

From: Scott Jennings [SJennings@gwb43.com]
Sent: Wednesday, February 21, 2007 11:40 AM
To: Karl Rove
Cc: Hughes, Taylor A.
Subject: NM USATTY UPDATE
Importance: High
Attachments: DOMEN-FAX_0702202129030351.TIF

Karl – Steve Bell forwarded me a resume this morning of a new candidate they'd like to offer for USATTY in New Mexico. His name is Jason Bowles (I have attached the resume in hopes Taylor may be able to send to the plane).

I do not know Jason; I checked him out with Mickey Barnett this morning (one of our trusted legal sources) who did vouch for him. He is a younger guy who previously served in the USATTY's office. Why Domenici didn't send this guy up in the first place is beyond me.

We have two options here –

- 1) Tell Domenici we are continuing with Bibb and they need to get behind it, or
- 2) Reopen this process and interview Bowles.

I am going to get a read from Chris Oprison in Counsel on if they think this is someone we need to consider; I am sure someone at DOJ can give us a read on Bowles' past performance as Assistant USATTY.

BOWLES & CROW

Attorneys At Law

201 Third Street N.W., Suite 1370

Post Office Box 25186

Albuquerque, N.M. 87125-5186

Jason Bowles*

B.J. Crow

Telephone

(505) 217-2680

Facsimile

(505) 217-

*Licensed to practice law in New Mexico and Texas

FAX COVER SHEET

ATT: Mr. Steve Bell

FAX NO.: (202) 228-

FROM: Jason Bowles

RE: Resume

DATE: February 20, 2007

OPERATOR: MRZ

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 5

[If you do not receive the total number of pages as indicated above, please notify this office to have this fax re-transmitted.]

COMMENTS

To follow is the resume of Jason Bowles. Thank you.

CONFIDENTIAL

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JASON BOWLES

- BUSINESS -

- HOME -

Bowles & Crow
201 3rd St. N.W. #1370
Albuquerque, New Mexico 87102
(505) 217-2680

Albuquerque, New Mexico

E-MAIL:

II. LEGAL EXPERIENCE

July 2005 to present

Shareholder - Bowles & Crow

General trial practice in federal and state courts in New Mexico and Texas. Retained in the defense of multiple white collar cases and appointed in CJA (Criminal Justice Act) criminal cases. Additionally, practice has concentrated in representation in wrongful death, catastrophic torts, medical malpractice, and election law matters. Handled approximately 40 trials and 30 appeals in the United States District Courts for New Mexico and the Western District of Texas, the Supreme Court and Courts of Appeals of New Mexico, and the Fifth and Tenth Circuit Courts of Appeals.

March 2001 to June 2005

**Shareholder and Managing Director
Sharp, Jarmlie & Bowles, P.A.
Albuquerque, NM**

General trial practice in federal and state courts, including medical malpractice and tort defense, white collar criminal defense, CJA Act representation, and election law matters.

September 1996 - March 2001

**Assistant United States Attorney
Albuquerque and Las Cruces, NM**

Investigated and prosecuted federal violent, narcotics, immigration, and white collar offenses. Extensive trial and appellate experience in the United States District Court for the District of New Mexico and the Tenth Circuit Court of Appeals. Tried numerous felony jury trials and prosecuted over two dozen appeals, including 2 *en banc* appeals involving a wide range of criminal violations including narcotics, immigration, white collar, and violent offenses.

January 1999 - January 2000 **Special Assistant United States Attorney
Middle District of Florida**

Appointed Special Assistant by U.S. Attorney Charles Wilson for one year to coordinate and prosecute multi-state immigrant smuggling ring. Case involved coordination of efforts of U.S. Border Patrol and INS agents in New Mexico, Texas, Florida, and Georgia and grand jury presentations and prosecutions in New Mexico and Florida.

June 1994 - September 1996 **Federal Appellate Law Clerk
The Honorable Bobby R. Baldock
United States Court of Appeals, Tenth Circuit, Roswell, NM**

Researched, wrote, and edited opinions and bench memos in all areas of federal law for active United States Court of Appeals judge. Assisted in drafting and reviewing opinions in over 60 appeals. Prepared memorandums in over 30 oral arguments for Judge Baldock.

August 1994 - May 1995 **Business Law Instructor
Lubbock, TX**

Taught two semesters of senior-level business law to twenty-eight students at Lubbock Christian University in Lubbock, Texas. Prepared curriculum, syllabus, and lectures.

Spring 1994 **Research Assistant to Law Professor
Lubbock, TX**

Professor Thomas E. Baker, Alvin R. Allison Professor of Law, Texas Tech University School of Law, Lubbock, Texas. Researched and edited publications for professor appointed by Chief Justice of the United States to serve on Standing Committee on rules of Practice and Procedure for the Federal Courts.

Summers 1989-1990 **Senatorial Intern
United States Senator Jeff Bingaman, D-N.M.
Roswell, NM and Washington, DC**

Worked on project to develop business/school partnerships. Researched and presented memos to City of Roswell on sources of federal funds. Responded to constituent inquiries.

II. MILITARY EXPERIENCE

May 1997 - August 2006

**Major, New Mexico National Guard
And Army Reserve
Judge Advocate**

Served as Judge Advocate for Troop Command, New Mexico National Guard. In the Army Reserve, assisted in courts martial and Article 32 hearings as Trial Counsel. Provided legal assistance to active duty and reserve soldiers. Supervised enlisted soldiers. Awarded the Meritorious Service Medal, Army Commendation Medal with two oak leaf clusters, Army Achievement Medal and Reserve Components Achievement Medal and Reserve Components Overseas Service Ribbon (with three device).

III. EDUCATION

**Texas Tech University School of Law
Doctor of Jurisprudence
Summa Cum Laude
August 1991 - May 1994**

**Order of the Coif
Associate Editor, Texas Tech Law Review
Board of Barristers**

**Lubbock Christian University
Bachelor of Science - Finance
Summa Cum Laude
August 1988 - May 1991**

IV. PROFESSIONAL LICENSING & ASSOCIATIONS

- United States Supreme Court
- United States Court of Appeals, Tenth Circuit
- United States Court of Appeals, Fifth Circuit
- State Bar of New Mexico
- State Bar of Texas
- United States District Court, District of New Mexico

V. PUBLICATIONS/LECTURES

Immigration Prosecutions, Southwestern Association of Legal Assistants, November, 1997.

"Illegal Employment of Aliens", Chapter 10, Department of Justice, Office of Legal Education, Immigration Prosecutions Manual (with 2 other authors), April, 1988

Faculty presenter, *Alien Smuggling*, DOJ Immigration Seminar, San Diego, California, May, 1998

Presenter, *Drug and Immigration Prosecutions for New Mexico*, to Deputy Attorney General Eric Holder, July, 1998.

Faculty presenter, *Organized Criminal Immigrant Smuggling*, I-25 Confederation, INS Conference, Clearwater, Florida, November, 1998.

Faculty presenter, National Advocacy Center (NAC), Department of Justice, *Criminal Paralegal Seminar, Fourth Amendment and Immigration Issues*, February, 1999.

Faculty presenter, International Prosecutors Conference, *Trial Skills*, July, 2000.

Faculty presenter, *Alien Smuggling*, DOJ Immigration Seminar, NAC, January, 2001.

VI. AWARDS

- Three Sustained Superior Performance Awards, Department of Justice
- Special Recognition Award, Immigration and Naturalization Service, November, 1998, Operation Dixie Junction
- United States Attorney's Award, District of New Mexico, September, 1999
- United States Customs Service, OCDETF Award, Operation Backpack
- United States Border Patrol, Service Award

From: Oprison, Christopher G. [Christopher_G_Oprison@who.eop.gov]
Sent: Wednesday, February 21, 2007 5:18 PM
To: Scott Jennings
Subject: RE: NM USATTY UPDATE

Way ahead of you - sent it to Monica Goodling earlier today and asked her to have it scheduled ASAP

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

From: Scott Jennings [mailto:SJennings@gwb43.com]
Sent: Wednesday, February 21, 2007 5:17 PM
To: Scott Jennings; Oprison, Christopher G.
Subject: Re: NM USATTY UPDATE

KR connected with Domenici.

KR thinks we should move quickly to interview Bowles.

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

From: Scott Jennings
To: Oprison, Christopher G. <Christopher_G_Oprison@who.eop.gov>
Sent: Wed Feb 21 15:37:12 2007
Subject: RE: NM USATTY UPDATE

Ok - let me know when you reach out to Bowles.

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

From: Oprison, Christopher G.
[mailto:Christopher_G_Oprison@who.eop.gov]
Sent: Wednesday, February 21, 2007 3:08 PM
To: Scott Jennings
Subject: RE: NM USATTY UPDATE

Hell yes

He and Bibb may know each other from the NM National Guard

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

From: Scott Jennings [mailto:SJennings@gwb43.com]
Sent: Wednesday, February 21, 2007 1:41 PM
To: Oprison, Christopher G.
Subject: RE: NM USATTY UPDATE

If he isn't as good as Bibb, I still think we reserve the right to go with Bibb -- don't you think?

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

From: Oprison, Christopher G.
[mailto:Christopher_G_Oprison@who.eop.gov]
Sent: Wednesday, February 21, 2007 11:49 AM
To: Scott Jennings
Subject: RE: NM USATTY UPDATE

This guy worked for Bingaman. Are we interviewing him?

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

From: Scott Jennings [mailto:SJennings@gwb43.com]
Sent: Wednesday, February 21, 2007 11:44 AM

To: Oprison, Christopher G.
Subject: Fw: NM USATTY UPDATE

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

From: Karl Rove
To: Scott Jennings
Sent: Wed Feb 21 11:40:46 2007
Subject: Re: NM USATTY UPDATE

I believe we need to quickly interview this new entry.

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

From: Scott Jennings
To: Karl Rove
CC: Hughes, Taylor A. <Taylor_A._Hughes@who.eop.gov>
Sent: Wed Feb 21 11:39:49 2007
Subject: NM USATTY UPDATE

Karl - Steve Bell forwarded me a resume this morning of a new candidate they'd like to offer for USATTY in New Mexico. His name is Jason Bowles (I have attached the resume in hopes Taylor may be able to send to the plane).

I do not know Jason; I checked him out with Mickey Barnett this morning (one of our trusted legal sources) who did vouch for him. He is a younger guy who previously served in the USATTY's office. Why Domenici didn't send this guy up in the first place is beyond me.

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- 2) Reopen this process and interview Bowles.

I am going to get a read from Chris Oprison in Counsel on if they think this is someone we need to consider; I am sure someone at DOJ can give us a read on Bowles' past performance as Assistant USATTY.

From: Oprison, Christopher G.
Sent: Friday, February 23, 2007 7:21 AM
To: Kelley, William K.
Subject: RE: Revised Draft

I'll take care of this.

-----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>>

From: Kelley, William K.
Sent: Tuesday, February 13, 2007 4:43 PM
To: Oprison, Christopher G.
Subject: RE: John Wood, US Attorney, WD Mo

I think it's okay. Thanks.

From: Oprison, Christopher G.
Sent: Tuesday, February 13, 2007 4:16 PM
To: Kelley, William K.
Subject: RE: John Wood, US Attorney, WD Mo

Bill - to follow up on the issue below, Andrea raised an interesting point. She suggested that we at least consider how John Wood joining DOJ now might feed into the Hill negativity toward US Attorney replacements and their views of the replacements as "DOJ/Administration insiders." She queried whether this would hinder his chances at confirmation. It's worth considering, but to be clear, this charge could be levied at Wood based on his prior work for AG Ashcroft and Sec. Chertoff. This is merely cumulative evidence of a DOJ-relationship, albeit closer in time to the nomination. And, I think the concern among some on the Hill was that the US Attorney replacements were not going to be put through the nomination process. That is clearly not the case with Wood. I asked Lou Reyes to hold off on this until I had a chance to get your views. I think it is fine for Wood to join DOJ, but wanted to spotlight this issue for you. Kyle Sampson agrees.

Chris

From: Kelley, William K.
Sent: Tuesday, February 13, 2007 12:55 PM
To: Oprison, Christopher G.
Subject: RE: John Wood, US Attorney, WD Mo

No problem, but should at least alert Andrea Looney to see if there is leg guidance. Thanks.

From: Oprison, Christopher G.
Sent: Tuesday, February 13, 2007 10:56 AM
To: Kelley, William K.
Subject: John Wood, US Attorney, WD Mo

Bill - received a call from Lou Reyes in PPO. Lou wanted to give us a heads up that DOJ would like to bring John Wood (formerly with DHS) in to work on various matters during the pendency of his nomination to be US Attorney for the WD Mo. Lou indicated John would not be assigned to work on any matters while at DOJ that would overlap with his duties/responsibilities as the US Attorney, if confirmed. I didn't see a problem with this, but wanted to run it by you for your thoughts.

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

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Tuesday, February 13, 2007 5:25 PM
To: Kelley, William K.
Subject: RE:

Bill, here you go -- pasted in the text as well as attached doc.

Summary of U.S. Attorney appointment legislation

Before the March 9, 2006, enactment of the USA PATRIOT Improvement and Reauthorization Act of 2005, the Attorney General had the authority to appoint U.S. Attorneys to vacant positions for periods not exceeding 120 days. If the President did not appoint a U.S. Attorney to such a vacancy within 120 days of the appointment made by the Attorney General, the appointment expired, and the local district court was authorized to appoint a U.S. Attorney to serve until the President made the appointment.

Section 502 of the USA PATRIOT Improvement and Reauthorization Act of 2005 enlarged the scope of the Attorney General's interim appointment authority. Specifically, the Act struck the provision that both limited the validity of the Attorney General's appointments to 120 days and authorized district courts to make subsequent appointments. The Act provided instead that "[a] person appointed as United States attorney [by the Attorney General] may serve until . . . a United States attorney for such district [is] appointed by the President." District courts retained no authority to appoint U.S. Attorneys. This change was explained in the Conference Report for the Act as "address [ing] an inconsistency in the appointment process of United States Attorneys."

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 U.S. Attorneys on an interim basis and would have authorized only the local district court to fill a U.S. Attorney vacancy pending an appointment by the President in the normal course.

The Deputy Attorney General testified in opposition to S. 214 before the Senate Judiciary Committee on February 6, 2007. Senator Feinstein later introduced a substitute amendment to the bill that would restore the Attorney General's interim appointment authority as it existed before enactment of the USA PATRIOT Improvement and Reauthorization Act of 2005. As amended, S. 214 would also limit the validity of appointments that have already been made by the Attorney General to a period not exceeding 120 days from the date of the bill's enactment and would authorize the local district courts to fill all resulting vacancies pursuant to their newly restored appointment power.

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 voting with all of the Democrats in favor of the amendment. Senator Specter has signed on as a cosponsor of the bill as reported.

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 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 Department of Justice 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 the technical assistance of the Department of Justice in drafting such an amendment.

From: Kelley, William K. [mailto:William_K._Kelley@who.eop.gov]
Sent: Tuesday, February 13, 2007 10:44 AM
To: Sampson, Kyle
Subject:

Kyle--Josh has asked for a one-pager on the US Attorney legislation, some time today. We don't have an Associate Counsel on this, so it's me (and I am jammed) or someone over there. Can you get someone to summarize the background and the legislation? The big shots here particularly need absolute clarity that the proposed fix just restores the pre-Patriot status quo. Let me know -- and thanks.

Summary of U.S. Attorney appointment legislation

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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 the technical assistance of the Department of Justice in drafting such an amendment.

From: Scott Jennings
Sent: 2/14/2007 4:34:51 PM
To: Karl Rove kr@georgewbush.com;
Cc: taylor_a._hughes@who.eop.gov taylor_a._hughes@who.eop.gov ;
Bcc:
Subject: McNulty Testimony 2-6-07

Ok – here is the PREPARED testimony from McNulty from Feb. 6. I am waiting on a transcript of the Q and A, where the comments you noted were made. The Judiciary Committee won't offer a full transcript until next week, but DoJ may have a draft transcript I can see tonight. He makes the case here, but got tripped up during the Q and A. I will send you the Q and A transcript as soon as I have it.

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

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

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

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

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

Turnover in the position of U.S. Attorney is not uncommon. When a presidential election results in a change of administration, every U.S. Attorney leaves and the new President nominates a successor for confirmation by the Senate. Moreover, U.S. Attorneys do not necessarily stay in place even during an administration. For example, approximately half of the U.S. Attorneys appointed at the beginning of the Bush Administration had left office by the end of 2006. Given this reality, career investigators and prosecutors exercise direct responsibility for nearly all investigations and

cases handled by a U.S. Attorney's Office. While a new U.S. Attorney may articulate new priorities or emphasize different types of cases, the effect of a U.S. Attorney's departure on an existing investigation is, in fact, minimal, and that is as it should be. The career civil servants who prosecute federal criminal cases are dedicated professionals, and an effective U.S. Attorney relies on the professional judgment of those prosecutors.

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

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

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

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

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

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

As you know, before last year's amendment of 28 U.S.C. § 546, the Attorney General could appoint an interim U.S. Attorney for the first 120 days after a vacancy arose; thereafter, the district court was authorized to appoint an interim

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

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

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

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

Finally, S. 214 seems to be aimed at solving a problem that does not exist. As noted, when a vacancy in the office of U.S. Attorney occurs, the Department typically looks first to the First Assistant or another senior manager in the office to serve as an Acting or interim U.S. Attorney. Where neither the First Assistant nor another senior manager is able or willing to serve as an Acting or interim U.S. Attorney, or where their 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: "Karl Rove" <kr@georgewbush.com>
Date: Wednesday, February 14, 2007, 10:18:41 PM
To: "Taylor A. Hughes" <taylor_a_hughes@who.eop.gov>
To: "Taylor A. Hughes" <taylor_a_hughes@who.eop.gov>
Subject: FW: McNulty Testimony 2-6-07

----- Forwarded Message

From: Scott Jennings <SJennings@gwb43.com>
Date: Wed, 14 Feb 2007 16:34:51 -0500
To: Karl Rove <KR@georgewbush.com>
Cc: <Taylor_A_Hughes@who.eop.gov>
Conversation: McNulty Testimony 2-6-07
Subject: McNulty Testimony 2-6-07

Ok - here is the PREPARED testimony from McNulty from Feb. 6. I am waiting on a transcript of the Q and A, where the comments you noted were made. The Judiciary Committee won't offer a full transcript until next week, but DoJ may have a draft transcript I can see tonight. He makes the case here, but got tripped up during the Q and A. I will send you the Q and A transcript as soon as I have it.

Testimony of Paul J. McNulty (Deputy Attorney General, U.S. Department of Justice) to the Committee on the Judiciary, United States Senate
³Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys?²
February 6, 2007
Chairman Leahy, Senator Specter, and Members of the Committee, thank you for the invitation to discuss the importance of the Justice Department's United States Attorneys. As a former United States Attorney, I particularly appreciate this opportunity to address the critical role U.S. Attorneys play in enforcing our Nation's laws and carrying out the priorities of the Department of Justice.

I have often said that being a United States Attorney is one of the greatest jobs you can ever have. It is a privilege and a challenge one that carries a great responsibility. As former Attorney General Griffin Bell said, U.S. Attorneys are ³the front-line troops charged with carrying out the Executive's constitutional mandate to execute faithfully the laws in every

federal judicial district.² As the chief federal law-enforcement officers in their districts, U.S. Attorneys represent the Attorney General before Americans who may not otherwise have contact with the Department of Justice. They lead our efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families (including child pornography, obscenity, and human trafficking).

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

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

Turnover in the position of U.S. Attorney is not uncommon. When a presidential election results in a change of administration, every U.S.

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

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

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

In every single case where a vacancy occurs, the Bush Administration is committed to having a United States Attorney who is confirmed by the Senate.

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

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

However, while that nomination process continues, the Department must have a leader in place to carry out the important work of these offices. To ensure an effective and smooth transition during U.S. Attorney vacancies, the office of the U.S. Attorney must be filled on an interim basis. To do so, the Department relies on the Vacancy Reform Act (³VRA²), 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.

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

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

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

----- End of Forwarded Message

From: Oprison
Sent: Wednesday, February 14, 2007 9:49 PM
To: Scott Jennings
Subject: RE: do you have

Svet was US Attorney from 91-93 - have some intel on his performance if you want to call

-----Original Message-----
From: Scott Jennings [mailto:SJennings@gwb43.com]
Sent: Wednesday, February 14, 2007 11:08 AM
To: Oprison, Christopher G.
Subject: Re: do you have

I'm going to brief kr today and see what he thinks

-----Original Message-----
From: Oprison, Christopher G. <Christopher_G._Oprison@who.eop.gov>
To: Scott Jennings
Sent: Wed Feb 14 10:46:01 2007
Subject: Re: do you have

Unbelievable. Bibb wants the position and would do a kick ass job. What can we do about this? Put Bibb up anyway? At a minimum, before Svets interview, I will pull any old cases and decisions and see how he has ruled.
Christopher G. Oprison
Associate Counsel to the President

-----Original Message-----
From: Scott Jennings
To: Oprison, Christopher G.
Sent: Wed Feb 14 08:19:45 2007
Subject: Fw: do you have

I will let you know what he comes back with.

This is beyond maddening.

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

From: Bell, Steve (Domenici)
To: Scott Jennings
Sent: Wed Feb 14 07:50:59 2007
Subject: RE: do you have

Scott:

Senator talked to Judge Svet last night; he will tell us today whether he is interested or not...I think he will do it and he would "clean up that office" as he put it last night if he takes the job...let's hope he takes it!

Bell

From: Scott Jennings [mailto:SJennings@gwb43.com]
Sent: Tuesday, February 13, 2007 5:39 PM
To: Bell, Steve (Domenici)
Subject: do you have

Svet's resume/bio handy?

Is it ok for Counsel to go ahead and call him? Is he expecting it?

From: "Karl Rove"
Date: Tuesday, February 13, 2007, 5:58:47 PM
To: peter_h_wehner@who.eop.gov
Subject: Re: any guidance re: Mark McKinnon question?

Ask Counsel's office for help on talking points and background material. Need to respond to these things.

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

From: Wehner, Peter H. <Peter_H_Wehner@who.eop.gov>
To: Karl Rove
Sent: Tue Feb 13 12:27:15 2007
Subject: any guidance re: Mark McKinnon question?

From: Mark McKinnon
Sent: Monday, February 12, 2007 8:48 PM
To: Wehner, Peter H.
Subject: Conason

Pete.

I don't think Joe Conason is generally worth responding to, but do we have something off the shelf on this....?

Thanks,
mck

Alberto Gonzalez's coup d'etat
The Constitution be damned, the attorney general has seized control of U.S. attorney appointments for partisan purposes.
By Joe Conason

Feb. 09, 2007 | Under any circumstances, the Bush <http://dir.salon.com/topics/george_w_bush/> <http://dir.salon.com/topics/george_w_bush/> administration's sudden, explicitly political dismissal and replacement of United States attorneys in judicial districts across the country would be very troubling -- both as a violation of American law enforcement traditions and as a triumph of patronage over competence.

But as the story behind these strange decisions unfolds, a familiar theme is emerging. Again, the White House and the Justice Department have been exposed in a secretive attempt to expand executive power for partisan purposes. And again, their scheming is tainted with a nasty whiff of authoritarianism.

There is much more at stake here than a handful of federal jobs.

Leading senators of both parties are disturbed by these incidents because U.S. attorneys -- the powerful

officials appointed by the president to prosecute federal crimes and defend federal interests in each of the nation's judicial districts -- are supposed to be as nonpartisan as possible. Democrats mostly appoint Democrats and Republicans mostly appoint Republicans, but the U.S. attorneys are usually chosen with the advice and consent of the senators from their home states, and then confirmed by the full Senate, with a decent respect for skill and experience as well as political connections.

The reason for this appointment process was simple: These prosecutors must police the politicians. They are expected to guard the nation's judicial system against the varieties of political abuse that are typical of authoritarian systems. They are granted a substantial degree of independence from the government in Washington, including the attorney general who functions as their boss.

To ensure that no U.S. attorney could be fired on a whim and replaced with a malleable hack, the relevant statute required that whenever a vacancy occurred in midterm, the replacement would be appointed by federal circuit judges rather than by the president. Getting rid of irksomely honest and nonpartisan prosecutors was difficult if not impossible.

But that wholesome safeguard was breached in December 2005, when the Senate renewed the Patriot Act. At the behest of the Justice Department, an aide to Sen. Arlen Specter slipped a provision into the bill <http://www.tpmuckraker.com/archives/002354.php> <http://www.tpmuckraker.com/archives/002354.php> that permitted the White House to place its own appointees in vacant U.S. attorney positions permanently and without Senate confirmation. So silently was this sleight of hand performed that Specter himself now claims, many months later, to have been completely unaware of the amendment's passage. (Of course, it would be nice if the senators actually read the legislation before they voted, particularly when they claim to be the authors.)

