intention to pursue private sector opportunities later that year.

Spring 2006:

- The White House Counsel asks if there will be a U.S. Attorney vacancy in the Eastern District of Arkansas, as Tim Griffin will be returning from Iraq and is interested in being appointed as U.S. Attorney in that district.

June 2006:

- EOUSA Director Mike Battle calls Cummins, inquires of his intentions to pursue private sector employment, and asks him to resign.

August 2006:

- First press reports regarding Cummins' impending resignation appear.
- Cummins indicates that he began discussing his departure with Main Justice in June.

September 27, 2006:

- Griffin is named Special Assistant U.S. Attorney in the Eastern District of Arkansas.

December 20, 2006:

- Cummins resigns.
- The Attorney General appoints Griffin as interim U.S. Attorney for the Eastern District of Arkansas.

**From:** Kelley, William K.  
**Sent:** Wednesday, February 21, 2007 4:59 PM  
**To:** Kaplan, Joel  
**Subject:** FW: More Cummins tick-tock  
**Importance:** High

More information regarding the December media on Cummins.

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**From:** Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]  
**Sent:** Wednesday, February 21, 2007 4:54 PM  
**To:** Kelley, William K.  
**Subject:** More Cummins tick-tock  
**Importance:** High

Addendum to the Cummins tick-tock.

<http://www.arktimes.com/Articles/print.aspx?ArticleID=1d6008ff-5b23-4871-b95d-4825be0256d6>

## The Insider Dec. 30

### Four more years?

We were talking to U.S. Attorney Bud Cummins a while back on another subject and happened to ask about his plans, now that George W. Bush is set to serve another four years as president. Cummins (we forgot to mention earlier) said he went into the election with no contingency plans, so was relieved by Bush's victory not to have to make any sudden decisions. Now completing his third year in the office, 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.

Kyle Sampson  
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**From:** Fielding, Fred F.  
**Sent:** Friday, February 23, 2007 5:50 PM  
**To:** Oprison, Christopher G.  
**Subject:** RE: Version 2 of Reid Letter re Cummins-Griffin

Many thanks!

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**From:** Oprison, Christopher G.  
**Sent:** Friday, February 23, 2007 5:40 PM  
**To:** Fielding, Fred F.  
**Subject:** RE: Version 2 of Reid Letter re Cummins-Griffin

June 23, 2006

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**From:** Fielding, Fred F.  
**Sent:** Friday, February 23, 2007 5:24 PM  
**To:** Oprison, Christopher G.  
**Subject:** RE: Version 2 of Reid Letter re Cummins-Griffin

I do not want that question to be passed out of this building in writing, but we should be sure before they send a letter....maybe Kyle knows the answer from his participation on the JSC.

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**From:** Oprison, Christopher G.  
**Sent:** Friday, February 23, 2007 5:20 PM  
**To:** Fielding, Fred F.  
**Subject:** RE: Version 2 of Reid Letter re Cummins-Griffin

in light of the question you raised about POTUS approval that is currently being explored, should I ask that Kyle hold off sending this letter until Monday?

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**From:** Fielding, Fred F.  
**Sent:** Friday, February 23, 2007 5:04 PM  
**To:** Oprison, Christopher G.  
**Subject:** RE: Version 2 of Reid Letter re Cummins-Griffin

Chris:

My only concern in this draft is to insure that it is absolutely consistent with the facts and that it does not add to the controversy surrounding this issue.

FFF

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**From:** Oprison, Christopher G.  
**Sent:** Friday, February 23, 2007 4:10 PM  
**To:** Fielding, Fred F.  
**Cc:** Bakke, Mary Beth  
**Subject:** FW: Version 2 of Reid Letter re Cummins-Griffin  
**Importance:** High

Sir - attached is the latest draft of Kyle's letter to Sen Reid, et al. I direct you specifically to the second bullet on page two. Let me know if you would like to discuss. Kyle would like to send this letter tonight if possible.

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**From:** Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]  
**Sent:** Friday, February 23, 2007 2:59 PM  
**To:** Oprison, Christopher G.  
**Subject:** RE: Version 2 of Reid Letter re Cummins-Griffin  
**Importance:** High

Chris, please review this version 3.

<<reid letter re cummins-griffin v.3.doc>>

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**From:** Sampson, Kyle  
**Sent:** Friday, February 23, 2007 2:56 PM  
**To:** 'Oprison, Christopher G.'  
**Subject:** Version 2 of Reid Letter re Cummins-Griffin  
**Importance:** High

Chris, please review and (hopefully) clear at your earliest. Thanks!

<< File: reid letter re cummins-griffin v.2.doc >>

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