The staffer who reportedly performed this bit of dirty work <http://www.tpmuckraker.com/archives/002489.php> <http://www.tpmuckraker.com/archives/002489.php> is Michael O'Neill, a law professor at George Mason University and former clerk for Supreme Court Justice Clarence Thomas. As the Washington Times explained <http://www.washingtontimes.com/national/20050905-114119-3586r.htm> <http://www.washingtontimes.com/national/20050905-114119-3586r.htm> when O'Neill was appointed as the Senate Judiciary Committee's chief counsel, many observers believed that Specter had hired him to reassure conservatives of his loyalty to the Bush White House. Right-wing distrust had almost ousted the Pennsylvania moderate from the Judiciary chairmanship, and appointing O'Neill was apparently the price for keeping that post.

Evidently O'Neill rewarded Specter by sneaking through legislation to deprive him and his fellow senators of one of their most important powers, at the behest of an attorney general intent on aggrandizing executive power. The results of this backstage betrayal -- now playing out in a wave of politicized dismissals and hirings -- were perfectly predictable and utterly poisonous.

Carol Lam, the U.S. attorney in San Diego who successfully prosecuted the sensationally crooked Republican Rep. Randy "Duke" Cunningham, <http://www.signonsandiego.com/news/politics/20070121-9999-1n21lam.html> <http://www.signonsandiego.com/news/politics/20070121-9999-1n21lam.html> was fired for no known reason while she is still pursuing important leads in that historic case. Cunningham is supposed to be cooperating, but if Bush replaces her with a partisan stooge, he may be able to keep his secrets. Bud Cummings, the respected U.S. attorney in Little Rock, Ark., was canned to make room for a Republican opposition research operative <http://www.warandpiece.com/blogdirs/005470.html> <http://www.warandpiece.com/blogdirs/005470.html> and Karl Rove acolyte named Timothy Griffin. Could that conceivably have anything to do with Sen. Hillary Rodham Clinton http://dir.salon.com/topics/hillary_rodham_clinton/ http://dir.salon.com/topics/hillary_rodham_clinton/'s presidential candidacy? Paul Charlton, the U.S. attorney in Arizona, was thrown out http://www.aei.org/publications/filter.all.pubID.25497/pub_detail.asp http://www.aei.org/publications/filter.all.pubID.25497/pub_detail.asp while investigating allegations of corruption against Republican Rep. Rick Renzi.

And John McKay, the U.S. attorney in Seattle whose diligence has been praised by judges and lawyers of both parties, was simply ordered to quit <http://www.theolympian.com/377/story/64410.html> <http://www.theolympian.com/377/story/64410.html> last December, for no obvious reason. Although McKay's last evaluation by the Justice Department was excellent, the attorney general insists that all of these curious firings were due to "performance" issues.

Any such self-serving statements emanating from Alberto Gonzales http://dir.salon.com/topics/alberto_gonzales/ http://dir.salon.com/topics/alberto_gonzales/ should always be greeted with appropriate skepticism. So should the claim that he sought to seize control of interim U.S. attorney appointments because of his concern over the "separation of powers" issues supposedly inherent in judges' appointing prosecutors. As the McClatchy Newspapers reported on Jan. 26, Gonzales has named at least nine "conservative loyalists from the Bush administration's inner circle" <http://www.realcities.com/mld/krwashington/16555903.htm> <http://www.realcities.com/mld/krwashington/16555903.htm> to positions vacated by professional prosecutors.

On Thursday, the Senate Judiciary Committee voted to restore the old nonpartisan system <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/08/AR2007020800907.html> <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/08/AR2007020800907.html> for replacing U.S. attorneys and to require Senate confirmation of all new appointees. The full Senate <http://dir.salon.com/topics/senate/> <http://dir.salon.com/topics/senate/> and the House of Representatives http://dir.salon.com/topics/house_of_representatives/ http://dir.salon.com/topics/house_of_representatives/ should do likewise, despite Republican opposition, but that is not enough. The Senate Democrats should continue to probe the attorney general's little coup d'état and all of the resulting appointments. That is the best way to discourage future usurpations -- and to frustrate whatever skulduggery was afoot this time.

-- By Joe Conason

From: Wehner, Peter H.
Sent: Thursday, February 15, 2007 3:12 PM
To: Oprison, Christopher G.
Subject: RE: question

many thanks, Chris.

From: Oprison, Christopher G.
Sent: Thursday, February 15, 2007 3:10 PM
To: Wehner, Peter H.
Subject: RE: question

Pete - here is what we (DOJ) has disseminated to friends on the Hill re: this issue, as well as the testimony from Paul McNulty's hearing on this issue. I don't know who Mark is, but certainly if you trust him with this information, our White House liaison in DOJ Monica Goodling has given the green light to provide to him, with the understanding he does not disseminate further (although he can certainly use it to draft a response). Thanks. Sorry for the delay.

From: Wehner, Peter H.
Sent: Thursday, February 15, 2007 10:04 AM
To: Oprison, Christopher G.
Subject: RE: question

Chris:

What you have should be enough, so long as it's okay to share with Mark. I think he was simply interested in a general rebuttal; it doesn't have to be point-by-point.

If you could send me what you have, I'll forward it along to Mark.

And many thanks, too, for your kind wishes. I understand not being able to get away. Trust me!

I hope you're well.

Warmly,

Pete

From: Oprison, Christopher G.
Sent: Wednesday, February 14, 2007 7:26 PM
To: Wehner, Peter H.
Subject: RE: question

Hey Pete - we have some talkers and other memos drafted on this issue, as well as recent testimony before the Senate Judiciary by Deputy AG Paul McNulty on this subject. Would you like for me to send those along for you to draft something, or did you want me to see if someone at DOJ could draft a point-counterpoint? If the latter, I would have to check with our White House liaison over there. Let me know.

Oh, and by the way, happy belated birthday. I meant to come up for your party on Monday, but was unable to get away from the phones that morning. Hope you are enjoying being 39.

Chris

From: Wehner, Peter H.
Sent: Wednesday, February 14, 2007 5:42 PM
To: Oprison, Christopher G.
Subject: question

Chris:

Would you/somebody at DOJ be able to send along to me a response to the charges by Joe Conason, which I could pass along to Mark McKinnon?

I'd be grateful if you could -- and I'd understand if you can't.

Many thanks.

Pete

From: Mark McKinnon
Sent: Monday, February 12, 2007 8:48 PM
To: Wehner, Peter H.
Subject: Conason

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The staffer who reportedly performed this bit of dirty work <http://www.tpmuckraker.com/archives/002489.php> is Michael O'Neill, a law professor at George Mason University and former clerk for Supreme Court Justice Clarence Thomas. As the Washington Times explained <http://www.washingtontimes.com/national/20050905-114119-3586r.htm> when O'Neill was appointed as the Senate Judiciary Committee's chief counsel, many observers believed that Specter had hired him to reassure conservatives of his loyalty to the Bush White House. Right-wing distrust had almost ousted the Pennsylvania moderate from the Judiciary chairmanship, and appointing O'Neill was apparently the price for keeping that post.

Evidently O'Neill rewarded Specter by sneaking through legislation to deprive him and his fellow senators of one of their most important powers, at the behest of an attorney general intent on aggrandizing executive power. The results of this backstage betrayal -- now playing out in a wave of politicized dismissals and hirings -- were perfectly predictable and utterly poisonous.

Carol Lam, the U.S. attorney in San Diego who successfully prosecuted the sensationally crooked Republican Rep. Randy "Duke" Cunningham, <http://www.signonsandiego.com/news/politics/20070121-9999-1n21lam.html> was fired for no known reason while she is still pursuing important leads in that historic case. Cunningham is supposed to be cooperating, but if Bush replaces her with a partisan stooge, he may be able to keep his secrets. Bud Cummings, the respected U.S. attorney in Little Rock, Ark., was canned to make room for a Republican opposition research operative <http://www.warandpiece.com/blogdirs/005470.html> and Karl Rove acolyte named Timothy Griffin. Could that conceivably have anything to do with Sen. Hillary Rodham Clinton http://dir.salon.com/topics/hillary_rodham_clinton/'s presidential candidacy? Paul

Charlton, the U.S. attorney in Arizona, was thrown out http://www.aei.org/publications/filter.all.pubID.25497/pub_detail.asp while investigating allegations of corruption against Republican Rep. Rick Renzi.

And John McKay, the U.S. attorney in Seattle whose diligence has been praised by judges and lawyers of both parties, was simply ordered to quit <http://www.theolympian.com/377/story/64410.html> last December, for no obvious reason. Although McKay's last evaluation by the Justice Department was excellent, the attorney general insists that all of these curious firings were due to "performance" issues.

Any such self-serving statements emanating from Alberto Gonzales http://dir.salon.com/topics/alberto_gonzales/ should always be greeted with appropriate skepticism. So should the claim that he sought to seize control of interim U.S. attorney appointments because of his concern over the "separation of powers" issues supposedly inherent in judges' appointing prosecutors. As the McClatchy Newspapers reported on Jan. 26, Gonzales has named at least nine "conservative loyalists from the Bush administration's inner circle" <http://www.realcities.com/mld/krwashington/16555903.htm> to positions vacated by professional prosecutors.

On Thursday, the Senate Judiciary Committee voted to restore the old nonpartisan system <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/08/AR2007020800907.html> for replacing U.S. attorneys and to require Senate confirmation of all new appointees. The full Senate <http://dir.salon.com/topics/senate/> and the House of Representatives http://dir.salon.com/topics/house_of_representatives/ should do likewise, despite Republican opposition, but that is not enough. The Senate Democrats should continue to probe the attorney general's little coup d'état and all of the resulting appointments. That is the best way to discourage future usurpations -- and to frustrate whatever skulduggery was afoot this time.

-- By Joe Conason

From: Kelley, William K.
Sent: Thursday, February 15, 2007 4:50 PM
To: Perino, Dana M.; Kaplan, Joel
Subject: RE:

I wouldn't comment, and would refer them to DOJ, where the story belongs. (Incidentally, I don't have any reason to think that the story is true.)

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

From: Perino, Dana M.
Sent: Thursday, February 15, 2007 4:41 PM
To: Kelley, William K.; Kaplan, Joel
Subject: FW:
Importance: High

Assuming I should NOT weigh in on this?

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

From: David Johnston
Sent: Thursday, February 15, 2007 4:32 PM
To: Perino, Dana M.
Subject:

Dana:

I've been meaning to call you for a lunch, so apologies for this abrupt note.

Among other things, I've been covering Dems' questions about departures of US Attorneys. I've been told that Bud Cummins, an outgoing US Attorney in Arkansas, was removed in mid 2006 after Harriet Miers phoned chief of staff to Alberto Gonzales to recommend Cummin's replacement. This to critics is a sign of WH intervention in the process. I guess Harriet Miers has departed...care to weigh in on this?

thanks,
David J.
862-

From: Oprison, Christopher G.
Sent: Friday, February 16, 2007 7:11 AM
To: Fielding, Fred F.; Kelley, William K.
Cc: Bakke, Mary Beth
Subject: RE: US Attorney articles

I be right over to fill you in on what I know

From: Fielding, Fred F.
Sent: Friday, February 16, 2007 7:10 AM
To: Oprison, Christopher G.; Kelley, William K.
Cc: Bakke, Mary Beth
Subject: RE: US Attorney articles

Would someone kindly fill me in on yesterday's calls – I'm about to go into Senior Staff where this IS a hot topic!

From: Oprison, Christopher G.
Sent: Friday, February 16, 2007 7:08 AM
To: Fielding, Fred F.; Kelley, William K.
Cc: Bakke, Mary Beth
Subject: US Attorney articles

See below the text from a NYT article re: the role of HM in the dismissal of Bud Cummins and AG-appointment of Tim Griffin. There is another article from the Arkansas Gazette that I received from Tim that announces his intent not to submit his name for nomination to fill the post. Bill, I think you had a chat with Monica yesterday on this issue and she probably discussed the Pryor/Gonzales call of yesterday. Happy to discuss details if you wish.

Chris

White House Is Reported to Be Linked to a Dismissal

By DAVID JOHNSTON, The New York Times

WASHINGTON, Feb. 15 — A United States attorney in Arkansas who was dismissed from his job last year by the Justice Department was ousted after Harriet E. Miers, the former White House counsel, intervened on behalf of the man who replaced him, according to Congressional aides briefed on the matter.

Ms. Miers, the aides said, phoned an aide to Attorney General Alberto R. Gonzales suggesting the appointment of J. Timothy Griffin, a former military and civilian prosecutor who was a political director for the Republican National Committee and a deputy to Karl Rove, the White House political adviser.

Later, the incumbent United States attorney, H. E. Cummins III, was removed without explanation and replaced on an interim basis by Mr. Griffin. Officials at the White House and Justice Department declined to comment on Ms. Miers's role in the matter.

Paul J. McNulty, the deputy attorney general, said at a hearing last week that Mr. Cummins had done nothing wrong but was removed to make room for Mr. Griffin. It was not known at the time Mr. McNulty testified that Ms. Miers had intervened on Mr. Griffin's behalf.

Her involvement was disclosed on Wednesday by Justice Department officials led by Mr. McNulty, who held a closed-door briefing for senators on the Judiciary Committee after Democrats criticized the dismissals of 7 to 10 United States attorneys as politically motivated.

Ms. Miers, whose resignation as White House counsel was effective Jan. 31, could not be reached for comment Thursday.

At the briefing, Justice Department officials denied that the White House had been involved in any of the other dismissals, suggesting that the department had acted on its own after advising the White House of its intention to remove incumbents.

Democrats have said the removals represented an effort to make room for rising political favorites of the Bush administration and to be rid of independent-minded prosecutors, all of whom had been appointed by President Bush.

Senator Charles E. Schumer, Democrat of New York, said that he was not satisfied by the Justice Department's explanations at the briefing.

"Yesterday's briefing by the deputy attorney general did little to alleviate our concerns that politics was involved and, in fact, raised those concerns," Mr. Schumer said. "Some may have been fired for political reasons because they may have not done what Justice Department wanted them to do."

Justice Department officials have said that because United States attorneys are presidential appointees they may be replaced at any time without a specific reason, although they have said that none were removed for pursuing politically sensitive cases.

Another United States attorney asked to resign was Carol C. Lam of San Diego, who departed on Thursday at the request of the Justice Department. Two days earlier, Ms. Lam announced two indictments, including one against a former high-ranking Central Intelligence Agency official, in a corruption inquiry that began with last year's guilty plea by a former Republican representative, Randy Cunningham, who was sentenced to more than eight years in prison.

Karen P. Hewitt, an assistant in Ms. Lam's office, was named Thursday to serve as the interim United States attorney in the Southern District, while Scott N. Schools, a general counsel in the Justice Department, will fill the interim role in the Northern District, in San Francisco.

Senator Dianne Feinstein, Democrat of California, said in a statement on the Senate floor Thursday that Ms. Lam had been dismissed despite a strong record of prosecutions.

"Ms. Lam has had a distinguished career, and she served the southern district of San Diego well and everyone in that district knows that," Ms. Feinstein said. "I regret that main Justice does not. I am quite disappointed that main Justice chose to remove her, especially given the ongoing work in which the office is involved."

Christopher G. Oprison

Associate Counsel to the President
phone: (202) 456-
fax: (202) 456-

From: Perino, Dana M.
Sent: Friday, February 16, 2007 8:09 AM
To: Mamo, Jeanie S.; Sullivan, Kevin F.
Subject: Fw: NYT - White House Is Reported to Be Linked to a Dismissal

My goodness.

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

From: White House News Update
To: Perino, Dana M.
Sent: Fri Feb 16 06:34:56 2007
Subject: NYT - White House Is Reported to Be Linked to a Dismissal

White House Is Reported to Be Linked to a Dismissal

By DAVID JOHNSTON, The New York Times

WASHINGTON, Feb. 15 — A United States attorney in Arkansas who was dismissed from his job last year by the Justice Department was ousted after Harriet E. Miers, the former White House counsel, intervened on behalf of the man who replaced him, according to Congressional aides briefed on the matter.

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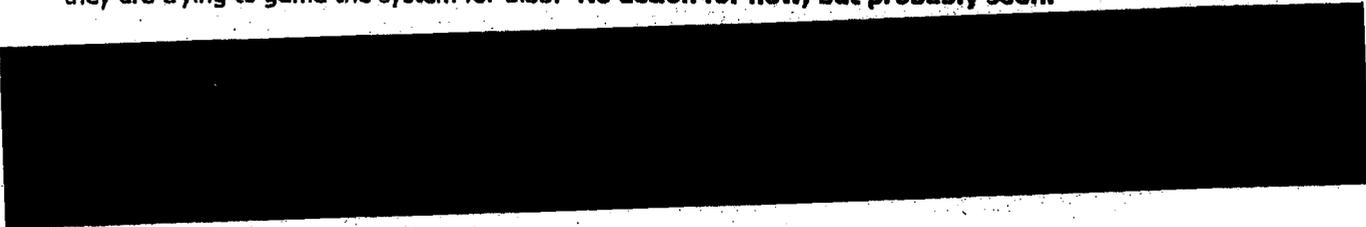
You are currently subscribed to News Update (wires) as:
To unsubscribe send a blank email to leave-whitehouse-news-wires-1008005M@list.whitehouse.gov

From: Scott Jennings [SJennings@gwb43.com]
Sent: Friday, February 16, 2007 10:22 AM
To: Karl Rove
Cc: Hughes, Taylor A.
Subject: Assorted personnel items
Attachments: Humetewa Resume.pdf; Humetewa.doc

I need to bring a few personnel items to your attention:

1. AZ USATTY. **The Counsel's office is asking you to call Senator McCain to get more names for the vacant USATTY slot in AZ.** McCain submitted one name only: Diane Humetewa. I have attached her resume and a list of problems causing DoJ and Counsel to balk at nominating her. Humetewa is a former McCain staffer, and so far his office has been unwilling to submit any other names. They are asking you to personally engage to move this process along; Humetewa is simply unacceptable. Sen. Kyl joined McCain in making this recommendation; DoJ doesn't think Kyl will give more names at this point as he is following McCain's lead.
2. Update on NM USATTY – as you know, all but one of the names originally submitted by Sen. Domenici were ruled invalid due to clearance issues. The final name standing was Jim Bibb, our preference for the job. Sen. Bingaman rejected this name, and after several days of deliberating Domenici chose not to stand up for Bibb and told the WH he wanted to submit a new name. That person was Don Svet, a Magistrate Judge and former USATTY in the Bush 41 Administration.

After reviewing this suggestion, Counsel advises that DoJ has a policy whereby they will not consider sitting judges for USATTY positions because they believe they need to recuse themselves from ALL criminal matters pending before their court because notification would need to be sent out to all people with business pending before the court that the judge is being considered for the USATTY position. It's quite onerous and they don't want to go down this road. Additionally, Svet got low marks during his time as a US Attorney before and is generally considered low-caliber. Domenici appears to have submitted his name for one reason: Bingaman agreed to let it move forward. We are back to the following choices: force the issue with Bibb, nominate him, and see what happens; or ask Domenici for more names. My opinion is that there are no good names left – Bibb is by far the best we will be able to do from a background/credentialing standpoint. I need to have a further talk with Counsel this morning, but we may need to have you call Steve Bell soon to convince them to support Bibb for the position. When Counsel tells Bell that Svet is unacceptable, he will likely go ballistic because he thinks they are trying to game the system for Bibb. **No action for now, but probably soon.**



DIANE J. HUMETEWA

EXPERIENCE & EMPLOYMENT

Senior Litigation Counsel, U.S. Attorney's Office, District of Arizona (August 2001- Present) Advise the U.S. Attorney, attorney staff and the Victim Witness Program on legal and litigation matters; act as Tribal Liaison to Arizona's 21 Indian tribes and their criminal justice agencies on USAO related matters, carries a criminal caseload and provides counsel to the Victim Witness Program.

Detailed to U.S. Senate, (January -December 2005) Detailed by the U.S. Dept. of Justice to the U.S. Senate Committee on Indian Affairs, John McCain, Chairman, to act as attorney advisor to the Majority Staff on justice related issues.

Assistant United States Attorney, U.S. Attorney's Office, District of Arizona (January 1998-February 2001) Defended civil actions against the United States including Federal Tort Claims Act and U.S. Bankruptcy matters; Prosecuted an extensive case load of Major Crimes Act violations in Arizona's Indian Country and general federal crimes in Arizona, including: child sex crimes, homicides, Native American Graves Protection Act and Archeological Resource Protection Act violations. Federal trials include, NAGPRA, ARPA, homicide, assaults, sex crimes, bank robbery, juvenile delinquency and juvenile-adult transfer hearings.

Recognition and Achievements:

- * The Director's Award (A Dept. of Justice high honor)(1999)
- * Designated Senior Litigation Counsel (August 2001)
- * Member, Ad Hoc Advisory Counsel to the U.S. Sentencing Commission (2003);
- * Member, Hiring Committee (1998 - present)

Training:

Provide legal training nationwide on Indian Country legal issues; Instruct law enforcement and prosecutors in areas of federal criminal procedure, jurisdiction, Indian Country child abuse; Federal Victims' Rights; DOJ Office of Legal Counsel Instructor on NAGPRA and, ARPA prosecution

Counsel to the Deputy Attorney General, Department of Justice (March, 1996-January 1998) Conducted legal research and provide advice on Indian law/judicial program related matters. Assigned to the Arizona District as a *Special Assistant U.S. Attorney* (May 1996-January 1998) responsible for prosecuting Major Crimes in Indian Country and training law enforcement on the Violence Against Women Act and Federal Child Abuse Reporting laws.

Deputy Counsel, U.S. Senator John McCain, United States Senate, Chairman, Committee on Indian Affairs (August, 1993-March 1996). Researched and drafted federal legislation, staffed Committee hearings and drafted Committee reports to accompany federal legislation, provided legal advice, memoranda, and correspondence for Chairman McCain on national issues affecting Indians to include gaming, welfare reform, NAGPRA, ICWA, and fiscal appropriations.

Law Clerk, U.S. Attorney's Office, District of Arizona, Linda A. Akers, U.S. Attorney (May- September, 1992). Conducted legal research and prepared legal memoranda on issues of federal criminal law.

Victims Advocate, U.S. Attorney's Office, District of Arizona, Stephen M. McNamee, U.S. Attorney (1987-1990). Assisted federal crime victim's provided referral services, conducted national training of federal victim's issues and child sexual abuse issues.

Recognition & Achievements:

Certificate of Appreciation for Contribution to the District of Arizona, U.S. Attorney's Office (1987-1990) and Outstanding Contribution (1990)
Certificate of Appreciation for Contribution for Outstanding Dedication, Service & Advocacy, Richard B. Abell, Assistant U.S. Attorney General (1988-1989)

EDUCATION:

Arizona State University, Tempe, Arizona

Juris Doctor, May 1993
Honors: Hopi Women's Scholarship (1991, 1992)
Hopi Tribal Scholarship (Fall 1992-Spring 1993)
Activities: Native American Law Student's Association; Women's Law Student's Association; Indian Legal Program's Advisory Committee

Arizona State University, Tempe, Arizona

Bachelors of Science, Justice Studies, December 1987
Honors: Dean's List (1985-1987); Golden Key National Honor Society (1987)
Hopi Tribal Scholarship (1987)

OTHER:

-Arizona State Bar Assoc. Member No. 015818
-Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, Board Member (Nominated by President Bush November 9, 2006/Senate Approved Dec 8, 2006)
-Appellate Court Judge, Hopi Tribal Court (2002- present /civil matters only)
-Sandra Day O'Connor (formerly "Arizona State University") College of Law, Indian Legal Programs, Advisory Council Member (August 99-Present)
-Hearst Museum Board of Directors (2001 - 2004)
-Hopi Education Endowment Fund Board Member (2001)
-Arizona State Bar, Indian Law Section, Executive Council Officer (August 1997-July 1999)
-Maricopa County Public Lawyers, Board of Directors (September 1996-July 1997)

REFERENCES:

Hon. Stephen M. McNamee
U.S. District Court Judge
District of Arizona
401 West Washington Street, Suite 625
Phoenix, Arizona 85003
(602) 322-

Paul K. Chariton,
United States Attorney
U.S. Attorney's Office, Arizona
40 North Central, Ave, Suite 1200
Phoenix, Arizona 85004
(602) 514

Eric D. Eberhard, Partner
Dorsey & Whitney, LLP
Second & Seneca Bldg.
1191 Second Ave, Suite 1440
Seattle, Washington, 98101
(206) 654-

Kevin Gover, Esq. Law Professor
Sandra Day O'Connor College of Law
P.O. Box 877906
Tempe, Arizona 85287-7906

DIANE HUMETEWA - CANDIDATE FOR U.S. ATTORNEY (ARIZONA)

- For the vacant U.S. Attorney slot in Arizona, Senator McCain has provided us with a single candidate — Diane Humetewa, a Senior Litigation Counsel in that office and a former McCain staffer on the Senate Indian Affairs Committee.
- Sen. McCain has already issued a press release stating that he will recommend Humetewa to be the nominee, and has indicated that he will not provide us with other candidates. Sen. Kyl has endorsed her in deference to Sen. McCain's wishes.
- But DOJ believes (and we concur) that Humetewa is not a viable candidate to be the U.S. Attorney for the following reasons:

• [REDACTED]

• [REDACTED]

• [REDACTED]

• [REDACTED]

• [REDACTED]

REDACTED

From: Karl Rove
Sent: Tuesday, February 20, 2007 7:28 AM
To: Scott Jennings
Subject: Re: Assorted personnel items

Replace Blanquita.

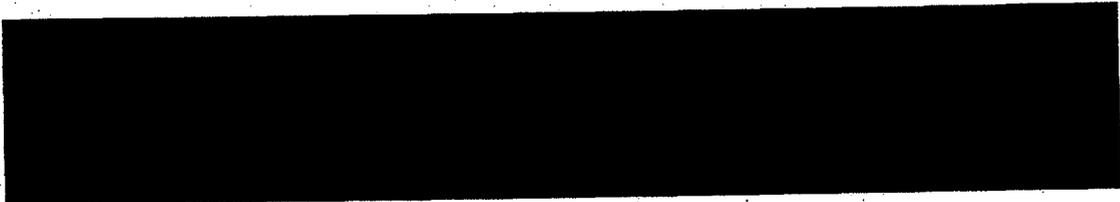
I am happy to call Bell about Bibb.

On 2/16/07 10:22 AM, "Scott Jennings" <SJennings@gwb43.com> wrote:

I need to bring a few personnel items to your attention:

1. **AZ USATTY. The Counsel's office is asking you to call Senator McCain to get more names for the vacant USATTY slot in AZ. McCain submitted one name only: Diane Humetewa. I have attached her resume and a list of problems causing DoJ and Counsel to balk at nominating her. Humetewa is a former McCain staffer, and so far his office has been unwilling to submit any other names. They are asking you to personally engage to move this process along; Humetewa is simply unacceptable. Sen. Kyl joined McCain in making this recommendation; DoJ doesn't think Kyl will give more names at this point as he is following McCain's lead.**
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After reviewing this suggestion, Counsel advises that DoJ has a policy whereby they will not consider sitting judges for USATTY positions because they believe they need to recuse themselves from ALL criminal matters pending before their court because notification would need to be sent out to all people with business pending before the court that the judge is being considered for the USATTY position. It's quite onerous and they don't want to go down this road. Additionally, Svet got low marks during his time as a US Attorney before and is generally considered low-caliber. Domenici appears to have submitted his name for one reason: Bingaman agreed to let it move forward. We are back to the following choices: force the issue with Bibb, nominate him, and see what happens; or ask Domenici for more names. My opinion is that there are no good names left – Bibb is by far the best we will be able to do from a background/credentialing standpoint. I need to have a further talk with Counsel this morning, but we may need to have you call Steve Bell soon to convince them to support Bibb for the position. When Counsel tells Bell that Svet is unacceptable, he will likely go ballistic because he thinks they are trying to game the system for Bibb. **No action for now, but probably soon.**



From: Kelley, William K.
Sent: Friday, February 16, 2007 11:49 AM
To: Oprison, Christopher G.; Scudder, Michael Y.
Subject: RE:

Chris--The COS has asked for a memo today, which I'd like you to prepare, that does two things:

First, it needs to summarize the state of the appointment authority, its history, and how it got changed. It also needs to describe the pending legislation and our position on it. On the last point, we should talk, obviously.

Second, it needs to contain the information below.

I'll forward you a one-page DOJ summary that we got a couple of days ago on the first point, which should do most of the work but perhaps not all.

Thanks.

From: Oprison, Christopher G.
Sent: Friday, February 16, 2007 11:33 AM
To: Kelley, William K.; Scudder, Michael Y.
Subject: RE:

Bill - after our staff meeting, I contacted Monica for raw data about Clinton's appointments/replacements. I also went through Kyle's archived files from WHORM and found similar spreadsheets that identify the dates of appointment/replacement of his US Attorneys. We are unable to know, however, the circumstances of the departures as, according to Monica, that personnel information has been purged. I am on a CREW conference call, but will work on the memo once I am off.

An overview: Clinton appointed a total of 122 US Attorneys during his two terms. To date, this Administration has had 124 appointments (including AG appointments). Also, in contrast to Clinton firing all 93 US Attorneys immediately after taking over, there are memos from Judge Gonzales reflecting this Administration would not terminate all US Attorneys immediately, but would consider what investigations were pending at the beginning of the administration as well as how long the particular US Attorney has already served. A handful of Clinton-appointees actually served well into 2001 before being replaced.

From: Kelley, William K.
Sent: Friday, February 16, 2007 11:09 AM
To: Oprison, Christopher G.; Scudder, Michael Y.
Subject:

Can you gentlemen tell me asap the status and scope of any taskings you have on the US Atty issue -- specifically any memos that you might have in progress. Thanks.

From: Kelley, William K.
Sent: Friday, February 16, 2007 11:49 AM
To: Oprison, Christopher G.
Subject: FW:
Attachments: summary of status of s 214.doc

Thanks, by the way.

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Tuesday, February 13, 2007 5:25 PM
To: Kelley, William K.
Subject: RE:

Bill, here you go -- pasted in the text as well as attached doc.

Summary of U.S. Attorney appointment legislation

Before the March 9, 2006, enactment of the USA PATRIOT Improvement and Reauthorization Act of 2005, the Attorney General had the authority to appoint U.S. Attorneys to vacant positions for periods not exceeding 120 days. If the President did not appoint a U.S. Attorney to such a vacancy within 120 days of the appointment made by the Attorney General, the appointment expired, and the local district court was authorized to appoint a U.S. Attorney to serve until the President made the appointment.

Section 502 of the USA PATRIOT Improvement and Reauthorization Act of 2005 enlarged the scope of the Attorney General's interim appointment authority. Specifically, the Act struck the provision that both limited the validity of the Attorney General's appointments to 120 days and authorized district courts to make subsequent appointments. The Act provided instead that "[a] person appointed as United States attorney [by the Attorney General] may serve until . . . a United States attorney for such district [is] appointed by the President." District courts retained no authority to appoint U.S. Attorneys. This change was explained in the Conference Report for the Act as "address [ing] an inconsistency in the appointment process of United States Attorneys."

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 U.S. Attorneys on an interim basis and would have authorized only the local district court to fill a U.S. Attorney vacancy pending an appointment by the President in the normal course.

The Deputy Attorney General testified in opposition to S. 214 before the Senate Judiciary Committee on February 6, 2007. Senator Feinstein later introduced a substitute amendment to the bill that would restore the Attorney General's interim appointment authority as it existed before enactment of the USA PATRIOT Improvement and Reauthorization Act of 2005. As amended, S. 214 would also limit the validity of appointments that have already been made by the Attorney General to a period not exceeding 120 days from the date of the bill's enactment and would authorize the local district courts to fill all resulting vacancies pursuant to their newly restored appointment power.

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 voting with all of the Democrats in favor of the amendment. Senator Specter has signed on as a cosponsor of the bill as reported.

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 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 Department of Justice 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 the technical assistance of the Department of Justice in drafting such an amendment.

From: Kelley, William K. [mailto:William_K_Kelley@who.eop.gov]
Sent: Tuesday, February 13, 2007 10:44 AM
To: Sampson, Kyle
Subject:

Kyle--Josh has asked for a one-pager on the US Attorney legislation, some time today. We don't have an Associate Counsel on this, so it's me (and I am jammed) or someone over there. Can you get someone to summarize the background and the legislation? The big shots here particularly need absolute clarity that the proposed fix just restores the pre-Patriot status quo. Let me know -- and thanks.

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Before the March 9, 2006, enactment of the USA PATRIOT Improvement and Reauthorization Act of 2005, the Attorney General had the authority to appoint U.S. Attorneys to vacant positions for periods not exceeding 120 days. If the President did not appoint a U.S. Attorney to such a vacancy within 120 days of the appointment made by the Attorney General, the appointment expired, and the local district court was authorized to appoint a U.S. Attorney to serve until the President made the appointment.

Section 502 of the USA PATRIOT Improvement and Reauthorization Act of 2005 enlarged the scope of the Attorney General's interim appointment authority. Specifically, the Act struck the provision that both limited the validity of the Attorney General's appointments to 120 days and authorized district courts to make subsequent appointments. The Act provided instead that "[a] person appointed as United States attorney [by the Attorney General] may serve until . . . a United States attorney for such district [is] appointed by the President." District courts retained no authority to appoint U.S. Attorneys. This change was explained in the Conference Report for the Act as "address[ing] an inconsistency in the appointment process of United States Attorneys."

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 U.S. Attorneys on an interim basis and would have authorized only the local district court to fill a U.S. Attorney vacancy pending an appointment by the President in the normal course.

The Deputy Attorney General testified in opposition to S. 214 before the Senate Judiciary Committee on February 6, 2007. Senator Feinstein later introduced a substitute amendment to the bill that would restore the Attorney General's interim appointment authority as it existed before enactment of the USA PATRIOT Improvement and Reauthorization Act of 2005. As amended, S. 214 would also limit the validity of appointments that have already been made by the Attorney General to a period not exceeding 120 days from the date of the bill's enactment and would authorize the local district courts to fill all resulting vacancies pursuant to their newly restored appointment power.

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 voting with all of the Democrats in favor of the amendment. Senator Specter has signed on as a cosponsor of the bill as reported.

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 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 Department of Justice 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 the technical assistance of the Department of Justice in drafting such an amendment.

From: Jennings
Sent: Friday, February 16, 2007 12:34 PM
To: Scott Jennings
Subject: FW: USA -- Arizona
Attachments: Resume.pdf; Humetewa.doc

From: Lee, Kenneth K.
Sent: Thursday, February 15, 2007 12:03 PM
To: Jennings, Jeffery S.
Subject: USA -- Arizona

Scott --

Can you touch base with Karl and see if he can reach out to Sen. McCain about the U.S. Attorney position? We previously discussed this her candidacy at a JSC meeting, and hoped that Karl could reach out to Sen. McCain to see if we can get additional names.

I've attached a memo that explains our problems with Sen. McCain's candidate, Diane Humetewa. She is a former staffer of his, and McCain's office has apparently signaled to DOJ that he won't provide any other names.

Thanks,

Ken

evaluation was very positive."

David Iglesias, the U.S. attorney in New Mexico, also received a positive evaluation last year, according to another Justice Department official.

Both officials asked not to be identified because they weren't authorized by the Justice Department to release the information.

The other U.S. attorneys who received good reviews were John McKay, the former U.S. attorney in Seattle; Paul Charlton, the former U.S. attorney in Arizona; and Carol Lam, the current U.S. attorney in San Diego.

McKay, who stepped down recently, said in an interview that his positive review in May 2006 didn't explain his ouster, nor did the phone call he received in December from a Justice Department official who ordered him to resign.

"I was not told that it was related to my performance," he said.

Lam was described in her 2005 evaluation as "well respected" by law enforcement officials, judges and her staff. Overall the review was positive.

"We're not aware of any significant issues," said another Justice Department official, who also asked not to be identified. Lam is leaving office Feb. 15.

Officials with the U.S. attorney's office in Arizona said Charlton received his last review in December 2005. He was described as being respected by his staff, federal investigators, judges and Native American leaders for "his integrity, professionalism and competence."

On Wednesday, Deputy Attorney General Paul McNulty is scheduled to brief senators privately on the reasons for the firings.

Tasia Scolinos, a chief spokeswoman for the Justice Department, said the removals were the result of a "careful, thoughtful" decision-making process.

"This issue really boils down to the department's reasons for making internal management changes," she said.

The decision to fire the U.S. attorneys came under scrutiny late last month after Senate Democrats discovered a change in the Patriot Act that allowed Gonzales to appoint interim U.S. attorneys for indefinite terms without Senate approval.

In testimony to the Senate Judiciary Committee last week, McNulty conceded that H.E. "Bud" Cummins, the former U.S. attorney in Arkansas, wasn't fired because of how he handled his job. Rather, McNulty said, administration officials wanted to make room for Timothy Griffin, a former aide of presidential adviser Karl Rove.

Pressed to explain the other firings, McNulty said they were motivated by a "range of reasons" and were "performance-related."

He also emphasized that the Justice Department had wide latitude because U.S. attorneys are appointed by the president.

"We don't believe that we have an obligation to set forth a certain standard or reason or a cause when it comes to removal," he said.

McNulty cautioned the senators that the evaluations might not explain the firings.

"That's just one way of measuring someone's performance," he said. "And much of this is subjective and won't be apparent in the form of some report that was done two or three years ago."

In an interview for the Arizona Republic's Saturday edition, Charlton said he was fired for "principled reasons, not performance issues."

Charlton declined to comment on the matter, but his supporters said he clashed with the administration over the handling of death penalty cases. Charlton objected to automatically recommending the death penalty for certain crimes, said Grant Woods, a former attorney general in Arizona.

"Paul felt it was one of the main reasons" he was fired, Woods, a Republican, told McClatchy.

Woods said it was "misleading" for the administration to describe Charlton's firing as performance-related. "A conflict over policy is different than poor performance," he said.

Justice Department officials are now completing the evaluation of Kevin Ryan, who's being forced to step down as San Francisco U.S. attorney.

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REDACTED

From: Rethmeier, Blain K.
Sent: Tuesday, February 13, 2007 9:11 AM
To: Martin, Catherine
Subject: 8am

Cathie,

To recap:

[REDACTED]

3. U.S. Attorney issue continues to get coverage esp. with performance evaluation out there

[REDACTED]

From: Oprison, Christopher G.
Sent: Tuesday, February 13, 2007 12:21 PM
To: Fielding, Fred F.; Kelley, William K.
Cc: Bakke, Mary Beth
Subject: US Attorneys

Gentlemen - you may be aware, but I wanted to pass this info to you in any event: at the request of Sen Schumer, the DAG has agreed to meet privately with members of the Senate Judiciary Committee tomorrow to discuss the departures (termed "firings" by the press) of 6 US Attorneys. See Roll Call blurb below. The Administration's position has been, at least in part, that the departures were due to "performance related issues." An article McClatchy Newspapers indicates that five of the six received "positive job evaluations." I have not called Kyle Sampson yet, but would like to do so if you have no objection. I want to avoid meddling in DOJ business, but believe we should have some idea what "specific reasons" will be discussed.

Roll Call (2/13, Van Dongen) reports Deputy US Attorney General Paul McNulty is "slated to brief members of the Senate Judiciary Committee at a closed-door meeting Wednesday on the personnel records of a handful of U.S. attorneys around the country who recently were fired from their posts." When "pressed by Senators at a hearing last week, McNulty declined to discuss the specific reasons for the Justice Department's dismissal of up to seven U.S. attorneys from California to Arkansas. Instead, he assented to a request from Sen. Charles Schumer (N.Y.), who serves as Democratic Senatorial Campaign Committee chairman and Democratic Caucus vice chairman, to privately share such information with the Senators." It is "unclear whether Democratic Senators - who charge the Justice Department has politicized U.S. attorney appointments - will be satisfied with Wednesday's briefing."

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

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

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

The Administration Must Ensure an Effective Transition When Vacancies Occur:

- When a United States Attorney has submitted his or her resignation, the Administration has -- in every single case -- consulted with home-state Senators regarding candidates for the Presidential nomination and Senate confirmation.

The Administration is committed to nominating a candidate for Senate consideration everywhere a vacancy arises, as evidenced by the fact that there have been 125 confirmations of new U.S. Attorneys since January 20, 2001.

- With 93 U.S. Attorney positions across the country, the Department often averages between 8-15 vacancies at any given time. Because of the important work conducted by these offices, and the need to ensure that the office is being managed effectively and appropriately, the Department uses a range of options to ensure continuity of operations.
- In some cases, the First Assistant U.S. Attorney is an appropriate choice. However, in other cases, the First Assistant may not be an appropriate option for reasons including that he or she: resigns or retires at the same time as the outgoing U.S. Attorney; indicates that he/she does not want to serve as Acting U.S. Attorney; has ongoing or completed OPR or IG matters in their file, which may make his/her elevation to the Acting role inappropriate; or is subject of an unfavorable recommendation by the outgoing U.S. Attorney or otherwise does not enjoy the confidence of those responsible for ensuring ongoing operations and an appropriate transition until such time as a new U.S. Attorney is nominated and confirmed by the Senate. In those cases, the Attorney General has appointed another individual to lead the office during the transition.

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

- Since March 9, 2006, when the appointment authority was amended, the Administration has nominated 15 individuals for Senate consideration (12 have been confirmed to date).
- Since March 9, 2006, when the appointment authority was amended, 13 vacancies have been created. Of those 13 vacancies, the Administration nominated candidates to fill 5 of these positions (3 were confirmed to date), has interviewed candidates for 7 positions, and is waiting to receive names to set up interviews for 1 position – all in consultation with home-state Senators.

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

- In 4 cases, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period.
- In 1 case, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). However, the First Assistant took federal retirement a month later and the Department had to select another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate.
- In 7 cases, the Department selected another Department employee to serve as

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

Amending the Statute Was Necessary:

- Last year's amendment to the Attorney General's appointment authority was necessary and appropriate.
- We are aware of no other federal agency where federal judges, members of a separate branch of government and not the head of the agency, appoint interim staff on behalf of the agency.
- Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in numerous, recurring problems.
- The statute was amended for several reasons:
 - 1) The previous provision was constitutionally-suspect;
 - 2) Some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments;
 - 3) Other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances.
- Because the Administration is committed to having a Senate-confirmed United States Attorney in all districts, changing the law to restore the limitations on the Attorney General's appointment

authority is unnecessary.

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

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

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

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

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

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

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

- **Central District of California** – FAUSA George Cardona is acting United States Attorney
- **Southern District of Illinois** – FAUSA Randy Massey is acting United States Attorney (a nomination was made last Congress for Phillip Green, but confirmation did not occur);
- **Eastern District of North Carolina** – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting United States Attorney (Sharon Potter was nominated and confirmed).

For 1 vacancy, the Department first selected the First Assistant United States Attorney to lead the office

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

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

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

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

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

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

In 2 of the 12 cases, the FAUSA had been serving as acting United States Attorney under the Vacancies Reform Act (VRA), but the VRA’s 210-day period expired before a nomination could be made.

Thereafter, the Attorney General appointed that same FAUSA to serve as interim United States Attorney. These districts include:

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

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

- **District of Alaska** – Nelson Cohen

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

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

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

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

incumbent United States Attorney resigned.

AG-appointed, interim USA

Nine of the Eleven currently serving, AG-appointed, interim USAs, are career federal prosecutors:

1. District of Alaska -- Nelson Cohen (career)
 2. Eastern District of Arkansas -- Tim Griffin
 3. District of Columbia -- Jeff Taylor (career)
 4. Western District of Missouri -- Brad Schlozman
 5. District of Nebraska -- Joe Stecher (career)
 6. District of Puerto Rico -- Rosa Rodriguez-Velez (career)
 7. Eastern District of Tennessee -- Russ Dedrick (career)
 8. Middle District of Tennessee -- Craig Morford (career)
 9. Southern District of West Virginia -- Chuck Miller (career)
 10. Western District of Washington -- Jeffery Sullivan (career)
 11. District of Arizona -- Dan Knauss (career)
-

Original Serving U.S. Attorneys

There are 43 districts that are currently being led by a U.S. Attorney nominated by President Bush and confirmed by the Senate in 2001 or 2002. All of these U.S. Attorneys have completed a four year term (5 of the 43 have announced their resignations). Additionally, there are 6 districts that are currently being led by the first U.S. Attorney nominated by President Bush and confirmed by the Senate -- but who are still serving a four year term. The other 44 districts are either being led by their second Presidentially-nominated and Senate-confirmed U.S. Attorney, or are currently awaiting a nomination.

Historical figures for ages of US Attorneys

In the past two Administrations, there have been 14 individuals nominated to serve as United States Attorney who were under the age of 35.

Clinton Administration -- 9 nominations of individuals under the age of 35 (the youngest was John Simmons, who was 31 years old when nominated)

Bush Administration -- 5 nominations of individuals under the age of 35 to date (the youngest was Strom Thurmond, Jr., who was 29 years old when nominated)

Here are the five youngest U.S. Attorneys since to the Carter Administration

1. Richard Blumenthal, CT - 31
2. W.Asa Hutchinson, ARW - 31
3. Joe D. Whitley, GAM, 30
4. John S. Simmons, SC, 31
5. Strom Thurmond, SC - 29

Here are the five youngest currently serving U.S. Attorneys

1. Rachel Paulose, MN - 33
2. Brad Scholzman, MOW - 36 (Acting - John Wood nominated)
3. Marty Jackley, SD - 36
4. Brett Tolman, UT - 36
5. Erik Peterson, WIW - 37
6. Matt Whitaker, IAS - 37

Average ages of US Attorneys

President George W. Bush USAs (125 nominees confirmed to date): 44.82 years
President Bill Clinton USAs (122 nominees confirmed): 44.67 years

Below, please find the Attorney General's Q&A with Senator Feinstein from the Judiciary Committee Hearing on Jan. 18.

FEINSTEIN:

Thank you.

You and I talked on Tuesday about what's happening with U.S. attorneys. And it spurred me to do a little research. And let me begin. Title 28, Section 541 states: "Each United States attorney shall be appointed for a term of four years. On the expiration of his term, a United States attorney shall continue to perform the duties of his office until his successor is appointed and qualified."

Now, I understand that there is a pleasure aspect to it. But I also understand what practice has been in the past.

We have 13 vacancies. Yesterday, you sent up two nominees for the 13 existing vacancies.

GONZALES:

We've now nominated, I think -- there have been 11 vacancies created since the law was changed; 11 vacancies in U.S. Attorneys' Offices. The president has now nominated as to six of those. As to the remaining five, we're in discussions with home-state senators.

And so let me publicly sort of preempt perhaps a question you're going to ask me, and that is: I am fully committed, as the administration's fully committed, to ensure that, with respect to every United States attorney position in this country, we will have a presidentially appointed, Senate-confirmed United States attorney.

GONZALES:

I think a United States attorney who I view as the leader, law enforcement leader, my representative in the community -- I think he has greater imprimatur of authority, if in fact that person's been confirmed by the Senate.

FEINSTEIN:

Now, let me get at where I'm going. How many United States attorneys have been asked to resign in the past year?

GONZALES:

Senator, you know, you're asking me to get into a public discussion about personnel...

FEINSTEIN:

No, I'm just asking you to give me a number. That's all. I'm asking you to give me a number. I'm asking...

GONZALES:

You know, I don't know the answer to that question. But we have been very forthcoming...

FEINSTEIN:

You didn't know it on Tuesday when I spoke with you. said you would find out and tell me.

GONZALES:

I'm not sure I said that, but...

FEINSTEIN:

Yes, you did, Mr. Attorney General.

GONZALES:

Well, if that's what I said, then that's what I will do. But we did provide to you a letter where we gave you a lot of information about...

FEINSTEIN:

I read the letter.

GONZALES:

OK.

FEINSTEIN:

It doesn't answer the questions that I have.

I know of at least six that have been asked to resign. I know that we amended the law in the Patriot Act and we amended it because if there were a national security problem, the attorney general would have the ability to move into the gap.

We did not amend it to prevent the confirmation process from taking place. And I'm very concerned. I've had two of them asked to resign in my state from major jurisdictions with major cases ongoing, with substantially good records as prosecutors.

And I'm very concerned, because, technically, under the Patriot Act, you can appoint someone without confirmation for the remainder of the president's term. I don't believe you should do that. We are going to try to change the law back.

GONZALES:

Senator, may I just say that I don't think there was any evidence that is what I'm trying to do. In fact, to the contrary, the evidence is quite clear that what we're trying to do is ensure that for the people in each of these respective districts we have the very best possible representative for the Department of Justice and that we are working to nominate people and that we are working with home state senators to get U.S. attorneys nominated.

So the evidence is just quite contrary to what your possibly suggesting.
Let me just say...

FEINSTEIN:

Do you deny that you have asked -- your office has asked United States attorneys to resign in the past year?

GONZALES:

Senator, that...

FEINSTEIN:

Yes or no?

GONZALES:

Yes.

No, I don't deny that. What I'm saying is -- but that happens during every administration during different periods for different reasons.

And so the fact that that's happened, quite frankly, some people should view that as a sign of good management. What we do is we make an evaluation about the performance of individuals, and I have a responsibility to the people in your district that we have the best possible people in these positions.

And that's the reason why changes sometimes have to be made, although there are a number of reasons why changes get made and why people leave on their own.

I think I would never, ever make a change in 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.

FEINSTEIN:

Well, let me just say one thing. I believe very strongly that these positions should come to this committee for confirmation.

GONZALES:

They are, Senator.

FEINSTEIN:

I believe very strongly we should have the opportunity...

GONZALES:

I agree with you.

FEINSTEIN:

... to answer (sic) questions about...

GONZALES:

I agree with you.

FEINSTEIN:

And I have been asked by another senator to ask this question, and I will: Was there any other reason for asking Bud Cummings of Arkansas to resign other than the desire to put in Tim Griffin?

GONZALES:

Senator, again, I'm not going to get into a public discussion about the merits or not with respect to personnel decisions.

I will say that I've had two conversations -- one as recanvassed, I think, yesterday -- with a senator from Arkansas about this issue. He and I are in a dialogue. We are -- I am consulting with the home state senator so he understands what's going on and the reasons why, and working with him to try to get this thing resolved; to make sure for his benefit, for the benefit of the Department of Justice that we have the best possible person manning that position.

Article excerpt written by former Attorney General Griffin Bell

I thought you may be interested in the following article excerpt written by former Attorney General Griffin Bell (under President Jimmy Carter) in the Journal of Law & Politics.....

.....The major concern of the Attorney General in relation to U.S. Attorneys is to see to it that the government is represented effectively in every district by competent attorneys of integrity who are responsive to policies formulated by the Attorney General. The best way to achieve this is for the Attorney General to be able to select such persons and to have them serve only as long as they perform effectively and carry out those policies.

Reasonable minds, all equally dedicated to improving the process, can differ as to what method would produce the best results. In our view, placing the appointing power in the President alone or in the Attorney General alone would probably be an improvement over the present process. All things considered, however, we believe that the method most likely to produce the best results in the long run is to place the power of

appointment and removal of U.S. Attorneys solely in the Attorney General. This method seems more promising than any other to assure high quality in the appointees, to minimize the stigma of political patronage surrounding these appointments, and to foster effective departmental management.

This conclusion rests on the legal and practical realities of the situation. ... the Attorney General discharges a large part of that responsibility ["take care that the laws be executed faithfully"] through the ninety-four U.S. Attorneys throughout the country. They must be persons in whom the Attorney General has complete confidence and who in turn are responsible to the Attorney General alone. U.S. Attorneys are major arms of the executive branch, and they should be entirely accountable to the constitutionally and statutorily ordained superior executive officers. Giving the Attorney General the power to hire and fire these subordinates provides the best guarantee of consistent and effective administration and enforcement of federal laws.

Los Angeles Times editorial

January 26, 2007

The rumor bill

Sen. Dianne Feinstein's concerns about the departure of a high-profile U.S. attorney are premature.

IT'S NEVER A good idea to write legislation in response to a rumor, yet that's exactly what Sen. Dianne Feinstein appears to have done in the case of Carol Lam. Lam is the U.S. attorney in San Diego who oversaw the prosecution of former Rep. Randy "Duke" Cunningham, who pleaded guilty to receiving \$2.4 million in bribes from military contractors and evading more than \$1 million in taxes. Lam is one of half a dozen U.S. attorneys, including one in San Francisco, who are stepping down.

Feinstein at least acknowledges that she is responding to a rumor that Lam is being forced out not because of policy or personality differences with her superiors but because she is preparing other cases that might ruffle influential feathers. Lam's office has been investigating a politically connected defense contractor who was described as an unindicted co-conspirator in the Cunningham case.

This conspiracy theory has another strand: a suddenly controversial provision in the Patriot Act that allows the attorney general to name an acting U.S. attorney who can serve until the Senate confirms a new nominee. Feinstein has proposed a bill that would restore the previous arrangement, in which local federal judges named U.S. attorneys on an interim basis.

The Justice Department persuasively argues that it hasn't abused its new authority to bypass the usual Senate confirmation process. Even after they are confirmed by the Senate, U.S. attorneys still serve at the president's pleasure, and they can be removed if they are underperforming or if their priorities conflict with the administration's.

A further problem with the conspiracy theory is that it is not easy, as even Watergate demonstrated, for

an administration to stymie a criminal investigation. If the Bush administration has been scheming to prevent the prosecution of prominent Republicans, it has been remarkably unsuccessful: Just ask Cunningham, former Rep. Bob Ney or I. Lewis "Scooter" Libby.

Where politics undeniably plays a role — and not just in this administration — is in the selection of U.S. attorneys, who often are prominent members of the president's party. Yet precisely because these positions are political plums, professionals in the Justice Department and the FBI traditionally exert huge influence in prosecution decisions. Those same professionals are likely to blow the whistle on improper interference.

Feinstein and other senators certainly should keep their ears pricked for any such alarm. They also should press Atty. Gen. Alberto R. Gonzales to explain the personnel changes (in closed session if necessary) and to abide by his commitment to the Judiciary Committee that the names of new U.S. attorneys be submitted expeditiously to the Senate. But cries of a conspiracy are premature, and so is Feinstein's legislation.

The Pot Calling the Kettle "Interim"

Democrats with short memories rail about Bush's removal of U.S. attorneys.

By Andrew C. McCarthy

In lambasting the Bush administration for politicizing the appointment of the nation's United States attorneys, Democrats may be on the verge of redefining *chutzpah*.

The campaign is being spearheaded on the Judiciary Committee by Senator Dianne Feinstein. She contends that at least seven U.S. attorneys — tellingly, including those for two districts in her home state — have been "forced to resign without cause." They are, she further alleges, to be replaced by Bush appointees who will be able to avoid Senate confirmation thanks to a "little known provision" of the Patriot Act reauthorization law enacted in 2006.

Going into overdrive, Feinstein railed on the Senate floor Tuesday that "[t]he public response has been shock. Peter Nunez, who served as the San Diego U.S. Attorney from 1982 to 1988 has said, 'This is like nothing I've ever seen in my 35-plus years.'"

Yes, the public, surely, is about as "shocked, shocked" as Claude Raines's Captain Renault, and one is left to wonder whether Mr. Nunez spent the 1990s living under a rock.

One of President Clinton's very first official acts upon taking office in 1993 was to fire *every* United States attorney then serving — except one, Michael Chertoff, now Homeland Security secretary but then U.S. attorney for the District of New Jersey, who was kept on only because a powerful New Jersey Democrat, Sen. Bill Bradley, specifically requested his retention.

Were the attorneys Clinton fired guilty of misconduct or incompetence? No. As a class they were able (and, it goes without saying, well-connected). Did he shove them aside to thwart corruption investigations into his own party? No. It was just politics, plain and simple.

Patronage is the chief spoil of electoral war. For a dozen years, Republicans had been in control of the White House, and, therefore of the appointment of all U.S. attorneys. President Clinton, as was his right, wanted his party's own people in. So he got rid of the Republican appointees and replaced them with,

predominantly, Democrat appointees (or Republicans and Independents who were acceptable to Democrats).

We like to think that law enforcement is not political, and for the most part — the day-to-day part, the proceedings in hundreds of courtrooms throughout the country — that is true. But appointments are, and have always been political. Does it mean able people are relieved before their terms are up? Yes, but that is the way the game is played.

Indeed, a moment's reflection on the terms served by U.S. attorneys reveals the emptiness of Feinstein's argument. These officials are appointed for four years, with the understanding that they serve at the pleasure of the president, who can remove them for any reason or no reason. George W. Bush, of course, has been president for six years. That means every presently serving U.S. attorney in this country has been appointed or reappointed by this president.

That is, contrary to Clinton, who unceremoniously cashiered virtually all Reagan and Bush 41 appointees, the current President Bush can only, at this point, be firing *his own appointees*. Several of them, perhaps even all of them, are no doubt highly competent. But it is a lot less unsavory, at least at first blush, for a president to be rethinking his own choices than to be muscling out another administration's choices in an act of unvarnished partisanship.

Feinstein's other complaint, namely, that the Bush administration is end-running the Constitution's appointment process, which requires Senate confirmation for officers of the United States (including U.S. attorneys), is also unpersuasive.

As she correctly points out, the Patriot Act reauthorization did change prior law. Previously, under the federal code (Title 28, Section 546), if the position of district U.S. attorney became vacant, it could be filled for up to 120 days by an interim appointee selected by the attorney general. What would happen at the end of that 120-day period, if a new appointee (who would likely also be the interim appointee) had not yet been appointed by the president and confirmed by the senate? The old law said the power to appoint an interim U.S. attorney would then shift to the federal district court, whose appointee would serve until the president finally got his own nominee confirmed.

This was a bizarre arrangement. Law enforcement is exclusively an executive branch power. The Constitution gives the judiciary no role in executive appointments, and the congressional input is limited to senate confirmation. U.S. attorneys are important members of the Justice Department — the top federal law enforcement officers in their districts. But while the attorney general runs the Justice Department, U.S. attorneys work not for the AG but for the president. They are delegated to exercise executive authority the Constitution reposes only in the president, and can thus be terminated at will by the president. Consequently, having the courts make interim appointments made no practical sense, in addition to being constitutionally dubious.

The Patriot Act reauthorization remedied this anomaly by eliminating both the role of the district courts and the 120-day limit on the attorney general's interim appointments. The interim appointee can now serve until the senate finally confirms the president's nominee.

Is there potential for abuse here? Of course — there's no conceivable appointments structure that would not have potential for abuse. Like it or not, in our system, voters are the ultimate check on political excess.

So yes, a president who wanted to bypass the Constitution's appointments process could fire the U.S. attorney, have the attorney general name an interim appointee, and simply refrain from submitting a

nominee to the senate for confirmation. But we've also seen plenty of abuse from the Senate side of appointments — and such abuse was not unknown under the old law. Though the president can nominate very able U.S. attorney candidates — just as this president has also nominated very able *judicial* candidates — those appointments are often stalled in the confirmation process by the senate's refusal to act, its imperious blue-slip privileges (basically, a veto for senators from the home state of the nominee), and its filibusters.

But that's politics. The president tries to shame the senate into taking action on qualified nominees. Senator Feinstein, now, is trying to shame the White House — making sure the pressure is on the administration not to misuse the Patriot Act modification as an end-around the confirmation process.

Why is Feinstein doing this? After all, the next president may be a Democrat and could exploit to Democratic advantage the same perks the Bush administration now enjoys.

Well, because Feinstein is not going to be the next president. She is still going to be a senator and clearly intends to remain a powerful one. Aside from being enshrined in the Constitution, the confirmations process is a significant source of senatorial power no matter who the president is. Practically speaking, confirmation is what compels a president of either party to consult senators rather than just peremptorily installing the president's own people. Over the years, it has given senators enormous influence over the selection of judges and prosecutors in their states. Feinstein does not want to see that power diminished.

It's worth noting, however, that the same Democrats who will be up in arms now were mum in the 1990s. President Clinton not only fired U.S. attorneys sweepingly and without cause. He also appointed high executive-branch officials, such as Justice Department civil-rights division chief Bill Lann Lee, on an "acting" basis even though their positions called for senate confirmation. This sharp maneuver enabled those officials to serve even though it had become clear that they would never be confirmed.

Reporting on Lee on February 26, 1998, the *New York Times* noted: "Under a Federal law known as the Vacancy Act, a person may serve in an acting capacity for 120 days. But the [Clinton] Administration has argued that another Federal law supercedes the Vacancy Act and gives the Attorney General the power to make temporary law enforcement assignments of any duration."

What the Clinton administration dubiously claimed was the law back then is, in fact, the law right now. Yet, for some strange reason — heaven knows what it could be — Senator Feinstein has only now decided it's a problem. Like the public, I'm shocked.

— *Andrew C. McCarthy is a senior fellow at the Foundation for the Defense of Democracies.*

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From: Perino, Dana M.
Sent: Wednesday, February 07, 2007 9:02 AM
To: Mamo, Jeanie S.
Subject: FW: BACKGROUND: U.S. ATTORNEY NOMINATIONS AND INTERIM APPOINTMENTS BY THE ATTORNEY GENERAL

From: Scolinos, Tasia [mailto:Tasia.Scolinos@usdoj.gov]
Sent: Wednesday, February 07, 2007 8:02 AM
To: Perino, Dana M.
Cc: Martin, Catherine
Subject: FW: BACKGROUND: U.S. ATTORNEY NOMINATIONS AND INTERIM APPOINTMENTS BY THE ATTORNEY GENERAL

With the hearing this week, I thought you might find this background information helpful.

Overview:

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

Specifically, since March 9, 2006 (when the AG's appointment authority was amended), the Administration has nominated 15 individuals to serve as U.S. Attorney (12 have been confirmed to date).

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

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

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

The Administration Must Ensure an Effective Transition When Vacancies Occur:

- When a United States Attorney has submitted his or her resignation, the Administration has -- in every single case -- consulted with home-state Senators regarding candidates for the Presidential nomination and Senate confirmation.

The Administration is committed to nominating a candidate for Senate consideration everywhere a vacancy arises, as evidenced by the fact that there have been 125 confirmations of new U.S. Attorneys since January 20, 2001.

- With 93 U.S. Attorney positions across the country, the Department often averages between 8-15 vacancies at any given time. Because of the important work conducted by these offices, and the need to ensure that the office is being managed effectively and appropriately, the Department uses a range of options to ensure continuity of operations.
- In some cases, the First Assistant U.S. Attorney is an appropriate choice. However, in other cases, the First Assistant may not be an appropriate option for reasons including that he or she: resigns or retires at the same time as the outgoing U.S. Attorney; indicates that he/she does not want to serve as Acting U.S. Attorney; has ongoing or completed OPR or IG matters in their file, which may make his/her elevation to the Acting role inappropriate; or is subject of an unfavorable recommendation by the outgoing U.S. Attorney or otherwise does not enjoy the confidence of those responsible for ensuring ongoing operations and an appropriate transition until such time as a new U.S. Attorney is nominated and confirmed by the Senate. In those cases, the Attorney General has appointed another individual to lead the office during the transition.

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

- Since March 9, 2006, when the appointment authority was amended, the Administration has nominated 15 individuals for Senate consideration (12 have been confirmed to date).
- Since March 9, 2006, when the appointment authority was amended, 13 vacancies have been created. Of those 13 vacancies, the Administration nominated candidates to fill 5 of these positions (3 were confirmed to date), has interviewed candidates for 7 positions, and is waiting to receive names to set up interviews for 1 position – all in consultation with home-state Senators.

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

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

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

- In 7 cases, the Department selected another Department employee to serve as

interim under AG appointment until such time as a nomination is submitted to the Senate.

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

Amending the Statute Was Necessary:

- Last year's amendment to the Attorney General's appointment authority was necessary and appropriate.
- We are aware of no other federal agency where federal judges, members of a separate branch of government and not the head of the agency, appoint interim staff on behalf of the agency.
- Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in numerous, recurring problems.
- The statute was amended for several reasons:
 - 1) The previous provision was constitutionally-suspect;
 - 2) Some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments;
 - 3) Other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances.
- Because the Administration is committed to having a Senate-confirmed United States Attorney in all districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

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

The 15 nominations are:

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

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

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

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

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

- **Central District of California** – FAUSA George Cardona is acting United States Attorney
- **Southern District of Illinois** – FAUSA Randy Massey is acting United States Attorney (a nomination was made last Congress for Phillip Green, but confirmation did not occur);
- **Eastern District of North Carolina** – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting United States Attorney (Sharon Potter was nominated and confirmed).

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

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

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

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

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

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

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

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

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

submitted to the Senate. That district is:

- **District of Alaska** – Nelson Cohen

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

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

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

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

AG-appointed, interim USA

Nine of the Eleven currently serving, AG-appointed, interim USAs, are career federal prosecutors:

1. District of Alaska -- Nelson Cohen (career)

2. Eastern District of Arkansas -- Tim Griffin
3. District of Columbia -- Jeff Taylor (career)
4. Western District of Missouri -- Brad Schlozman
5. District of Nebraska -- Joe Stecher (career)
6. District of Puerto Rico -- Rosa Rodriguez-Velez (career)
7. Eastern District of Tennessee -- Russ Dedrick (career)
8. Middle District of Tennessee -- Craig Morford (career)
9. Southern District of West Virginia -- Chuck Miller (career)
10. Western District of Washington -- Jeffery Sullivan (career)
11. District of Arizona -- Dan Knauss (career)

Original Serving U.S. Attorneys

There are 43 districts that are currently being led by a U.S. Attorney nominated by President Bush and confirmed by the Senate in 2001 or 2002. All of these U.S. Attorneys have completed a four year term (5 of the 43 have announced their resignations). Additionally, there are 6 districts that are currently being led by the first U.S. Attorney nominated by President Bush and confirmed by the Senate -- but who are still serving a four year term. The other 44 districts are either being led by their second Presidentially-nominated and Senate-confirmed U.S. Attorney, or are currently awaiting a nomination.

Historical figures for ages of US Attorneys

In the past two Administrations, there have been 14 individuals nominated to serve as United States Attorney who were under the age of 35.

Clinton Administration -- 9 nominations of individuals under the age of 35 (the youngest was John Simmons, who was 31 years old when nominated)

Bush Administration -- 5 nominations of individuals under the age of 35 to date (the youngest was Strom Thurmond, Jr., who was 29 years old when nominated)

Here are the five youngest U.S. Attorneys since to the Carter Administration

1. Richard Blumenthal, CT - 31
2. W.Asa Hutchinson, ARW - 31
3. Joe D. Whitley, GAM, 30
4. John S. Simmons, SC, 31
5. Strom Thurmond, SC - 29

Here are the five youngest currently serving U.S. Attorneys

1. Rachel Paulose, MN - 33
2. Brad Scholzman, MOW - 36 (Acting - John Wood nominated)
3. Marty Jackley, SD - 36
4. Brett Tolman, UT - 36
5. Erik Peterson, WIW - 37

6. Matt Whitaker, IAS - 37

Average ages of US Attorneys

President George W. Bush USAs (125 nominees confirmed to date): 44.82 years

President Bill Clinton USAs (122 nominees confirmed): 44.67 years

Below, please find the Attorney General's Q&A with Senator Feinstein from the Judiciary Committee Hearing on Jan. 18.

FEINSTEIN:

Thank you.

You and I talked on Tuesday about what's happening with U.S. attorneys. And it spurred me to do a little research. And let me begin. Title 28, Section 541 states: "Each United States attorney shall be appointed for a term of four years. On the expiration of his term, a United States attorney shall continue to perform the duties of his office until his successor is appointed and qualified."

Now, I understand that there is a pleasure aspect to it. But I also understand what practice has been in the past.

We have 13 vacancies. Yesterday, you sent up two nominees for the 13 existing vacancies.

GONZALES:

We've now nominated, I think -- there have been 11 vacancies created since the law was changed; 11 vacancies in U.S. Attorneys' Offices. The president has now nominated as to six of those. As to the remaining five, we're in discussions with home-state senators.

And so let me publicly sort of preempt perhaps a question you're going to ask me, and that is: I am fully committed, as the administration's fully committed, to ensure that, with respect to every United States attorney position in this country, we will have a presidentially appointed, Senate-confirmed United States attorney.

GONZALES:

I think a United States attorney who I view as the leader, law enforcement leader, my representative in the community -- I think he has greater imprimatur of authority, if in fact that person's been confirmed by the Senate.

FEINSTEIN:

Now, let me get at where I'm going. How many United States attorneys have been asked to resign in the past year?

GONZALES:

Senator, you know, you're asking me to get into a public discussion about personnel...

FEINSTEIN:

No, I'm just asking you to give me a number. That's all. I'm asking you to give me a number. I'm asking...

GONZALES:

You know, I don't know the answer to that question. But we have been very forthcoming...

FEINSTEIN:

You didn't know it on Tuesday when I spoke with you. said you would find out and tell me.

GONZALES:

I'm not sure I said that, but...

FEINSTEIN:

Yes, you did, Mr. Attorney General.

GONZALES:

Well, if that's what I said, then that's what I will do. But we did provide to you a letter where we gave you a lot of information about...

FEINSTEIN:

I read the letter.

GONZALES:

OK.

FEINSTEIN:

It doesn't answer the questions that I have.

I know of at least six that have been asked to resign. I know that we amended the law in the Patriot Act and we amended it because if there were a national security problem, the attorney general would have the ability to move into the gap.

We did not amend it to prevent the confirmation process from taking place. And I'm very concerned. I've had two of them asked to resign in my state from major jurisdictions with major cases ongoing, with substantially good records as prosecutors.

And I'm very concerned, because, technically, under the Patriot Act, you can appoint someone without confirmation for the remainder of the president's term. I don't believe you should do that. We are going to try to change the law back.

GONZALES:

Senator, may I just say that I don't think there was any evidence that is what I'm trying to do. In fact, to the contrary, the evidence is quite clear that what we're trying to do is ensure that for the people in each of these respective districts we have the very best possible representative for the Department of Justice and that we are working to nominate people and that we are working with home state senators to get U.S. attorneys nominated.

So the evidence is just quite contrary to what your possibly suggesting.
Let me just say...

FEINSTEIN:

Do you deny that you have asked -- your office has asked United States attorneys to resign in the past year?

GONZALES:

Senator, that...

FEINSTEIN:

Yes or no?

GONZALES:

Yes.

No, I don't deny that. What I'm saying is -- but that happens during every administration during different periods for different reasons.

And so the fact that that's happened, quite frankly, some people should view that as a sign of good management. What we do is we make an evaluation about the performance of individuals, and I have a responsibility to the people in your district that we have the best possible people in these positions.

And that's the reason why changes sometimes have to be made, although there are a number of reasons why changes get made and why people leave on their own.

I think I would never, ever make a change in 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.

FEINSTEIN:

Well, let me just say one thing. I believe very strongly that these positions should come to this committee for confirmation.

GONZALES:

They are, Senator.

FEINSTEIN:

I believe very strongly we should have the opportunity...

GONZALES:

I agree with you.

FEINSTEIN:

... to answer (sic) questions about...

GONZALES:

I agree with you.

FEINSTEIN:

And I have been asked by another senator to ask this question, and I will: Was there any other reason for asking Bud Cummings of Arkansas to resign other than the desire to put in Tim Griffin?

GONZALES:

Senator, again, I'm not going to get into a public discussion about the merits or not with respect to personnel decisions.

I will say that I've had two conversations -- one as reconvened, I think, yesterday -- with a senator from Arkansas about this issue. He and I are in a dialogue. We are -- I am consulting with the home state senator so he understands what's going on and the reasons why, and working with him to try to get this thing resolved; to make sure for his benefit, for the benefit of the Department of Justice that we have the best possible person manning that position.

Article excerpt written by former Attorney General Griffin Bell

I thought you may be interested in the following article excerpt written by former Attorney General Griffin Bell (under President Jimmy Carter) in the Journal of Law & Politics.....

.....The major concern of the Attorney General in relation to U.S. Attorneys is to see to it that the government is represented effectively in every district by competent attorneys of integrity who are responsive to policies formulated by the Attorney General. The best way to achieve this is for the Attorney General to be able to select such persons and to have them serve only as long as they perform effectively and carry out those policies.

Reasonable minds, all equally dedicated to improving the process, can differ as to what method would produce the best results. In our view, placing the appointing power in the President alone or in the Attorney General alone would probably be an improvement over the present process. All things considered, however, we believe that the method most likely to produce the best results in the long run is to place the power of appointment and removal of U.S. Attorneys solely in the Attorney General. This method seems more promising than any other to assure high quality in the appointees, to minimize the stigma of political patronage surrounding these appointments, and to foster effective departmental management.

This conclusion rests on the legal and practical realities of the situation. ... the Attorney General discharges a large part of that responsibility ["take care that the laws be executed faithfully"]

through the ninety-four U.S. Attorneys throughout the country. They must be persons in whom the Attorney General has complete confidence and who in turn are responsible to the Attorney General alone. U.S. Attorneys are major arms of the executive branch, and they should be entirely accountable to the constitutionally and statutorily ordained superior executive officers. Giving the Attorney General the power to hire and fire these subordinates provides the best guarantee of consistent and effective administration and enforcement of federal laws.

Los Angeles Times editorial

January 26, 2007

The rumor bill

Sen. Dianne Feinstein's concerns about the departure of a high-profile U.S. attorney are premature.

IT'S NEVER A good idea to write legislation in response to a rumor, yet that's exactly what Sen. Dianne Feinstein appears to have done in the case of Carol Lam. Lam is the U.S. attorney in San Diego who oversaw the prosecution of former Rep. Randy "Duke" Cunningham, who pleaded guilty to receiving \$2.4 million in bribes from military contractors and evading more than \$1 million in taxes. Lam is one of half a dozen U.S. attorneys, including one in San Francisco, who are stepping down.

Feinstein at least acknowledges that she is responding to a rumor that Lam is being forced out not because of policy or personality differences with her superiors but because she is preparing other cases that might ruffle influential feathers. Lam's office has been investigating a politically connected defense contractor who was described as an unindicted co-conspirator in the Cunningham case.

This conspiracy theory has another strand: a suddenly controversial provision in the Patriot Act that allows the attorney general to name an acting U.S. attorney who can serve until the Senate confirms a new nominee. Feinstein has proposed a bill that would restore the previous arrangement, in which local federal judges named U.S. attorneys on an interim basis.

The Justice Department persuasively argues that it hasn't abused its new authority to bypass the usual Senate confirmation process. Even after they are confirmed by the Senate, U.S. attorneys still serve at the president's pleasure, and they can be removed if they are underperforming or if their priorities conflict with the administration's.

A further problem with the conspiracy theory is that it is not easy, as even Watergate demonstrated, for an administration to stymie a criminal investigation. If the Bush administration has been scheming to prevent the prosecution of prominent Republicans, it has been remarkably unsuccessful: Just ask Cunningham, former Rep. Bob Ney or I. Lewis "Scooter" Libby.

Where politics undeniably plays a role — and not just in this administration — is in the selection of U.S. attorneys, who often are prominent members of the president's party. Yet precisely because these positions are political plums, professionals in the Justice Department and the FBI traditionally exert huge influence in prosecution decisions. Those same professionals are likely to blow the whistle on improper interference.

Feinstein and other senators certainly should keep their ears pricked for any such alarm. They also should press Atty. Gen. Alberto R. Gonzales to explain the personnel changes (in closed session if necessary) and to abide by his commitment to the Judiciary Committee that the names of new U.S. attorneys be submitted expeditiously to the Senate. But cries of a conspiracy are premature, and so is Feinstein's legislation.

The Pot Calling the Kettle "Interim"

Democrats with short memories rail about Bush's removal of U.S. attorneys.

By Andrew C. McCarthy

In lambasting the Bush administration for politicizing the appointment of the nation's United States attorneys, Democrats may be on the verge of redefining *chutzpah*.

The campaign is being spearheaded on the Judiciary Committee by Senator Dianne Feinstein. She contends that at least seven U.S. attorneys — tellingly, including those for two districts in her home state — have been "forced to resign without cause." They are, she further alleges, to be replaced by Bush appointees who will be able to avoid Senate confirmation thanks to a "little known provision" of the Patriot Act reauthorization law enacted in 2006.

Going into overdrive, Feinstein railed on the Senate floor Tuesday that "[t]he public response has been shock. Peter Nunez, who served as the San Diego U.S. Attorney from 1982 to 1988 has said, 'This is like nothing I've ever seen in my 35-plus years.'"

Yes, the public, surely, is about as "shocked, shocked" as Claude Raines's Captain Renault, and one is left to wonder whether Mr. Nunez spent the 1990s living under a rock.

One of President Clinton's very first official acts upon taking office in 1993 was to fire *every* United States attorney then serving — except one, Michael Chertoff, now Homeland Security secretary but then U.S. attorney for the District of New Jersey, who was kept on only because a powerful New Jersey Democrat, Sen. Bill Bradley, specifically requested his retention.

Were the attorneys Clinton fired guilty of misconduct or incompetence? No. As a class they were able (and, it goes without saying, well-connected). Did he shove them aside to thwart corruption investigations into his own party? No. It was just politics, plain and simple.

Patronage is the chief spoil of electoral war. For a dozen years, Republicans had been in control of the White House, and, therefore of the appointment of all U.S. attorneys. President Clinton, as was his right, wanted his party's own people in. So he got rid of the Republican appointees and replaced them with, predominantly, Democrat appointees (or Republicans and Independents who were acceptable to Democrats).

We like to think that law enforcement is not political, and for the most part — the day-to-day part, the proceedings in hundreds of courtrooms throughout the country — that is true. But appointments are, and have always been political. Does it mean able people are relieved before their terms are up? Yes, but that is the way the game is played.

Indeed, a moment's reflection on the terms served by U.S. attorneys reveals the emptiness of Feinstein's argument. These officials are appointed for four years, with the understanding that they serve at the

pleasure of the president, who can remove them for any reason or no reason. George W. Bush, of course, has been president for six years. That means every presently serving U.S. attorney in this country has been appointed or reappointed by this president.

That is, contrary to Clinton, who unceremoniously cashiered virtually all Reagan and Bush 41 appointees, the current President Bush can only, at this point, be firing *his own appointees*. Several of them, perhaps even all of them, are no doubt highly competent. But it is a lot less unsavory, at least at first blush, for a president to be rethinking his own choices than to be muscling out another administration's choices in an act of unvarnished partisanship.

Feinstein's other complaint, namely, that the Bush administration is end-running the Constitution's appointment process, which requires Senate confirmation for officers of the United States (including U.S. attorneys), is also unpersuasive.

As she correctly points out, the Patriot Act reauthorization did change prior law. Previously, under the federal code (Title 28, Section 546), if the position of district U.S. attorney became vacant, it could be filled for up to 120 days by an interim appointee selected by the attorney general. What would happen at the end of that 120-day period, if a new appointee (who would likely also be the interim appointee) had not yet been appointed by the president and confirmed by the senate? The old law said the power to appoint an interim U.S. attorney would then shift to the federal district court, whose appointee would serve until the president finally got his own nominee confirmed.

This was a bizarre arrangement. Law enforcement is exclusively an executive branch power. The Constitution gives the judiciary no role in executive appointments, and the congressional input is limited to senate confirmation. U.S. attorneys are important members of the Justice Department — the top federal law enforcement officers in their districts. But while the attorney general runs the Justice Department, U.S. attorneys work not for the AG but for the president. They are delegated to exercise executive authority the Constitution reposes only in the president, and can thus be terminated at will by the president. Consequently, having the courts make interim appointments made no practical sense, in addition to being constitutionally dubious.

The Patriot Act reauthorization remedied this anomaly by eliminating both the role of the district courts and the 120-day limit on the attorney general's interim appointments. The interim appointee can now serve until the senate finally confirms the president's nominee.

Is there potential for abuse here? Of course — there's no conceivable appointments structure that would not have potential for abuse. Like it or not, in our system, voters are the ultimate check on political excess.

So yes, a president who wanted to bypass the Constitution's appointments process could fire the U.S. attorney, have the attorney general name an interim appointee, and simply refrain from submitting a nominee to the senate for confirmation. But we've also seen plenty of abuse from the Senate side of appointments — and such abuse was not unknown under the old law. Though the president can nominate very able U.S. attorney candidates — just as this president has also nominated very able *judicial* candidates — those appointments are often stalled in the confirmation process by the senate's refusal to act, its imperious blue-slip privileges (basically, a veto for senators from the home state of the nominee), and its filibusters.

But that's politics. The president tries to shame the senate into taking action on qualified nominees. Senator Feinstein, now, is trying to shame the White House — making sure the pressure is on the

administration not to misuse the Patriot Act modification as an end-around the confirmation process.

Why is Feinstein doing this? After all, the next president may be a Democrat and could exploit to Democratic advantage the same perks the Bush administration now enjoys.

Well, because Feinstein is not going to be the next president. She is still going to be a senator and clearly intends to remain a powerful one. Aside from being enshrined in the Constitution, the confirmations process is a significant source of senatorial power no matter who the president is. Practically speaking, confirmation is what compels a president of either party to consult senators rather than just peremptorily installing the president's own people. Over the years, it has given senators enormous influence over the selection of judges and prosecutors in their states. Feinstein does not want to see that power diminished.

It's worth noting, however, that the same Democrats who will be up in arms now were mum in the 1990s. President Clinton not only fired U.S. attorneys sweepingly and without cause. He also appointed high executive-branch officials, such as Justice Department civil-rights division chief Bill Lann Lee, on an "acting" basis even though their positions called for senate confirmation. This sharp maneuver enabled those officials to serve even though it had become clear that they would never be confirmed.

Reporting on Lee on February 26, 1998, the *New York Times* noted: "Under a Federal law known as the Vacancy Act, a person may serve in an acting capacity for 120 days. But the [Clinton] Administration has argued that another Federal law supercedes the Vacancy Act and gives the Attorney General the power to make temporary law enforcement assignments of any duration."

What the Clinton administration dubiously claimed was the law back then is, in fact, the law right now. Yet, for some strange reason — heaven knows what it could be — Senator Feinstein has only now decided it's a problem. Like the public, I'm shocked.

— *Andrew C. McCarthy is a senior fellow at the Foundation for the Defense of Democracies.*

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

From: Oprison, Christopher G.
Sent: Friday, February 09, 2007 11:56 AM
To: Fielding, Fred F.; Kelley, William K.
Cc: Bakke, Mary Beth
Subject: Senate Efforts re: AG Appointment authority

Gentlemen, two articles of interest below on effort in the Senate to eliminate recently-enacted authority that allowed AG to appoint, for unlimited duration, US Attorneys to fill vacancies. I spoke with the Chief of Staff in OLP recently about developments on this issue. The DAG provided testimony on Tuesday (I believe) to the Senate Judiciary Committee on this issue. OLP is apparently now working on suggested alternative amendments to an outright elimination of this authority. Based solely on my conversation with the Chief of Staff, those suggestions include:

- (1) Retaining AG appointment authority, but limited interim appointment to 210 days, which period is tolled during the time a nomination for permanent replacement is on the floor
- (2) At expiration of 210 days, interim appointment expires. Chief Judge of district then has authority to retain or replace the current interim. According to OLP, the recommendation is that the Chief Judge works in consultation with the AG, but that the Chief Judge has the final say.
- (3) If the AG-appointed interim is also the nominee offered up for Senate confirmation and should the nominee NOT be confirmed, he must resign as interim.

Link to articles and text included in this email:

<http://www.thehill.com/thehill/export/TheHill/News/Frontpage/020907/attorneys.html>

Senate Democrats condemn policy of placing unconfirmed U.S. attorneys

By [Elana Schor](#)

Senate Democrats plan to bring legislation to the floor next week that would rein in the Bush administration's power to appoint U.S. attorneys without Senate confirmation, an increasingly bipartisan concern as the number of abruptly dismissed prosecutors grew to eight.

Senate leaders announced their plans hours after the Judiciary Committee approved a bill reversing a little-noticed provision of last year's Patriot Act reauthorization that allows the Justice Department to sidestep Senate approval in naming interim U.S. attorneys. Three Judiciary Republicans backed the bill, signaling heightened concerns on both sides of the aisle at the pattern of attorney axe-ings.

"We have a new topic: It's called 'crony-gate,'" Senate Majority Leader Harry Reid (D-Nev.) told reporters yesterday, vowing to "do everything I can to get this to the floor."

Nevada's U.S. attorney, Daniel Bogden, a Bush appointee whose actions have been questioned in a civil suit against a key supporter of Gov.-elect Jim Gibbons (R-Nev.), was asked to step down just

before Christmas. The home-state U.S. attorney of Sen. Patty Murray (Wash.), Democratic Caucus secretary, late Wednesday revealed that the Justice Department also had asked for his resignation.

"This has come home for me in a very personal way," Murray said, adding that her state's departed attorney is also a Republican.

Justice has strongly defended the dismissals, with Deputy Attorney General Paul McNulty telling Judiciary this week that the administration will seek formal Senate confirmation for each of the new prosecutors. But two removals in particular, those of San Diego-based U.S. Attorney Carol Lam and Arkansas U.S. Attorney Bud Cummins, have sparked Democrats' ire.

Senate Majority Whip Dick Durbin (D-Ill.) noted colleague Mark Pryor's (D-Ark.) uncharacteristic alarm at the naming of Timothy Griffin, a former staffer in White House adviser Karl Rove's office and onetime national GOP opposition research director, to replace Cummins.

"Mark Pryor is a mild-mannered, soft-spoken senator, unlike some of us, but he's righteously upset," Durbin said.

The revision in the Patriot Act rewrite was intended for use in national-security emergencies, when U.S. attorneys might need quick appointment to pursue terrorism suspects. Yet GOP lawmakers have backed administration suggestions that Lam was removed amid complaints about her record of prosecuting immigration-related cases.

An October 2005 letter to Attorney General Alberto Gonzales from 19 California House Republicans blasted Lam's office for a "lax prosecutorial standard" in only prosecuting apprehended illegal immigrants who have two felony convictions on their records. Rep. Darrell Issa (R-Calif.), a signatory of that letter, earlier chastised Lam for amassing "an appalling record of refusal to prosecute even the worst criminal alien offenders."

Sen. Dianne Feinstein (D-Calif.), who first raised concerns that Lam will leave her post next week unable to complete her corruption probe of imprisoned former Rep. Randy "Duke" Cunningham (R-Calif.), inquired in June about the low number of immigration prosecutions in Lam's district.

One House GOP aide contended that the bipartisan concern over Lam clouds Democratic attempts to link her dismissal to the Cunningham probe.

"Democrats don't want to talk about the fact that they actually had

substantive concerns with this particular U.S. attorney," the aide said.

House Democrats aim to move the Senate's bill quickly through the process, holding a hearing in the Judiciary panel's subcommittee of jurisdiction during the first week of March and a markup soon after, Rep. Howard Berman (D-Calif.) said in a statement yesterday.

Meanwhile, Sen. John Ensign (R-Nev.) has been asked to recommend candidates to fill the open Nevada attorney's post, but Reid said he had no knowledge of talks on Bogden's replacement.

"Maybe it's somebody from Scooter Libby's office," he quipped.

Susan Crabtree contributed to this report.

* * * * *

http://www.washingtonpost.com/wp-dyn/content/article/2007/02/08/AR2007020801867_pf.html

Fired Prosecutor Disputes Justice Dept. Allegation

He Calls Testimony 'Unfair'; Meanwhile, Senate Panel Votes to Limit Attorney General's Power

By Dan Eggen
Washington Post Staff Writer
Friday, February 9, 2007; A06

A recently fired U.S. attorney based in Seattle said yesterday that he was told of no performance problems when he was asked to resign, and he called critical remarks by a top Justice Department official "unfair" and inaccurate.

The comments by former U.S. attorney John McKay add to a growing tide of criticism of the Justice Department's decision to fire seven top prosecutors without explanation, and came on the same day the Senate Judiciary Committee voted 13 to 6 to limit the attorney general's power to appoint replacements.

McKay said in an interview that his Seattle office received glowing reviews as recently as last fall, when an intensive Justice Department audit heaped praise on McKay and his staff.

McKay challenged testimony this week by Deputy Attorney General Paul J. McNulty, who told the Senate panel that McKay and five other Republican-appointed U.S. attorneys were forced to resign for "performance-related" reasons.

"That is unfair," McKay said. "That reflects on my former colleagues in the office and the good work that we did, and I know that's not true."

McKay is the third U.S. attorney to speak publicly about his dismissal. Daniel G. Bogden of Nevada told the Las Vegas Review-Journal that he was given no explanation for being forced out and that he had not been told of any problems with his performance.

McNulty's testimony Tuesday also included an admission that the chief prosecutor in Little Rock, Ark., was fired to make way for GOP stalwart J. Timothy Griffin, a protege of presidential adviser Karl Rove and former researcher for the Republican National Committee.

The firings have angered lawmakers in both parties and have rapidly evolved into a serious political problem for the Justice Department. Yesterday's vote by the Judiciary Committee included approval from three Republicans: Sens. Arlen Specter (Pa.), Charles E. Grassley (Iowa) and Orrin G. Hatch (Utah).

The measure would repeal a provision in last year's USA Patriot Act reauthorization law that gave Attorney Gen. Alberto R. Gonzales the authority to appoint interim prosecutors for indefinite terms. The new legislation would return to the previous system, under which the attorney general appoints a replacement for 120 days and district courts appoint an interim U.S. attorney if a permanent one is not named in that time.

Chairman Patrick J. Leahy (D-Vt.) said the legislation is necessary to ensure Senate oversight and limit the "politicization of U.S. attorneys offices."

Justice Department spokeswoman Tasia Scolinos said that allowing Gonzales to appoint interim prosecutors is "good government and constitutionally sound."

"We are disappointed by congressional efforts to restrict our ability to appoint our own employees for temporary periods of time while a permanent nominee is selected," Scolinos said.

The House Judiciary Committee plans to hold hearings on similar legislation next month. They may include testimony from some of the fired prosecutors.

The leader of the House Democratic caucus, Rep. Rahm Emanuel (Ill.), has called on Gonzales to appoint one of the fired prosecutors, Carol S. Lam of San Diego, as an outside counsel to continue the corruption investigation related to former representative Randy "Duke" Cunningham (R-Calif.), who pleaded guilty to accepting \$2.4 million in bribes in 2005 and is serving a sentence of as much as eight years. Scolinos said career prosecutors will be able to continue handling the case while a replacement is chosen.

In addition to Lam, McKay and Bogden, three other U.S. attorneys were told on Dec. 7 to resign: Paul K. Charlton in Arizona; David C. Iglesias in New Mexico; and Kevin Ryan in San Francisco. A seventh U.S. attorney, Bud Cummins in Little Rock, was notified he was being removed last summer.

McKay said he was called Dec. 7 by Michael A. Battle, head of the Executive Office of U.S. Attorneys, who only months before had sent him a congratulatory letter for the laudatory report issued by the Justice Department audit team. He said Battle told him to resign by the end of January.

"When I was composed enough to ask him why, he told me he couldn't answer any of my questions," said McKay, who has accepted a teaching position at Seattle University Law School. "I was immediately so surprised. He said nothing about performance issues or management or anything else."

McKay said that four days after Battle's call, the White House counsel's office also informed him that he was not among a group of three finalists for a federal judgeship in Washington state. He declined to say whether he believed political considerations went into his dismissal.

McKay angered other Republicans when he declined to intervene in a ballot dispute in the 2004 Washington governor's race. His brother, Mike McKay, served as U.S. attorney in Seattle under President George H.W. Bush.

In a highly unusual move, the chief judge of the federal court in Seattle publicly came to John McKay's defense.

"We were dismayed to see that the Justice Department was suggesting there was something wrong with his performance as a United States attorney," said Judge Robert Lasnik, a Clinton-era appointee who said he was speaking for all the judges on the Seattle court. "We unanimously agreed that he was absolutely superb."

Scolinos declined to comment on McKay's remarks.

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

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

From: Looney, Andrea B.
Sent: Friday, February 09, 2007 12:56 PM
To: Kelley, William K.
Subject: Fw: US atty paragraph

FYI

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

From: Looney, Andrea B.
To: Fiddelke, Debbie S.
Sent: Fri Feb 09 11:32:36 2007
Subject: US atty paragraph

Am writing from my bberry so hope it is not too sloppy . . .
On Thursday, the Senate Judiciary Committee approved a bill 13-6 that would limit the Attorney General's ability to make interim U.S. Attorney appointments that he gained in the Patriot Act. Senators Specter (R, PA), Hatch (R, UT) and Grassley (R, IA) joined Democrats and supported passage. The bill would permit the Attorney General to fill a U.S. attorney vacancy for 120 days, with a new limiting provision requiring that the chief federal judge in a district assuming the interim appointment authority thereafter if a nominee had not been confirmed yet. Senator Feinstein (D, CA) sponsored the legislation due to her disapproval of the dismissal of 7 US attorneys in December of last year.

Several Judiciary Committee Republicans said they agreed that a change was necessary to ensure that the president's selections faced Senate confirmation. Senate Majority Leader Reid (D, NV), said he intends to bring the bill to the floor as soon as next week. Republicans, led by Senator Kyl (R, AZ) may slow floor passage unless Democrats are willing to negotiate on taking judges out of the appointment process entirely since they believe such a role for the judiciary is a violation of the separation of powers constitutional requirement.

From: Sara Taylor
Sent: Monday, February 12, 2007 5:43 PM
To: Scott Jennings
Subject: FW: L.A.

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Monday, February 12, 2007 5:40 PM
To: Sara Taylor
Subject: RE: L.A.

thx
there is some urgency
if collins can get recommended, then we would consider putting our L.A. 2nd choice, O'Brien, in as interim in San Diego
but, we need to know by Thu at the latest -- that's the SD USA's last day

From: Sara Taylor [mailto:st@gwb43.com]
Sent: Monday, February 12, 2007 5:30 PM
To: Sampson, Kyle; Kelley, William K.
Cc: Scott Jennings
Subject: RE: L.A.

let me get a download from Karl.

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Monday, February 12, 2007 5:03 PM
To: Kelley, William K.; Sara Taylor
Subject: L.A.
Importance: High

At our last JSC, Karl volunteered to talk to Gerry Parsky about the need for the selection commission in Los Angeles to recommend a third possible candidate for U.S. Attorney. In particular, Karl was going to talk to Gerry about getting the commission to recommend **Dan Collins**. Any word on this?

Kyle Sampson
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kyle.sampson@usdoj.gov

From: Perino, Dana M.
Sent: Tuesday, February 13, 2007 7:19 AM
To: Bartlett, Dan; Sullivan, Kevin F.; Snow, Tony
Subject: FW: McClatchy - 5 ousted U.S. attorneys received positive job evaluations

I didn't get back anything from counsel's office on this yesterday – could you bring it up at senior staff? I think this is one of those odd-ball questions that could either come up at the briefing or possibly even the press conference.

From: White House News Update
Sent: Tuesday, February 13, 2007 6:35 AM
To: Perino, Dana M.
Subject: McClatchy - 5 ousted U.S. attorneys received positive job evaluations

5 ousted U.S. attorneys received positive job evaluations

By Marisa Taylor, McClatchy Newspapers

WASHINGTON - Although the Bush administration has said that six U.S. attorneys were fired recently in part because of "performance related" issues, at least five of them received positive job evaluations before they were ordered to step down.

Attorney General Alberto Gonzales, using authority he gained in March from a little-noticed provision of the Patriot Act, has appointed interim U.S. attorneys from the Bush administration's inner circle. The firings and appointments have raised concerns that Gonzales is politicizing the process.

Supporters of the U.S. attorneys and Justice Department officials familiar with the job evaluations suggested in interviews that top Justice Department officials may have exaggerated the role job performance played in the firings.

A Justice Department official who spoke on behalf of the administration said the dispute might simply be a matter of "semantics."

"Performance-related can mean many things," said the official, who asked to remain anonymous because the Privacy Act bars officials from discussing personnel decisions. "Policy is set at a national level. Individual U.S. attorneys around the country can't just make up their policy agenda."

Performance reviews of U.S. attorneys are conducted every three to four years by a team of experienced Justice Department officials, who interview judges, staff members, community leaders and federal agents. In some of the five cases, the reviewers made recommendations for improvements, but overall their assessments were positive, Justice Department officials said.

For instance, Daniel Bogden, the U.S. attorney in Nevada, was described in his last job performance evaluation in 2003 as being a "capable" leader who was highly regarded by the federal judiciary and investigators.

"He didn't get any dings," said a Justice Department official with knowledge of the review. "The overall

To: Brosnahan, Jennifer R.; McIntosh, Brent J.; Seidel, Rebecca
Cc: Scott-Finan, Nancy; Gibbs, Landon M.
Subject: RE: DAG testimony on USA firings issue

Correct - Landon forwarded them, I believe

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

From: Brosnahan, Jennifer R.
Sent: Friday, February 02, 2007 3:45 PM
To: McIntosh, Brent J.; Rebecca Seidel
Cc: 'nancy.scott-finan'; O'Prison, Christopher G.
Subject: RE: DAG testimony on USA firings issue

Chris reviewed and submitted comments, I believe...

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

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

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

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

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

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

DAG McNulty's testimony on USA issue and Views letter

From: Scott-Finan, Nancy
Sent: Friday, February 02, 2007 3:50 PM
To: Green, Richard E.; Seidel, Rebecca; Oprison, Christopher G.
Cc: Blackwood, Kristine; Simms, Angela M.
Subject: RE: DAG McNulty's testimony on USA issue and Views letter

Angela and Richard,
We understand from Chris Oprison that WH Counsel has submitted comments. We have not yet received them. Thanks.

From: Green, Richard E.
Sent: Friday, February 02, 2007 12:23 PM
To: Seidel, Rebecca
Cc: Scott-Finan, Nancy; Blackwood, Kristine; Simms, Angela M.
Subject: RE: DAG McNulty's testimony on USA issue and Views letter

Angie and Kristine are talking to each other. I believe we are close on the views letter; we just need to get Justice response on a handful of what I would say are relatively minor comments. On the testimony, we have one key office to hear from. (We set a 1:00 today deadline when your guys asked us to try to clear by COB Friday. We're seeing if we can get comments sooner from a couple of key offices.) What you need to know is that we got the letter on Tuesday at 6:45 p.m. (which means effectively Wednesday morning) and the testimony on Wednesday at 8:45 p.m. (which means effectively Thursday morning). We didn't wait for the testimony to circulate the letter or that would not have happened until Thursday (yesterday)! If we had actually gotten these materials on Monday and Tuesday, we might actually be farther along or done at this point.

From: Seidel, Rebecca
Sent: Friday, February 02, 2007 9:44 AM
To: Green, Richard E.; Simms, Angela M.
Cc: Scott-Finan, Nancy; Blackwood, Kristine
Subject: DAG McNulty's testimony on USA issue and Views letter
Importance: High

Where are we on clearance? The DAG needs to take his testimony home for the weekend and we need to give him his briefing book at 2pm. Views letter on the bill and testimony are substantially similar so we asked earlier this week that they be circulated together as it would be the same reviewers and substantially the same material.

I believe the views letter was sent to OMB on Monday and the Testimony Tues. Please tell me asap if there is any hold up and where it is so we can affirmatively reach out to resolve asap? Thanks.

From: Braunstein, Todd F.
Sent: Friday, February 02, 2007 1:37 PM
To: Simms, Angela M.
Subject: RE: (Follow Up) [AMS-110-15] JUSTICE Testimony on S.214 - the Preserving United States Attorney Independence Act of 2007

OK – cleared.

From: Simms, Angela M.
Sent: Friday, February 02, 2007 12:50 PM
To: Braunstein, Todd F.
Subject: (Follow Up) [AMS-110-15] JUSTICE Testimony on S.214 - the Preserving United States Attorney Independence Act of 2007

Todd,

Below are Justice's responses to the comments you made on its testimony regarding S.214. Please let me know if you continue to have concerns.

Angie
5-

Justice Comments:

1. Schumer is chairing the hearing, so he is chairman for the day and we believe it is appropriate to address him as such consistent with Senate custom.
2. Comment on page 2 - " Both by the Senate . . . " Is DOJ really in position to speak for the Senate? Surely the observation is correct, but it may appear presumptuous to some Senators for the Administration to state it.
We need to leave that in because the Senators have raised the issue and are saying that we are using the interim appointments to avoid Senate confirmation.
3. We can take the edits on p. 5
4. We have taken out the "oddity" phrase.
5. p. 8 - not pushing the argument about judges not being appropriate to pick interim USAs: We feel very strongly about that paragraph; it is key to our argument. Also, there is a distinction between Article III judges, who are nominated by the Executive Branch but subject to confirmation by the Senate and have life tenure, and Article II judges (e.g., bankruptcy judges, immigration judges, etc), who are appointed by the Executive Branch and not Congressionally confirmed. US Attorneys, although they are subject to Senate confirmation, serve at the pleasure of the President and do not have a right to hold their position once their term is up or the Administration changes. So the "beholden to the appointing authority" argument does not apply to Article III judges.

From: Blackwood, Kristine
Sent: Friday, February 02, 2007 12:46 PM
To: Simms, Angela M.
Cc: Scott-Finan, Nancy; Seidel, Rebecca; Seidel, Rebecca; Scott-Finan, Nancy; Green, Richard E.
Subject: RE: (Partial) Passback: [AMS-110-15] JUSTICE Testimony on S.214 - the Preserving United States Attorney Independence Act of 2007

Angie,

To elaborate --

1. Schumer is chairing the hearing, so he is chairman for the day and we believe it is appropriate to address him as such consistent with Senate custom.
 2. Comment on page 2 - "Both by the Senate . . ." Is DOJ really in position to speak for the Senate? Surely the observation is correct, but it may appear presumptuous to some Senators for the Administration to state it.
We need to leave that in because the Senators have raised the issue and are saying that we are using the interim appointments to avoid Senate confirmation.
 3. We can take the edits on p. 5
 4. We have taken out the "oddity" phrase.
5. p. 8 - not pushing the argument about judges not being appropriate to pick interim USAs: We feel very strongly about that paragraph; it is key to our argument. Also, there is a distinction between Article III judges, who are nominated by the Executive Branch but subject to confirmation by the Senate and have life tenure; and Article II judges (e.g., bankruptcy judges, immigration judges, etc), who are appointed by the Executive Branch and not Congressionally confirmed. US Attorneys, although they are subject to Senate confirmation, serve at the pleasure of the President and do not have a right to hold their position once their term is up or the Administration changes. So the "beholden to the appointing authority" argument does not apply to Article III judges.

From: Blackwood, Kristine
Sent: Friday, February 02, 2007 11:44 AM
To: Angela_M_Simms
Cc: Scott-Finan, Nancy; Seidel, Rebecca
Subject: FW: (Partial) Passback: [AMS-110-15] JUSTICE Testimony on S.214 - the Preserving United States Attorney Independence Act of 2007

Hi Angie,

We are not able to accept any of the DPC comments.

From: Simms, Angela M.
Sent: Friday, February 02, 2007 11:15 AM
To: Blackwood, Kristine

Cc: Green, Richard E.

Subject: (Partial) Passback: [AMS-110-15] JUSTICE Testimony on S.214 - the Preserving United States Attorney Independence Act of 2007

Kristine,

Attached are comments from DPC staff regarding S.214. However, this is a partial passback. I am still waiting to hear from at least one more office before I can provide a complete passback. Please let me know Justice's response to the comments included in this e-mail.

Angie
202-395-

DAG McNulty's testimony on USA issue and Views letter

From: Blackwood, Kristine
Sent: Friday, February 02, 2007 12:24 PM
To: Green, Richard E.; Seidel, Rebecca
Cc: Scott-Finan, Nancy; Simms, Angela M.
Subject: RE: DAG McNulty's testimony on USA issue and Views letter

FYI Angie cleared the letter, so we're just dealing with the testimony at this point.

From: Green, Richard E.
Sent: Friday, February 02, 2007 12:23 PM
To: Seidel, Rebecca
Cc: Scott-Finan, Nancy; Blackwood, Kristine; Simms, Angela M.
Subject: RE: DAG McNulty's testimony on USA issue and Views letter

Angie and Kristine are talking to each other. I believe we are close on the views letter; we just need to get Justice response on a handful of what I would say are relatively minor comments. On the testimony, we have one key office to hear from. (We set a 1:00 today deadline when your guys asked us to try to clear by COB Friday. We're seeing if we can get comments sooner from a couple of key offices.) What you need to know is that we got the letter on Tuesday at 6:45 p.m. (which means effectively Wednesday morning) and the testimony on Wednesday at 8:45 p.m. (which means effectively Thursday morning). We didn't wait for the testimony to circulate the letter or that would not have happened until Thursday (yesterday)! If we had actually gotten these materials on Monday and Tuesday, we might actually be farther along or done at this point.

From: Seidel, Rebecca
Sent: Friday, February 02, 2007 9:44 AM
To: Green, Richard E.; Simms, Angela M.
Cc: Scott-Finan, Nancy; Blackwood, Kristine
Subject: DAG McNulty's testimony on USA issue and Views letter
Importance: High

Where are we on clearance? The DAG needs to take his testimony home for the weekend and we need to give him his briefing book at 2pm. Views letter on the bill and testimony are substantially similar so we asked earlier this week that they be circulated together as it would be the same reviewers and substantially the same material.

I believe the views letter was sent to OMB on Monday and the Testimony Tues. Please tell me asap if there is any hold up and where it is so we can affirmatively reach out to resolve asap? Thanks.

DAG McNulty's testimony on USA issue and Views letter

From: Green, Richard E.
Sent: Friday, February 02, 2007 12:23 PM
To: 'Seidel, Rebecca'
Cc: 'Scott-Finan, Nancy'; 'Blackwood, Kristine'; Simms, Angela M.
Subject: RE: DAG McNulty's testimony on USA issue and Views letter

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Sent: Friday, February 02, 2007 9:44 AM
To: Green, Richard E.; Simms, Angela M.
Cc: Scott-Finan, Nancy; Blackwood, Kristine
Subject: DAG McNulty's testimony on USA issue and Views letter
Importance: High

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Sent: Friday, February 02, 2007 11:44 AM
To: Simms, Angela M.
Cc: Scott-Finan, Nancy; Seidel, Rebecca
Subject: FW: (Partial) Passback: [AMS-110-15] JUSTICE Testimony on S.214 - the Preserving United States Attorney Independence Act of 2007

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To: Blackwood, Kristine
Cc: Green, Richard E.
Subject: (Partial) Passback: [AMS-110-15] JUSTICE Testimony on S.214 - the Preserving United States Attorney Independence Act of 2007

Kristine,

Attached are comments from DPC staff regarding S.214. However, this is a partial passback. I am still waiting to hear from at least one more office before I can provide a complete passback. Please let me know Justice's response to the comments included in this e-mail.

Angie
202-395-

From: Braunstein, Todd F.
Sent: Friday, February 02, 2007 10:18 AM
To: Simms, Angela M.
Cc: Jacob, Greg
Subject: RE: [AMS-110-15] JUSTICE Testimony on S.214 - the Preserving United States Attorney Independence Act of 2007
Attachments: ODAGMcNultyTestimonySJC2-6-07PoliticizationofUSAAttorneys with TFB comments.doc

See attached.

From: Simms, Angela M.
Sent: Thursday, February 01, 2007 11:50 AM
To: 'DHS'
Cc: Jukes, James J.; Green, Richard E.; Bopp, Michael D.; Haun, David J.; Boden, James; Page, Benjamin J.; Brown, Charles H.; Simpson, Diana C.; Chase, Edward H.; DL-OVP-LRM; DL-WHO-WHGC-LRM; Braunstein, Todd F.; Jacob, Greg; Stewart, Margaret B.; Looney, Andrea B.; Gans, Jon; Knepper, John G.; Luczynski, Kimberley S.; Hermann, Adam J.; Shea, Robert J.; Bullock, Katja
Subject: [AMS-110-15] JUSTICE Testimony on S.214 - the Preserving United States Attorney Independence Act of 2007

DEADLINE: Time: 1 p.m. Date: Feb 2, 2007

COMMENTS: Attached for your review is draft Justice testimony for a February 6, 2006, hearing before the Senate Judiciary Committee, regarding S.214, and issues related to the hiring and firing of U.S. Attorneys. The content of this testimony is similar to the views letter circulated January 31, 2007 (LRM AMS-110-13). Please provide any comments on the testimony by 1 p.m. tomorrow, February 2nd.

ATTACHMENTS:

LRM ID: AMS-110-15 EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: GREEN, RICHARD (for) Assistant Director for Legislative Reference
SUBJECT: [AMS-110-15] JUSTICE Testimony on S.214 - the Preserving United States Attorney Independence Act of 2007

OMB CONTACT: ANGELA SIMMS
E-Mail:
PHONE: (202) 395-
FAX: (202) 395-

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. By the deadline above, please reply

by e-mail or telephone, using the OMB Contact information above.

Thank you.



Department of Justice

STATEMENT

OF

**PAUL J. MCNULTY
DEPUTY ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE**

BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

CONCERNING

**“PRESERVING PROSECUTORIAL INDEPENDENCE:
IS THE DEPARTMENT OF JUSTICE
POLITICIZING THE HIRING AND FIRING
OF U.S. ATTORNEYS?”**

PRESENTED ON

FEBRUARY 6, 2007

**Testimony
OF**

**Paul J. McNulty
Deputy Attorney General
U.S. Department of Justice**

**Committee on the Judiciary
United States Senate**

**“Is the Department of Justice Politicizing the Hiring and Firing of U.S.
Attorneys?”**

February 6, 2007

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

I have often said that being a United States Attorney is one of the greatest jobs you can ever have. It is a privilege and a challenge—one that carries a great responsibility. As former Attorney General Griffin Bell said, U.S. Attorneys are “the front-line troops charged with carrying out the Executive’s constitutional mandate to execute faithfully the laws in every federal judicial district.” As the chief federal law-enforcement officers in their districts, U.S. Attorneys

Comment (b1): Is it proper to refer to Sen. Schumer as the Chairman, since this is a full committee hearing?

represent the Attorney General before Americans who may not otherwise have contact with the Department of Justice. They lead our efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families—including child pornography, obscenity, and human trafficking.

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

The Attorney General and I are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their offices effectively. It should come as no

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

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

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

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

Comment [b2]: Is DOJ really in position to speak for the Senate? Surely the observation is correct, but it may appear presumptuous to some Senators for the Administration to state it.

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

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

Deleted: one

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 U.S. Attorney 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 U.S. Attorney. It does not indicate an intention to avoid the confirmation process, as some have suggested.

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

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

Comment [b3]: Doesn't the executive branch appoint "officers" [i.e., judges] in the judicial branch? So is it fair to say that this is "odd"?

In most cases, of course, the district court simply appointed the Attorney General's choice as interim U.S. Attorney, revealing the fact that most judges recognized the importance of appointing an interim U.S. Attorney who enjoys the confidence of the Attorney General. In other words, the most important factor in the selection of past court-appointed interim U.S. Attorneys was the Attorney General's recommendation. By foreclosing the possibility of judicial appointment of interim U.S. Attorneys unacceptable to the Administration, last year's

amendment to Section 546 appropriately eliminated a procedure that created unnecessary problems without any apparent benefit.

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

Prosecutorial authority should be exercised by the Executive Branch in a unified manner, consistent with the application of criminal enforcement policy under the Attorney General. S.

Comment [b4]: I worry about pushing this argument too far because the very same arguments can be turned around and used to critique the President's power to appoint judges. (E.g., "judicial appointees would have authority for deciding cases where one of the parties is the very government to whom he or she was beholden for the appointment"). Won't insist on removing or changing this, but would ask DOJ to reconsider devoting even this much room to it.

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

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

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

From: Green, Richard E.
Sent: Friday, March 02, 2007 7:23 PM
To: Simms, Angela M.
Subject: FW: US Atty - ODAG Tstmny

Attachments: USAttys01.doc.doc



USAttys01.doc.doc
(79 KB)

additional language - sent to OMBGC, WHC, APC

AMS #10-37 → need to be - circulate bk new language

Let's make a judgement on Monday as to whether these changes warrant any action.

-----Original Message

From: Silas, Adrien
Sent: Friday, March 02, 2007 7:21 PM
To: Simms, Angela M.; Green, Richard E.
Subject: US Atty - ODAG Tstmny

Additional revisions to three paragraphs in the document to correct some facts. Please acknowledge receipt. Revised version of document is attached.

- >
1. 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.
 2. Two examples demonstrate the shortcomings of the previous system and the system contemplated in H.R. 580. During President Reagan's Administration, the district court appointed in the Southern District of West Virginia an interim U.S. Attorney who was neither a Justice Department employee nor an individual who had been subject of a FBI background review. The court-appointed U.S. Attorney, who had ties to a political party, sought access to law-enforcement sensitive investigative materials related to the office's most sensitive public corruption investigation, which was targeting a state-wide leader of the same party. The problem was that the interim U.S. Attorney had no clearances or had then undergone a background investigation so that the Attorney General and the Federal Bureau of Investigation could have complete confidence in the individual or her reasons for making inquiries into the case. The appointment forced the Department to remove the case files from the U.S. Attorney's office in order to protect the integrity of the investigation and prohibit the U.S. Attorney from making any additional inquiries into the case. In addition, the Department expedited a nomination for the permanent U.S. Attorney and with the extraordinary assistance of the Senate, he was confirmed to replace the court-appointed individual within a few weeks.

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

- working of WHC of so of when/when

- ~~is it his or~~

- Cal. Simpson

*cleared
3/5/07*

From: Simms, Angela M.
Sent: Friday, March 02, 2007 6:19 PM
To: 'CIA'; 'DEFENSE'; DL-HSC-LRM; *DHS*; DL-NSC-LRM; *ODM*; 'STATE'; 'TREASURY'
Cc: Jukes, James J.; Green, Richard E.; Bopp, Michael D.; Haun, David J.; Boden, James; Page, Benjamin J.; Brown, Charles H.; DL-WHO-WHGC-LRM; DL-OVP-LRM; Addington, David S.; Knepper, John G.; Luczynski, Kimberley S.; Hermann, Adam J.; Cote, Stephen M.; Frech, Christopher W.; Gans, Jon; Looney, Andrea B.; Braunstein, Todd F.; Jacob, Greg; Mahaffie, Robert F.; Alderfer, Robert H.; Pipan, Joseph G.
Subject: [AMS-110-37] JUSTICE Testimony on S.580 - Restoring Checks and Balances in the Nomination Process of U.S. Attorneys
Attachments: USAfys01.doc.doc

H.R.

~~202-201~~

DEADLINE: Time: 1 p.m. Date: Mar 5, 2007

COMMENTS: Attached for your review is draft Justice testimony for a March 6, 2007, hearing before the House Judiciary Committee, regarding H.R.580 - Restoring Checks and Balances in the Nomination Process of U.S. Attorneys. Please provide any comments by 1 p.m. this Monday, March 5th.

ATTACHMENTS:

LRM ID: AMS-110-37 EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

DHS - nc 3/5/07
Treasury - nc 3/5/07
NSC (democ) - nc 3/5/07
OMB Counsel - comments received 3/5/07

FROM: GREEN, RICHARD (for) Assistant Director for Legislative Reference
SUBJECT: [AMS-110-37] JUSTICE Testimony on S.580 - Restoring Checks and Balances in the Nomination Process of U.S. Attorneys

OMB CONTACT: ANGELA SIMMS
E-Mail:
PHONE: (202)
FAX: (202)

HSC - nc 3/5/07
OMB (judicial) - nc 3/5/07
PPC - comments 3/5/07

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. By the deadline above, please reply by e-mail or telephone, using the OMB Contact information above.

Thank you.

State - nc - 3/5/07

** WH Counsel -*

** ADNI -*

→ followed up w/ e-mail reminder, phone call



Department of Justice

STATEMENT

OF

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

BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES**

CONCERNING

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

PRESENTED ON

MARCH 6, 2007

**Testimony
of**

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

**Committee on the Judiciary
United States House of Representatives**

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

March 6, 2007

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

The Department of Justice opposes H.R. 580, the “Preserving United States Attorneys Independence Act of 2007” as presently drafted for the reasons set forth herein.

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

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

Turnover in the position of U.S. Attorney is not uncommon and should be expected, particularly after a U.S. Attorney's four-year term has expired. When a presidential election results in a change of administration, every U.S. Attorney leaves and the new President nominates a successor for confirmation by the Senate. Moreover, U.S. Attorneys do not

necessarily stay in place even during an administration. For example, approximately half of the U.S. Attorneys appointed at the beginning of the Bush Administration had left office by the end of 2006. Of the U.S. Attorneys whose resignations have been the subject of recent discussion, each one had served longer than four years prior to being asked to resign.

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

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

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

Since January 20, 2001, 125 new U.S. Attorneys have been nominated by the President and confirmed by the Senate. On March 9, 2006, the Congress amended the Attorney General's authority to appoint interim U.S. Attorneys, and 16 vacancies have occurred since that date. This amendment has not changed our commitment to nominating candidates for Senate confirmation. In fact, the Administration has nominated a total of 15 individuals for Senate consideration since the appointment authority was amended, with 12 of those nominees having been confirmed to date. Of the 16 vacancies that have occurred since the time that the law was amended, the Administration has nominated candidates to fill five of these positions, has interviewed candidates for nomination for seven more positions, and is waiting to receive names to set up interviews for the 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. H.R. 580 would not permit the Attorney General’s authority under current law to be tested in practice.

Prior to last year’s amendment, the Attorney General could appoint an interim U.S. Attorney for the first 120 days after a vacancy arose; thereafter, the district court was authorized to appoint an interim U.S. Attorney. In cases in which a Senate-confirmed U.S. Attorney could not be appointed within 120 days, the limitation on the Attorney General’s appointment authority resulted in recurring problems. Some district courts recognized the conflicts inherent in the appointment of an interim U.S. Attorney who would then have matters before the court—not to mention the oddity of one branch of government appointing officers of another—and simply refused to exercise the appointment authority. In those cases, the Attorney General was

consequently required to make multiple successive 120-day interim appointments. Other district courts ignored the inherent conflicts and sought to appoint as interim U.S. Attorneys wholly unacceptable candidates who lacked the required clearances or appropriate qualifications.

Two examples demonstrate the shortcomings of the previous system and the system contemplated in H.R. 580. During President Reagan's Administration, the district court appointed in the Southern District of West Virginia an interim U.S. Attorney who was neither a Justice Department employee nor a cleared individual. The new U.S. Attorney sought access to law-enforcement sensitive investigative materials related to the office's most sensitive public corruption investigation. The problem was that the interim U.S. Attorney had no clearances or had then undergone a background investigation so that the Attorney General and the Federal Bureau of Investigation could have complete confidence in the individual. The appointment forced the Department to remove the case files from the U.S. Attorney's office and bring them to Washington. In the end, the Department expedited the nomination of the permanent U.S. Attorney and appointed him to replace the court-appointed individual pending his confirmation.

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

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

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

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

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

and the exercise of prosecutorial discretion, and the Department contends that the chief prosecutor should be accountable to the Attorney General, the President, and ultimately the people.

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

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



Department of Justice

STATEMENT

OF

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

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

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

PRESENTED ON

MARCH 6, 2007

*U.S. Attorney
W. E. Moschella*

(final)

Highlights!
- shorter than original draft. few samples of new process. does not discuss Rep of powers per se and "effective" transitions, U.S. Attorney seek @ pleasure
- Reg's usual look to civil servant for

**Testimony
of**

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

**Committee on the Judiciary
United States House of Representatives**

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

March 6, 2007

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 continues to believe the Attorney General's current interim appointment authority is good policy, and 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. It should be made clear, however, that despite the speculation, it was never the objective of the Department, when exercising this interim appointment authority, to circumvent the Senate confirmation process.

Some background. 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. And while US Attorneys are charged with making prosecutorial decisions, they are also duty bound to implement and further the Administration's and Department's priorities and policy decisions. 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. Thus, United States Attorneys are, and should be, 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. 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.

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 [is this right? - I think it was only about 35] 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.

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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, 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.

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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.

As stated above, the Administration has not 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. In every 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. In each instance, 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.

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

However, while that nomination process continues, the Department must have a leader in place to carry out the important work of these offices and to ensure continuity of operations. 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, either under 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. Ensuring that the interim and permanent appointment process runs smoothly and effectively will be the focus of the Department's efforts to reach common ground with the Congress on this issue.

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

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

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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.

From: Jonathan Felts
Sent: Sunday, February 04, 2007 3:40 PM
To: Scott Jennings
Subject: Re: Bud Cummins

Yes...yes I did.

If I am lucky, she will leave and I will start going to those meetings just in time to get subpoenaed.
Be advised, if my choice is hire a lawyer and defend TG or cut a deal? Just call me Ari if that happens.

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

From: Scott Jennings
To: Jonathan Felts
Sent: Sun Feb 04 10:25:15 2007
Subject: RE: Bud Cummins

Did you pick up in here that someone at DoJ is starting to blame "those outside of DoJ" involved in the process...

From: Jonathan Felts
Sent: Sun 2/4/2007 10:24 AM
To: Scott Jennings
Subject: Re: Bud Cummins

Unreal.

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

From: Scott Jennings
To: Jonathan Felts
Sent: Sun Feb 04 10:03:08 2007
Subject: Bud Cummins

Why DoJ hasn't gone after this guy yet is beyond me.

U.S. Attorney Firings Set Stage for Congressional Battle

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ryan's departure was perhaps the least surprising because his tenure had been marked by public complaints about plummeting morale and high staff turnover. But Lam's departure has been more controversial, prompting public complaints from the head of the local FBI field office and questions from Sen. Patrick J. Leahy <<http://projects.washingtonpost.com/congress/members/l000174/>> (D-Vt.), Rep. John Conyers <<http://projects.washingtonpost.com/congress/members/c000714/>> Jr. (D-Mich.) and others. Some Democrats speculated that the administration was attempting to undermine the ongoing corruption probe centered on former representative Randy "Duke" Cunningham (R-Calif.), which was overseen by Lam.

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

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

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

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

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

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

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

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

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

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

From: Jonathan Felts
Sent: Sunday, February 04, 2007 5:08 PM
To: Jane Cherry
Subject: RE: Bud Cummins

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

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

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

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

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

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

Well, we will have to blame someone.

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

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

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

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

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

You already see this I assume?

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

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

U.S. Attorney Firings Set Stage for Congressional Battle

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

H.E. "Bud" Cummins III had served for five years as the U.S. attorney in Little Rock -- a

job he obtained in large part because of his credentials as a longtime GOP lawyer and avid supporter of President Bush.

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

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

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

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

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

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

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

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

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

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

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

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

Ryan's departure was perhaps the least surprising because his tenure had been marked by public complaints about plummeting morale and high staff turnover. But Lam's departure has been more controversial, prompting public complaints from the head of the local FBI field office and questions from Sen. Patrick J. Leahy

<<http://projects.washingtonpost.com/congress/members/1000174/>> (D-Vt.), Rep. John Conyers <<http://projects.washingtonpost.com/congress/members/c000714/>> Jr. (D-Mich.) and others. Some Democrats speculated that the administration was attempting to undermine the ongoing corruption probe centered on former representative Randy "Duke" Cunningham (R-Calif.), which was overseen by Lam.

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

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

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

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

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

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

From: Kelley, William K.
Sent: Monday, February 05, 2007 11:00 AM
To: Oprison, Christopher G.
Subject: RE: Bibb - US Attorney, D NM

No--but the BI itself can't start without Bingaman's knowing. Thx

From: Oprison, Christopher G.
Sent: Monday, February 05, 2007 10:48 AM
To: Kelley, William K.
Subject: Bibb - US Attorney, D NM

Bill - despite the current hold up from Bingaman's office regarding this vacancy, do you see any reason why DOJ should NOT send Jim Bibb (who the President approved) the SF86 for him to start filling out?

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

From: Perino, Dana M.
Sent: Wednesday, February 07, 2007 8:36 AM
To: Kelley, William K.
Subject: FW: BACKGROUND: U.S. ATTORNEY NOMINATIONS AND INTERIM APPOINTMENTS BY THE ATTORNEY GENERAL

Are you available to talk about this?

From: Scolinos, Tasia [mailto:Tasia.Scolinos@usdoj.gov]
Sent: Wednesday, February 07, 2007 8:02 AM
To: Perino, Dana M.
Cc: Martin, Catherine
Subject: FW: BACKGROUND: U.S. ATTORNEY NOMINATIONS AND INTERIM APPOINTMENTS BY THE ATTORNEY GENERAL

With the hearing this week, I thought you might find this background information helpful.

Overview:

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

☞☞ Specifically, since March 9, 2006 (when the AG's appointment authority was amended), the Administration has nominated 15 individuals to serve as U.S. Attorney (12 have been confirmed to date).

by this Senate and serve as U.S. Attorney for the remainder of the President's term in office. This is a way, simply stated, of avoiding a Senate confirmation of a U.S. Attorney.

The rationale to give the authority to the court has been that since district court judges are also subject to Senate confirmation and are not political positions, there is greater likelihood that their choice of who should serve as an interim U.S. Attorney would be chosen based on merit and not manipulated for political reasons. To me, this makes good sense.

Finally, by having the district court make the appointments, and not the Attorney General, the process provides an incentive for the administration to move quickly to appoint a replacement and to work in cooperation with the Senate to get the best qualified candidate confirmed.

I strongly believe we should return this power to district courts to appoint interim U.S. Attorneys. That is why last week, Senator Leahy, the incoming Chairman of the Judiciary Committee, the Senator from Arkansas, Senator Pryor, and I filed a bill that would do just that. Our bill simply restores the statute to what it once was and gives the authority to appoint interim U.S. Attorneys back to the district court where the vacancy arises.

I could press this issue on this bill. However, I do not want to do so because I have been saying I want to keep this bill as clean as possible, that it is restricted to the items that are the purpose of the bill, not elections or any other such things. I ought to stick to my own statement.

Clearly, the President has the authority to choose who he wants working in his administration and to choose who should replace an individual when there is a vacancy. But the U.S. Attorneys' job is too important for there to be unnecessary disruptions, or, worse, any appearance of undue influence. At a time when we are talking about toughening the consequences for public corruption, we should change the law to ensure that our top prosecutors who are taking on these cases are free from interference or the appearance of impropriety. This is an important change to the law. Again, I will question the Attorney General Thursday about it when he is before the Judiciary Committee for an oversight hearing.

I am particularly concerned because of the inference in all of this that is drawn to manipulation in the lineup of cases to be prosecuted by a U.S. Attorney. In the San Diego case, at the very least, we have people from the FBI indicating that Carol Lam has not only been a straight shooter but a very good prosecutor. Therefore, it is surprising to me to see that she would be, in effect, forced out, without cause. This would go for any other U.S. Attorney among the seven who are on that list.

We have something we need to look into, that we need to exercise our oversight or

From: Perino, Dana M.
Sent: Tuesday, January 16, 2007 6:05 PM
To: Mamo, Jeanie S.
Subject: FW: AP - Senate Democrats want to take back attorney general's power to replace U.S. attorneys

Sister, we are so right

From: Witcher, Eryn M.
Sent: Tuesday, January 16, 2007 5:42 PM
To: Perino, Dana M.
Subject: FW: AP - Senate Democrats want to take back attorney general's power to replace U.S. attorneys

we know "who was right" :)

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

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

By LAURIE KELLMAN

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

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

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

"It appears that the administration has chosen to use this provision, which was intended to help protect our nation, to circumvent the transparent constitutional Senate confirmation process to reward political allies," Pryor said in the joint Democratic statement.

Not true, Gonzales told The Associated Press.

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

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

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

prosecutors.

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

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

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

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

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

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

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

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

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

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

I'm fine with it.

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

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

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

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

From: Wolff, Candida P.
Sent: Tuesday, January 16, 2007 6:37 PM
To: Kelley, William K.; Rove, Karl C.
Cc: Kaplan, Joel
Subject: Re: Urgent US Attorney Issue

I am fine with that.

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

From: Kelley, William K.
To: Wolff, Candida P.; Rove, Karl C.
CC: Kaplan, Joel
Sent: Tue Jan 16 18:25:38 2007
Subject: Urgent US Attorney Issue

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

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From: Kaplan, Joel
Sent: Tuesday, January 16, 2007 7:34 PM
To: Kelley, William K.
Cc: cosjbb
Subject: Re: Urgent US Attorney Issue

Bill: thanks for touching those bases. Ok here.

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

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CC: Kaplan, Joel
Sent: Tue Jan 16 18:25:38 2007
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From: Roebke, Heather M.
Sent: Thursday, January 18, 2007 9:35 AM
To: Kelley, William K.
Subject: AG Hearing

You can watch the Attorney General's testimony on the Senate Judiciary Committee website here:
<http://judiciary.senate.gov/hearing.cfm?id=2473> by clicking on "Webcast"

From: Oprison, Christopher G.
Sent: Thursday, January 18, 2007 11:16 AM
To: Miers, Harriet; Kelley, William K.
Subject: Call from Cong Boozman

Harriet, Bill

I just received a call from Congressman Boozman regarding the news reports about the circumstances of Bud Cummins' departure. He wanted to make clear his concerns about any negative response from the White House about Bud's performance. He said Bob Russell (Sen Pryor's COS) had relayed to him a conversation Russell had with an individual in the White House about the US Attorney vacancy. Apparently, according to Cong Boozman, Russell asked this individual whether Bud's departure was due to job performance, to which the individual responded "we don't want to go there." Russell apparently construed this response as a negative comment on Bud's performance.

I told Congressman Boozman we were in agreement that, to the extent the White House provides comment on the circumstances of any US Attorney departures, the comment would include no reference to job performance.

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

From: Oprison, Christopher G.
Sent: Monday, January 22, 2007 11:56 AM
To: Miers, Harriet.
Cc: Kelley, William K.
Subject: USA D NM

Harriet - I finally caught up with Kyle and discussed the issues with the candidates for this position. He concurred on the disqualification issue. Happy to discuss.

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

From: Oprison, Christopher G.
Sent: Thursday, January 25, 2007 9:43 AM
To: Miers, Harriet; Kelley, William K.
Cc: Brosnahan, Jennifer R.
Subject: FW: FYI

fyi

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

From: Tim Griffin
Sent: Thursday, January 25, 2007 9:42 AM
To: Oprison, Christopher G.
Subject: FYI

January 25, 2007

NOTICE OF FULL COMMITTEE HEARING

The Senate Committee on the Judiciary has scheduled a hearing on "Preserving Prosecutorial Independence: Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys?"

for Wednesday, February 7, 2007 at 9:30 a.m. in Room 226 of the Dirksen Senate Office Building.

Senator Schumer will chair the hearing.

By order of the Chairman

From: Kelley, William K.
Sent: Thursday, January 25, 2007 11:02 AM
To: Miers, Harriet
Subject: FW: FOR YOUR REVIEW -- DOJ response to Pryor letter re Griffin
Importance: High
Attachments: Senator Mark Pryor Ltr. re Tim Griffin.pdf; Pryor Letter re Griffin.doc

FYI here is a draft letter from DOJ to Senator Pryor responding to a letter the Senator sent to the AG on the Griffin situation. I'll forward you my response, and then Sara's.

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Thursday, January 25, 2007 10:51 AM
To: Kelley, William K.; staylor@gwb43.com; Taylor, Sara M.
Subject: FOR YOUR REVIEW -- DOJ response to Pryor letter re Griffin
Importance: High

Bill/Sara, the attached .pdf is an outrageous letter the AG rec'd from Sen. Pryor re Griffin; the attached Word doc is our proposed response. Wanted the two of you to have the benefit of reviewing before we send our response later today. Let me know if you have any concerns/comments. Thx!

<<Senator Mark Pryor Ltr. re Tim Griffin.pdf>> <<Pryor Letter re Griffin.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

MARK PRYOR
ARKANSAS

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500 PRESIDENT CLINTON AVENUE
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(501) 324-6336
TOLL FREE: (877) 259-9602
<http://pryor.senate.gov>

January 11, 2007

The Honorable Alberto Gonzales
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

Dear Attorney General Gonzales:

I am writing this letter to express my displeasure regarding your appointment of Tim Griffin as Interim U.S. Attorney for the Eastern District of Arkansas. As you will recall, we discussed this matter in two telephone calls (Wednesday December 13, 2006, and December 15, 2006) in which I informed you of my reservations.

First, it is clear (from events that occurred in July and August 2006), that there was an attempt to force then U.S. Attorney Cummins to resign. At that time, my office expressed my concern to the White House Counsel regarding this matter, and Mr. Cummins was able to remain in his position until the end of December. While I am pleased that his service was extended, I am left with the conclusion that the purpose for the dismissal of Mr. Cummins was to appoint Mr. Griffin.

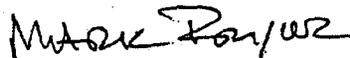
Second, I am astonished that the reason given by your office for the interim appointment is that the First Assistant U.S. Attorney is on maternity leave and therefore would not be able to perform the responsibilities of the appointment. This reason was given to my Chief of Staff, to the news media, and to me by your liaison in a meeting this week. This concerns me on several levels, but most importantly it uses pregnancy and motherhood as conditions that deny an appointment. While this may not be actionable in a public employment setting, it clearly would be in a private employment setting. The U.S. Department of Justice should never discriminate against women in this manner.

Finally, and most importantly, the appointment undermines the Senate confirmation process. The authority granted to the Attorney General to make an interim appointment for an indefinite time was given pursuant to the Patriot Act. I believe that in using this provision, the Attorney General should articulate a national security or law enforcement need that necessitates such an appointment. You have failed to do so in this case. In fact, as cited above, the reason articulated is at worst grossly deficient, and at best, a poor pretense.

For me personally this last point is most troublesome. When the Patriot Act was up for reauthorization, you called me and discussed the importance of its passage. I told you that while there were items in the Act that concerned me, I trusted that the spirit of the law would be upheld. It has also come to my attention that there may have been other similar appointments made under this provision of the Patriot Act. Therefore, I believe that the spirit of the law regarding this interim appointment (and perhaps others) has been violated. As such, I am pushing for a legislative change. I have signed on to a Bill that would strike the previous amended language and restore appointment authority to the original 120 days.

I am quite sure that you may not agree with some or all of my conclusions, therefore, I await your response and I appreciate your cooperation in this matter.

Sincerely,



Mark Pryor

Sent via facsimile

January 24, 2007

The Honorable Mark Pryor
United States Senate
257 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Pryor:

This is in response to your letter to the Attorney General dated January 11, 2007, regarding the Attorney General's appointment of J. Timothy Griffin to serve as interim United States Attorney for the Eastern District of Arkansas.

As the Attorney General informed you in his telephone conversations with you on December 13, 2006, and December 15, 2006, Mr. Griffin was chosen for appointment to serve as interim United States Attorney because of his excellent qualifications. To be clear, Mr. Griffin was not chosen because the First Assistant United States Attorney was on maternity leave and therefore was not able to serve as your letter states. As you know, Mr. Griffin has federal prosecution experience both in the Eastern District of Arkansas and in the Criminal Division in Washington, D.C. During his service in the Eastern District of Arkansas, Mr. Griffin established that district's successful Project Safe Neighborhoods initiative to reduce firearms-related violence. In addition, Griffin has served for more than a decade in the U.S. Army Reserve, Judge Advocate General's Corps, where he has prosecuted more than 40 criminal cases, including cases of national significance. Griffin's military experience includes recent service in Iraq, for which he was awarded the Combat Action Badge and the Army Commendation Medal. Importantly, Griffin is a "real Arkansan" with genuine ties to the community. For these qualifications, Griffin was selected to serve as interim United States Attorney.

As the Attorney General also has stated to you, the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. At no time has the Administration sought to avoid the Senate confirmation process by appointing an interim United States Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination and confirmation of a new United States Attorney. Not once.

The Eastern District of Arkansas is not different. As the Attorney General stated to you again last week, in a telephone conversation on January 17, 2007, the Administration is committed to having a Senate-confirmed United States Attorney in that

Letter to the Honorable Mark Pryor
January 24, 2007
Page 2

district too. That is why the Administration has consulted with you and Senator Lincoln for several months now regarding possible candidates for nomination, including Mr. Griffin. That is why the Attorney General has sought your views as to whether, if nominated, you would support Mr. Griffin's confirmation. The Administration awaits your decision.

If you decide that you would support Mr. Griffin's confirmation, then the President's senior advisors (after taking into account Senator Lincoln's views) likely would recommend that the President nominate him. With your support, Mr. Griffin almost certainly would be confirmed and appointed. We are convinced that, given his strong record as a federal prosecutor and as a military prosecutor, Mr. Griffin would serve ably as a Senate-confirmed United States Attorney. If, in contrast, you decide that for whatever reason you will not support Mr. Griffin's confirmation, then the President's senior advisors (after taking into account Senator Lincoln's views) will give your views substantial weight in determining what recommendation to make to the President, as we recognize it would be unusual for any nominee for United States Attorney to be confirmed over the objection of a home-State Senator.

Last year's amendment to the Attorney General's appointment authority was necessary and appropriate. Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in numerous, recurring problems. For example, some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments. In contrast, other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances. Contrary to your letter, nothing in the text or history of the statute even suggests that the Attorney General should articulate a national security or law enforcement need for making an interim appointment. Because the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

Enclosed is information regarding the exercise of the Attorney General's authority to appoint interim United States Attorneys. As you will see, the enclosed information establishes conclusively that the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. Indeed, every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or – as with the Eastern District of Arkansas – the Administration is working,

Letter to the Honorable Mark Pryor
January 24, 2007
Page 3

in consultation with home-State Senators, to select a candidate for nomination. Such nominations are, of course, subject to Senate confirmation.

Sincerely,

Richard A. Hertling
Acting Assistant Attorney General

cc: The Honorable Blanche L. Lincoln

From: Kelley, William K.
Sent: Thursday, January 25, 2007 11:02 AM
To: Miers, Harriet
Subject: FW: FOR YOUR REVIEW -- DOJ response to Pryor letter re Griffin

From: Kelley, William K.
Sent: Thursday, January 25, 2007 10:58 AM
To: 'Sampson, Kyle'; staylor@gwb43.com; Taylor, Sara M.
Subject: RE: FOR YOUR REVIEW -- DOJ response to Pryor letter re Griffin

I think that more of a response on the merits is warranted regarding the allegations of pregnancy discrimination. The draft letter says that that Griffin has been chosen because of his qualifications, but it doesn't take issue (or address) Senator Pryor's claim that he was told the 1st Asst was unavailable due to maternity leave and that that constitutes pregnancy/sex discrimination.

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Thursday, January 25, 2007 10:51 AM
To: Kelley, William K.; staylor@gwb43.com; Taylor, Sara M.
Subject: FOR YOUR REVIEW -- DOJ response to Pryor letter re Griffin
Importance: High

Bill/Sara, the attached .pdf is an outrageous letter the AG rec'd from Sen. Pryor re Griffin; the attached Word doc is our proposed response. Wanted the two of you to have the benefit of reviewing before we send our response later today. Let me know if you have any concerns/comments. Thx!

<<Senator Mark Pryor Ltr. re Tim Griffin.pdf>> <<Pryor Letter re Griffin.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: Kelley, William K.
Sent: Thursday, January 25, 2007 11:02 AM
To: Miers, Harriet
Subject: FW: FOR YOUR REVIEW -- DOJ response to Pryor letter re Griffin

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

From: Sara Taylor [mailto:st@gwb43.com]
Sent: Thursday, January 25, 2007 10:59 AM
To: Kyle.sampson@usdoj.gov; Kelley, William K.; Taylor, Sara M.
Subject: Re: FOR YOUR REVIEW -- DOJ response to Pryor letter re Griffin

I'm concerned we imply that we'll pull down Griffin's nomination should Pryor object.

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

From: Sampson, Kyle <Kyle.Sampson@usdoj.gov>
To: William_K_Kelley@who.eop.gov <William_K_Kelley@who.eop.gov>; Sara Taylor; Sara_M._Taylor@who.eop.gov <Sara_M._Taylor@who.eop.gov>
Sent: Thu Jan 25 10:50:31 2007
Subject: FOR YOUR REVIEW -- DOJ response to Pryor letter re Griffin

Bill/Sara, the attached .pdf is an outrageous letter the AG rec'd from Sen. Pryor re Griffin; the attached Word doc is our proposed response. Wanted the two of you to have the benefit of reviewing before we send our response later today. Let me know if you have any concerns/comments. Thx!

<<Senator Mark Pryor Ltr. re Tim Griffin.pdf>> <<Pryor Letter re Griffin.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: Hughes, Taylor A.
Sent: Tuesday, January 30, 2007 3:11 PM
To: Scott Jennings; Oprison, Christopher G.; Tanner, Christon R.
Subject: RE: Steve Bell

great, thanks

From: Scott Jennings [mailto:SJennings@gwb43.com]
Sent: Tuesday, January 30, 2007 3:07 PM
To: Oprison, Christopher G.; Hughes, Taylor A.; Tanner, Christon R.
Subject: Steve Bell

I spoke to Steve Bell, Chris. Will call you in a second.

Taylor/Tanner – Bell says no need for KR to call him back now.

From: Oprison, Christopher G.
Sent: Tuesday, January 30, 2007 3:18 PM
To: Miers, Harriet; Kelley, William K.
Subject: FW: Steve Bell

Harriet, Bill

Scott Jennings called me back and I explained the latest. Some recent developments: Bingaman's office apparently has convinced or is working to convince Senator Domenici to withdraw Bibb and bring in a new round of candidates for the US Attorney position in the D NM. When I learned this, I called Senator Domenici's chief (Steve Bell) earlier today and discussed with him and the Senator that Bibb was the only candidate of the three that was viable. I called Scott Jennings and Karl and left messages for them to call me to discuss. When I spoke with Scott a few minutes ago, he offered to call Bell and find out whether Senator Domenici was willing to back Bibb. Bell told Scott he would discuss further with the Senator (who was in a hearing with Bingaman at the moment) and then would call Scott back when he knew more. For now, we are in a holding pattern. Scott said he will talk with Karl at 4:15 today about this and give you or me a call.

Chris

From: Scott Jennings [mailto:SJennings@gwb43.com]
Sent: Tuesday, January 30, 2007 3:07 PM
To: Oprison, Christopher G.; Hughes, Taylor A.; Tanner, Christon R.
Subject: Steve Bell

I spoke to Steve Bell, Chris. Will call you in a second.

Taylor/Tanner – Bell says no need for KR to call him back now.

From: Oprison, Christopher G.
Sent: Wednesday, January 31, 2007 11:25 AM
To: Miers, Harriet; Kelley, William K.
Subject: FW: NM USATTY

fyi

From: Scott Jennings [mailto:SJennings@gwb43.com]
Sent: Wednesday, January 31, 2007 11:24 AM
To: Oprison, Christopher G.; Looney, Andrea B.
Subject: RE: NM USATTY

My sense is they want to see how hard Bingaman is going to fight Bibb before they decide how much they will stand up.

In other words, Domenici won't go to the mat if it means all out war with Bingaman. There is some thought that Bingaman may just be testing out the process here and won't really fight Bibb too hard. If that's the case, I think Domenici sticks. If this objection is for real, then I'm afraid we are going to have to go back to the drawing board. The good news is Domenici does NOT want to have to send up another slate of candidates, so that might bolster them a bit.

From: Oprison, Christopher G. [mailto:Christopher_G._Oprison@who.eop.gov]
Sent: Wednesday, January 31, 2007 11:22 AM
To: Scott Jennings; Looney, Andrea B.
Subject: RE: NM USATTY

Did Steve say whether Senator Domenici is planning to stand behind Bibb?

From: Scott Jennings [mailto:SJennings@gwb43.com]
Sent: Wednesday, January 31, 2007 11:18 AM
To: Oprison, Christopher G.; Looney, Andrea B.
Subject: NM USATTY

I just checked in with Steve Bell – they have not heard back from Bingaman or his CoS since yesterday.

From: Karl Rove [KR@georgewbush.com]
Sent: Wednesday, January 31, 2007 12:02 PM
To: Miers, Harriet
Subject: Re: NM USATTY

But the Senator is for Ellington

On 1/31/07 11:52 AM, "Miers, Harriet" <Harriet_Miers@who.eop.gov> wrote:

One step forward....two steps back.

From: Oprison, Christopher G.
Sent: Wednesday, January 31, 2007 11:25 AM
To: Miers, Harriet; Kelley, William K.
Subject: FW: NM USATTY

fyl

From: Scott Jennings [mailto:SJennings@gwb43.com]
Sent: Wednesday, January 31, 2007 11:24 AM
To: Oprison, Christopher G.; Looney, Andrea B.
Subject: RE: NM USATTY

My sense is they want to see how hard Bingaman is going to fight Bibb before they decide how much they will stand up.

In other words, Domenici won't go to the mat if it means all out war with Bingaman. There is some thought that Bingaman may just be testing out the process here and won't really fight Bibb too hard. If that's the case, I think Domenici sticks. If this objection is for real, then I'm afraid we are going to have to go back to the drawing board. The good news is Domenici does NOT want to have to send up another slate of candidates, so that might bolster them a bit.

From: Oprison, Christopher G.
Sent: Friday, February 02, 2007 3:52 PM
To: Gibbs, Landon M.
Subject: FW: DAG McNulty's testimony on USA issue and Views letter

From: Scott-Finan, Nancy
Sent: Friday, February 02, 2007 3:50 PM
To: Green, Richard E.; Seidel, Rebecca; Oprison, Christopher G.
Cc: Blackwood, Kristine; Simms, Angela M.
Subject: RE: DAG McNulty's testimony on USA issue and Views letter

Angela and Richard,
We understand from Chris Oprison that WH Counsel has submitted comments. We have not yet received them. Thanks.

From: Green, Richard E.
Sent: Friday, February 02, 2007 12:23 PM
To: Seidel, Rebecca
Cc: Scott-Finan, Nancy; Blackwood, Kristine; Simms, Angela M.
Subject: RE: DAG McNulty's testimony on USA issue and Views letter

Angie and Kristine are talking to each other. I believe we are close on the views letter; we just need to get Justice response on a handful of what I would say are relatively minor comments. On the testimony, we have one key office to hear from. (We set a 1:00 today deadline when your guys asked us to try to clear by COB Friday. We're seeing if we can get comments sooner from a couple of key offices.) What you need to know is that we got the letter on Tuesday at 6:45 p.m. (which means effectively Wednesday morning) and the testimony on Wednesday at 8:45 p.m. (which means effectively Thursday morning). We didn't wait for the testimony to circulate the letter or that would not have happened until Thursday (yesterday)! If we had actually gotten these materials on Monday and Tuesday, we might actually be farther along or done at this point.

From: Seidel, Rebecca
Sent: Friday, February 02, 2007 9:44 AM
To: Green, Richard E.; Simms, Angela M.
Cc: Scott-Finan, Nancy; Blackwood, Kristine
Subject: DAG McNulty's testimony on USA issue and Views letter
Importance: High

Where are we on clearance? The DAG needs to take his testimony home for the weekend and we need to give him his briefing book at 2pm. Views letter on the bill and testimony are substantially similar so we asked earlier this week that they be circulated together as it would be the same reviewers and substantially the same material.

I believe the views letter was sent to OMB on Monday and the Testimony Tues. Please tell me asap if there is any hold up and where it is so we can affirmatively reach out to resolve asap? Thanks.

From: Seidel, Rebecca
Sent: Friday, February 02, 2007 4:39 PM
To: Oprison, Christopher G.; Scott-Finan, Nancy
Cc: Gibbs, Landon M.; Brosnahan, Jennifer R.; McIntosh, Brent J.; Brady, Ryan D.
Subject: RE: DAG testimony on USA firings issue

Thank you!

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

From: Oprison, Christopher G.
[mailto:Christopher_G._Oprison@who.eop.gov]
Sent: Friday, February 02, 2007 4:02 PM
To: Seidel, Rebecca; Scott-Finan, Nancy
Cc: Gibbs, Landon M.; Brosnahan, Jennifer R.; McIntosh, Brent J.; Brady, Ryan D.
Subject: RE: DAG testimony on USA firings issue

Here are the comments I sent earlier today to our front office:

I have no legal objections. One minor wordsmithing edit: on Page 7, paragraph starting "As you know, . . ." In the third sentence, substitute "government" for "government's"

My apologies, ladies, for the delay. Thanks for following up.

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

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

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

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

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

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

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

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

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

Correct - Landon forwarded them, I believe

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

From: Brosnahan, Jennifer R.
Sent: Friday, February 02, 2007 3:45 PM
To: McIntosh, Brent J.; 'rebecca.seidel'
Cc: 'nancy.scott-finan'; Oprison, Christopher G.
Subject: RE: DAG testimony on USA firings issue

Chris reviewed and submitted comments, I believe...

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

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

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

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

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

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

From: Simms, Angela M.
Sent: Friday, February 02, 2007 4:51 PM
To: 'Seidel, Rebecca'; 'Blackwood, Kristine'
Cc: 'Scott-Finan, Nancy'
Subject: RE: (Clearance) AMS-110-15 (DAG Testimony on USA, S.214)

You are welcome. It has indeed been a busy day for us here at OMB, as I am sure it has been for you!

Angie

-----Original Message--

From: Seidel, Rebecca
Sent: Friday, February 02, 2007 4:36 PM
To: Simms, Angela M.; Blackwood, Kristine
Cc: Scott-Finan, Nancy
Subject: RE: (Clearance) AMS-110-15 (DAG Testimony on USA, S.214)

Thank you for all your help Angie! We know you must be flooded today.

-----Original Message-

From: Simms, Angela M.
Sent: Friday, February 02, 2007 4:36 PM
To: Blackwood, Kristine
Cc: Scott-Finan, Nancy; Seidel, Rebecca
Subject: (Clearance) AMS-110-15 (DAG Testimony on USA, S.214)

Kristine,

This testimony on S.214 is cleared, as amended.

Angie
202-395-

-----Original Message-

From: Seidel, Rebecca
Sent: Friday, February 02, 2007 4:24 PM
To: Green, Richard E.; Simms, Angela M.
Cc: Scott-Finan, Nancy; Blackwood, Kristine
Subject: FW: DAG testimony on USA firings issue
Importance: High

see below, this is apparently the only comment from WH counsel's office. We accept. Does this mean it is cleared? I spoke with Todd Braunstein at a meeting we were at together and understood his comments were only suggestions. Has he responded to our response yet? Didn't get the impression he was going to push.

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

From: Oprison, Christopher G.

Sent: Friday, February 02, 2007 4:02 PM
To: Seidel, Rebecca; Scott-Finan, Nancy
Cc: Gibbs, Landon M.; Brosnahan, Jennifer R.; McIntosh, Brent J.; Brady, Ryan D.
Subject: RE: DAG testimony on USA firings issue

Here are the comments I sent earlier today to our front office:

I have no legal objections. One minor wordsmithing edit: on Page 7, paragraph starting "As you know, . . ." In the third sentence, substitute "government" for "government's"

My apologies, ladies, for the delay. Thanks for following up.

HJC 10104

cleared. Need to give to DAG to take home for weekend.
Can u fin out who is reviewing for you guys and nudge? (Is it you ? :))

From: Simms, Angela M.
Sent: Friday, February 02, 2007 1:25 PM
To: Gibbs, Landon M.
Subject: Reminder: [AMS-110-15] JUSTICE Testimony on S.214 - the Preserving United States Attorney Independence Act of 2007
Attachments: ODAGMcNultyTestimonySJC2-6-07PoliticizationofUSAttorneys.doc

Landon,

This is a reminder to please submit any comments, as soon as possible, on the attached Justice testimony regarding S.214.

Angie

HJC 10107



Department of Justice

STATEMENT

OF

**PAUL J. McNULTY
DEPUTY ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE**

BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

CONCERNING

**“PRESERVING PROSECUTORIAL INDEPENDENCE:
IS THE DEPARTMENT OF JUSTICE
POLITICIZING THE HIRING AND FIRING
OF U.S. ATTORNEYS?”**

PRESENTED ON

FEBRUARY 6, 2007

**Testimony
OF**

**Paul J. McNulty
Deputy Attorney General
U.S. Department of Justice**

**Committee on the Judiciary
United States Senate**

**“Is the Department of Justice Politicizing the Hiring and Firing of U.S.
Attorneys?”**

February 6, 2007

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

I have often said that being a United States Attorney is one of the greatest jobs you can ever have. It is a privilege and a challenge—one that carries a great responsibility. As former Attorney General Griffin Bell said, U.S. Attorneys are “the front-line troops charged with carrying out the Executive’s constitutional mandate to execute faithfully the laws in every federal judicial district.” As the chief federal law-enforcement officers in their districts, U.S. Attorneys

represent the Attorney General before Americans who may not otherwise have contact with the Department of Justice. They lead our efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families—including child pornography, obscenity, and human trafficking.

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

The Attorney General and I are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their offices effectively. It should come as no

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

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

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

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

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

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

However, while that nomination process continues, the Department must have a leader in place to carry out the important work of these offices. To ensure an effective and smooth transition during U.S. Attorney vacancies, the office of the U.S. Attorney must be filled on an interim basis. To do so, the Department relies on the Vacancy Reform Act ("VRA"), 5 U.S.C. § 3345(a)(1), when the First Assistant U.S. Attorney 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 U.S. Attorney. It does not indicate an intention to avoid the confirmation process, as some have suggested.

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

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

In most cases, of course, the district court simply appointed the Attorney General's choice as interim U.S. Attorney, revealing the fact that most judges recognized the importance of appointing an interim U.S. Attorney who enjoys the confidence of the Attorney General. In other words, the most important factor in the selection of past court-appointed interim U.S. Attorneys was the Attorney General's recommendation. By foreclosing the possibility of judicial appointment of interim U.S. Attorneys unacceptable to the Administration, last year's

amendment to Section 546 appropriately eliminated a procedure that created unnecessary problems without any apparent benefit.

S. 214 would not merely reverse the 2006 amendment; it would exacerbate the problems experienced under the prior version of the statute by making judicial appointment the only means of temporarily filling a vacancy—a step inconsistent with sound separation-of-powers principles.

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

Prosecutorial authority should be exercised by the Executive Branch in a unified manner, consistent with the application of criminal enforcement policy under the Attorney General. S.

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

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

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

From: Seidel, Rebecca
Sent: Friday, February 02, 2007 4:24 PM
To: Green, Richard E.; Simms, Angela M.
Cc: Scott-Finan, Nancy; Blackwood, Kristine
Subject: FW: DAG testimony on USA firings issue

Importance: High

see below, this is apparently the only comment from WH counsel's office. We accept. Does this mean it is cleared? I spoke with Todd Braunstein at a meeting we were at together and understood his comments were only suggestions. Has he responded to our response yet? Didn't get the impression he was going to push.

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

From: Oprison, Christopher G.
[mailto:Christopher_G_Oprison]
Sent: Friday, February 02, 2007 4:02 PM
To: Seidel, Rebecca; Scott-Finan, Nancy
Cc: Gibbs, Landon M.; Brosnahan, Jennifer R.; McIntosh, Brent J.; Brady, Ryan D.
Subject: RE: DAG testimony on USA firings issue

Here are the comments I sent earlier today to our front office:

I have no legal objections. One minor wordsmithing edit: on Page 7, paragraph starting "As you know, . . ." In the third sentence, substitute "government" for "government's"

My apologies, ladies, for the delay. Thanks for following up.

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

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

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

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

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

From: Scott-Finan, Nancy
To: 'Oprison, Christopher G.' <Christopher_G_Oprison@omb.eop.gov>; Brosnahan, Jennifer R. <Jennifer_R_Brosnahan@omb.eop.gov>; Seidel, Rebecca <Rebecca.Seidel@omb.eop.gov>; McIntosh, Brent J. <Brent.McIntosh@omb.eop.gov>
Cc: Gibbs, Landon M. <Landon.M.Gibbs@omb.eop.gov>
Sent: Fri Feb 02 15:49:04 2007
Subject: RE: DAG testimony on USA firings issue

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

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

From: Oprison, Christopher G.
[mailto:Christopher_G_Oprison]
Sent: Friday, February 02, 2007 3:46 PM

information we provided on the appointment authority and pointing him towards our recent nominations, I don't think it will be as politically focused. More likely, he will write that the Department is pushing out USAs because they are underperforming or not embracing the Department's priorities.

The story will be very critical of how the Bud Cummins situation was handled. He thinks despite the political pedigree, that Griffin is very qualified, but just the way in which it was handled with Cummins and Pryor will make it nearly impossible for him to be nominated or confirmed. The good news on this front is he finds Feinstein and Pryor's criticism that we don't intend to nominate USAs suspect and unwarranted.

Talking Points:

- o In every case, it is a goal of this Administration to have a U.S. Attorney that is confirmed by the Senate. It is inconceivable for a member of Congress to believe that use of an appointment authority to fill a vacancy is in any way an attempt to circumvent the confirmation process. When a United States Attorney submits his or her resignation, the Administration has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's office. Following such a situation, we consult with the home-state Senators prior to nomination regarding candidates for Senate consideration.
- o Our record since this authority was amended demonstrates we are committed to working with the Senate to nominate candidates for U.S. Attorney positions. Specifically, since March 9, 2006, the Administration has nominated 13 individuals to serve as U.S. Attorney (12 have been confirmed). Additionally, since the appointment authority was amended, there have been 11 vacancies created by outgoing U.S. Attorneys -- of those 11 vacancies, the Administration nominated candidates to fill four of these positions to date and has already interviewed candidates for the other seven positions.

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

Talking Points on US Attorney Vacancies

- In every case, it is a goal of this Administration to have a U.S. Attorney that is confirmed by the Senate. It is inconceivable for a member of Congress to believe that use of an appointment authority to fill a vacancy is in any way an attempt to circumvent the confirmation process. When a United States Attorney submits his or her resignation, the Administration has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's office. Following such a situation, we consult with the home-state Senators prior to nomination regarding candidates for Senate consideration.
- Our record since this authority was amended demonstrates we are committed to working with the Senate to nominate candidates for U.S. Attorney positions. Specifically, since March 9, 2006, the Administration has nominated 13 individuals to serve as U.S. Attorney (12 have been confirmed). Additionally, since the appointment authority was amended, there have been 11 vacancies created by outgoing U.S. Attorneys -- of those 11 vacancies, the Administration nominated candidates to fill four of these positions to date and has already interviewed candidates for the other seven positions.

Appointment Authority

- United States Attorneys serve at the pleasure of the President, and whenever a vacancy occurs, we act to fill it in compliance with our obligations under the Constitution, the laws of the United States, and in consultation with the home-state Senators in the region. The Senators have raised concerns based on a misunderstanding of the facts surrounding the resignations of a handful of U.S. Attorneys, each of whom have been in office for their full four year term or more.
- When a United States Attorney submits his or her resignation, the Administration has -- in every case -- consulted with home-state Senators regarding candidates for the Presidential nomination and Senate confirmation. The Administration continues to be committed to working to nominate a candidate for Senate consideration in every case that a vacancy is created, as evidenced by the fact that there have been 125 confirmations of new U.S. Attorneys since January 20, 2001.
- With 93 U.S. Attorney positions across the country, the Department often averages between 8-15 vacancies at any given time. Because of the important work conducted by these offices, and the need to ensure that the office is being managed effectively and appropriately, the Department uses a range of options to ensure continuity of operations.
- In some cases, the First Assistant U.S. Attorney is an appropriate choice. However, in other cases, the First Assistant may not be an appropriate option for reasons including that he or she: resigns or retires at the same time as the outgoing U.S. Attorney; indicates that he/she does not want to serve as Acting; has ongoing or completed OPR or IG matters in their file, which may make his/her elevation to the Acting role inappropriate; or is subject of an unfavorable recommendation by the outgoing U.S. Attorney or otherwise does not enjoy the

confidence of those responsible for ensuring ongoing operations and an appropriate transition until such time as a new U.S. Attorney is nominated and confirmed by the Senate. In those cases, the Attorney General has appointed another individual to lead the office during the transition.

Vacancies Since the Appointment Authority Has Changed:

- Since March 9, 2006, when the appointment authority was amended, the Administration has nominated 13 individuals for Senate consideration (12 have been confirmed to date).
- Since March 9, 2006, when the appointment authority was amended, 11 vacancies have been created. Of the 11 vacancies, the Administration nominated candidates to fill four of these positions (three were confirmed to date) and has interviewed candidates for the other 7 positions. The 11 vacancies were filled as follows:
 - In 5 cases, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period.
 - In 5 cases, the Department selected another Department employee to serve as interim until such time as a nomination is submitted to the Senate.
 - In 1 case, the First Assistant resigned at the same time as the U.S. Attorney, creating a need for an interim until such time as a nomination is submitted to the Senate.

Amending the Statute:

- We are aware of no other federal agency where federal judges, members of a separate branch of government and not the head of the agency, appoint interim staff on behalf of the agency.
- In early 2006, the statute that authorizes the appointment of interim United States Attorneys (28 U.S.C. § 546) was amended by section 502 of Public Law 109-177 to eliminate the provision of a 120-day appointment and to allow the Attorney General to appoint interim United States Attorneys to serve until the nomination and confirmation of a United States Attorney under 28 U.S.C. § 541.
- The statute was amended for several reasons: 1) the previous provision was constitutionally-suspect and the Senate respects the Constitution; 2) some federal judges, recognizing the inherent problems, have refused to do appointments, creating a situation where the Attorney General had to do multiple 120-day appointments; 3) a small number of federal judges, disregarding the Constitutional issues, attempted to appoint individuals other than those proposed by the Department – in one case, someone who had never been a federal government official and hence had never been subject of the required national security clearance process, an unacceptable risk given the responsibilities and operations overseen by our U.S. Attorneys.

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, when the Congress amended the Attorney General's authority to appoint interim United States Attorneys, the President has nominated 13 individuals to serve as United States Attorney (two additional nominations are expected this week). The 13 nominations are:

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

All but Phillip Green have been confirmed by the Senate.

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, there have been 11 new U.S. Attorney vacancies that have arisen. For five of the 11 vacancies, the First Assistant United States Attorney (FAUSA) in the district was selected to lead the office in an acting capacity under the Vacancies Reform Act, *see* 5 U.S.C. § 3345(a)(1) (first assistant may serve in acting capacity for 210 days unless a nomination is made). Those districts are:

- **Central District of California** – FAUSA George Cardona is acting United States Attorney (Cardona is not a candidate for presidential nomination; a nomination is not yet ready);
- **Southern District of Illinois** – FAUSA Randy Massey is acting United States Attorney (Massey is not a candidate for presidential nomination; a nomination was made last Congress, but confirmation did not occur);
- **Northern District of Iowa** – FAUSA Judi Whetstine is acting United States Attorney (Whetstine is not a candidate for nomination and is retiring this month, necessitating an Attorney General appointment; nomination is not yet ready);

- **Eastern District of North Carolina** – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting United States Attorney (Valdrini was not a candidate for presidential nomination; another individual was nominated and confirmed).

For six of the 11 vacancies, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned (Griffin has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division (Taylor has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court (Stecher has expressed interest in presidential nomination; nomination is not yet ready);
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned (Morford is not a candidate for presidential nomination; nomination is not yet ready); and
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned (Schlozman is not a candidate for presidential appointment; nomination is not yet ready).

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

The Attorney General has exercised the authority to appoint interim United States Attorneys a total of nine times since the authority was amended in March 2006. In two of the nine cases, the FAUSA had been serving as acting United States Attorney under the Vacancies Reform Act (VRA), but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed that same FAUSA to serve as interim United States Attorney. These districts include:

- **District of Puerto Rico** – Rosa Rodriguez-Velez (Rodriguez-Velez has expressed interest in presidential nomination; nomination is not yet ready); and
- **Eastern District of Tennessee** – Russ Dedrick (Dedrick has expressed interest in

presidential nomination; nomination is not yet ready).

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

- **District of Alaska** – Nelson Cohen (Cohen is not a candidate for presidential nomination; nomination is not yet ready).

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

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned (Griffin has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division (Taylor has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court (Stecher has expressed interest in presidential nomination; nomination is not yet ready);
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned (Morford is not a candidate for presidential nomination; nomination is not yet ready); and
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned (Schlozman is not a candidate for presidential appointment; nomination is not yet ready).

From: Klingler, Richard D.

Sent: Tuesday, January 16, 2007 8:51 AM

To: Miers, Harriet; Kelley, William K.; Oprison, Christopher G.

Below is today's WSJ story on U.S. Attorneys and proposals to eliminate the PATRIOT ACT extension's appointment power of the Attorney General (touching on Griffin, and disclosing departures not officially confirmed), which I didn't see in the WH news summary. Especially with E.D. Ark., DOJ may have dug its own grave on this.

U.S. Attorney Vacancies Spark Concerns

By EVAN PEREZ and SCOT J. PALTROW

January 16, 2007; Page A4

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

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

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

The proposed legislation would restore to the federal courts authority to make the interim appointments. There is no fixed term for U.S. attorneys. Instead, they typically are appointed at the beginning of a new president's term, and serve throughout that term. If the president is re-elected, they continue to serve, unless of course they decide for some reason that they want to leave.

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

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

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

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

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

and in recent months began discussing stepping down.

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

From: Miers, Harriet
Sent: Tuesday, January 16, 2007 9:48 AM
To: Kelley, William K.; Snow, Tony; Perino, Dana M.
Subject: RE: US Attorney Issues FW: Letter to Leahy-Feinstein re USA Appointments

I am very worried about commenting on performance or management issues in a negative way. We do not do that on personnel decisions and it can be viewed as very harmful to the future of these individuals.

From: Kelley, William K.
Sent: Tuesday, January 16, 2007 9:14 AM
To: Miers, Harriet; Snow, Tony; Perino, Dana M.
Subject: US Attorney Issues FW: Letter to Leahy-Feinstein re USA Appointments
Importance: High

Attached are a draft letter – which, I emphasize, hasn't been sent, though it will be today – from DOJ legislative affairs to Senator Leahy explaining the DOJ's position on replacing US Attorneys, and a fact sheet giving the details on the history of each opening and AG appointment.

The message is simple:

First, US Attorneys serve at the pleasure of the President, and are supervised by the AG and Deputy AG to ensure that they are good managers and act in alignment with the Administration's policies.

Second, such supervision NEVER involves inappropriate interference with or influence on any case or investigation, civil or criminal.

Third, the Administration is committed to having Senate confirmed US Attorneys in all 94 slots, and our record shows that commitment. To the extent that the AG has made US Attorney appointments without nominations following, that is ONLY because of the time it takes to choose and vet a candidate. The AG has not, and will not, manipulate his statutory appointment authority to evade the scrutiny of advice and consent.

DOJ is looking into what they think they can appropriately say through talking points on the decision to replace several US Attorneys last month. We ordinarily don't comment on personnel matters, but we should be able to say that any decisions to ask for resignations were based solely on management and performance issues, and ABSOLUTELY not on any desire to influence cases or investigations or as a response to any such cases or investigations in the past.

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Monday, January 15, 2007 11:16 PM
To: Kelley, William K.
Subject: FW: Letter to Leahy-Feinstein re USA Appointments
Importance: High

Would you also please let me know if you have any concerns/comments? Thanks.

From: Sampson, Kyle

Sent: Monday, January 15, 2007 11:11 PM

To: Moschella, William; Elston, Michael (ODAG); Hertling, Richard; Scolinos, Tasia; Roehrkaase, Brian; Goodling, Monica; Margolis, David

Subject: Letter to Leahy-Feinstein re USA Appointments

Importance: High

All, here is (1) a draft response to the letter from Leahy/Feinstein on USA appointments and (2) fact sheet that we would attach to the letter. I think we should get this out by COB tomorrow, so please review and provide comments ASAP. Thanks.

<<Leahy Letter re USA Appts 1.16.2007.doc>> <<Leahy Letter re USA Appts 1.16.2007 fact sheet.doc>>

January 16, 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Dianne Feinstein
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Senator Feinstein:

This is in response to your letter, dated January 9, 2007, regarding the Administration's appointment of United States Attorneys.

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

United States Attorneys serve at the pleasure of the President. Thus, like other high-ranking Executive Branch officials, they may be removed for, *inter alia*, substandard performance or failure to embrace the Administration's policies. That on occasion some United States Attorneys are removed, or are asked or encouraged to resign, because of substandard performance or failure to embrace the Administration's policies should come as no surprise. Please be assured, however, that United States Attorneys never are removed, or asked or encouraged to resign, in an effort to interfere with or inappropriately influence a particular investigation, criminal prosecution or civil case. United States Attorneys are law enforcement officials and officers of the court who must carry out their responsibilities with strict impartiality.

The Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. When a vacancy in the office of United States Attorney occurs (because of removal, resignation or for any other reason), the Administration first must determine who will serve temporarily as United States Attorney until a new Senate-confirmed United States Attorney is appointed. Because of the importance of continuity in the office, the Administration often looks to the First Assistant United States Attorney or another senior manager in the office to serve as acting or interim United States Attorney. Where neither the First Assistant United States Attorney nor another senior manager in the office is able or willing to serve as acting or interim United States Attorney, or where their service would not be appropriate in the circumstances, the Administration may look to other Department employees to serve as interim United States Attorney. At no time, however, has the Administration sought to avoid the Senate confirmation process by (1) appointing an interim United States Attorney and then (2) refusing to move forward, in consultation with home-State Senators, on the selection, nomination and (hopefully) confirmation of a new United States Attorney. The appointment of United States Attorneys by and with the advice and consent of the Senate unquestionably is the appointment method preferred by the Senate and the one that the Administration follows.

Last year's amendment to the Attorney General's appointment authority was necessary and appropriate. Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in numerous, recurring problems. For example, some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments. In contrast, other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances. Because the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

Enclosed per your request is information regarding the exercise of the Attorney General's authority to appoint interim United States Attorneys. As you will see, the enclosed information establishes conclusively that the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. Indeed, every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or the Administration is working, in consultation with home-State

Letter to Chairman Leahy and Senator Feinstein
January 16, 2007
Page 3

Senators, to select candidates for nomination. Such nominations are, of course, subject to Senate confirmation.

Sincerely,

Richard A. Hertling
Acting Assistant Attorney General

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, when the Congress amended the Attorney General's authority to appoint interim United States Attorneys, the President has nominated 13 individuals to serve as United States Attorney (two additional nominations are expected this week). The 13 nominations are:

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

All but Phillip Green have been confirmed by the Senate.

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, there have been 11 new U.S. Attorney vacancies that have arisen. For five of the 11 vacancies, the First Assistant United States Attorney (FAUSA) in the district was selected to lead the office in an acting capacity under the Vacancies Reform Act, *see* 5 U.S.C. § 3345(a)(1) (first assistant may serve in acting capacity for 210 days unless a nomination is made). Those districts are:

- **Central District of California** – FAUSA George Cardona is acting United States Attorney (Cardona is not a candidate for presidential nomination; a nomination is not yet ready);
- **Southern District of Illinois** – FAUSA Randy Massey is acting United States Attorney (Massey is not a candidate for presidential nomination; a nomination was made last Congress, but confirmation did not occur);
- **Northern District of Iowa** – FAUSA Judi Whetstine is acting United States Attorney (Whetstine is not a candidate for nomination and is retiring this month, necessitating an Attorney General appointment; nomination is not yet ready);

- **Eastern District of North Carolina** – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting United States Attorney (Valdrini was not a candidate for presidential nomination; another individual was nominated and confirmed).

For six of the 11 vacancies, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned (Griffin has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division (Taylor has expressed interest in presidential nomination; nomination is not yet ready);
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- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned (Schlozman is not a candidate for presidential appointment; nomination is not yet ready).

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

The Attorney General has exercised the authority to appoint interim United States Attorneys a total of nine times since the authority was amended in March 2006. In two of the nine cases, the FAUSA had been serving as acting United States Attorney under the Vacancies Reform Act (VRA), but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed that same FAUSA to serve as interim United States Attorney. These districts include:

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presidential nomination; nomination is not yet ready).

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- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned (Schlozman is not a candidate for presidential appointment; nomination is not yet ready).

From: Kelley, William K.
Sent: Tuesday, January 16, 2007 10:34 AM
To: Miers, Harriet
Subject: FW: Leahy-Feinstein Letter re USA appointments
Importance: High
Attachments: Leahy Letter re USA Appts 1.16.2007.doc; Leahy Letter re USA Appts 1.16.2007 fact sheet.doc

I assume we agree with the proposition below, but I wanted to see if you had any comments before signing off.

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Tuesday, January 16, 2007 10:31 AM
To: Kelley, William K.
Subject: Leahy-Feinstein Letter re USA appointments
Importance: High

Bill, attached are the "final" drafts of the letter and fact sheet. We REALLY want to get these sent up to the Hill ASAP, but I feel like I need your clearance, as it implicates the President's appointment authority. For your ease of reference, the operative language for your purposes is:

"The Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts."

If WHCO is fine with this statement, then you all should be fine with the rest of the letter. Thanks for your attention to this. Standing by.

<<Leahy Letter re USA Appts 1.16.2007.doc>> <<Leahy Letter re USA Appts 1.16.2007 fact sheet.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

January 16, 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Dianne Feinstein
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Senator Feinstein:

This is in response to your letter, dated January 9, 2007, regarding the Administration's appointment of United States Attorneys.

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

United States Attorneys serve at the pleasure of the President. Thus, like other high-ranking Executive Branch officials, they may be removed for, *inter alia*, substandard performance or failure to implement effectively the Department's priorities. That on occasion in an organization as large as the Justice Department some United States Attorneys are removed, or are asked or encouraged to resign, because of substandard performance or failure to implement effectively the Department's priorities should come as no surprise. Please be assured, however, that United States Attorneys never are removed, or asked or encouraged to resign, in an effort to interfere with or inappropriately influence a particular investigation, criminal prosecution or civil case. United States Attorneys are law enforcement officials and officers of the court who must carry out their responsibilities with strict impartiality.

HJC 10055

The Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. When a vacancy in the office of United States Attorney occurs (because of removal, resignation or for any other reason), the Administration first must determine who will serve temporarily as United States Attorney until a new Senate-confirmed United States Attorney is appointed. Because of the importance of continuity in the office, the Administration often looks to the First Assistant United States Attorney or another senior manager in the office to serve as acting or interim United States Attorney. Where neither the First Assistant United States Attorney nor another senior manager in the office is able or willing to serve as acting or interim United States Attorney, or where their service would not be appropriate in the circumstances, the Administration may look to other Department employees to serve as interim United States Attorney. At no time, however, has the Administration sought to avoid the Senate confirmation process by (1) appointing an interim United States Attorney and then (2) refusing to move forward, in consultation with home-State Senators, on the selection, nomination and (hopefully) confirmation of a new United States Attorney. The appointment of United States Attorneys by and with the advice and consent of the Senate unquestionably is the appointment method preferred by the Senate and the one that the Administration follows.

Last year's amendment to the Attorney General's appointment authority was necessary and appropriate. Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in numerous, recurring problems. For example, some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments. In contrast, other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances. Because the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

Enclosed per your request is information regarding the exercise of the Attorney General's authority to appoint interim United States Attorneys. As you will see, the enclosed information establishes conclusively that the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. Indeed, every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or the Administration is working, in consultation with home-State

Letter to Chairman Leahy and Senator Feinstein

January 16, 2007

Page 3

Senators, to select candidates for nomination. Such nominations are, of course, subject to Senate confirmation.

Sincerely,

Richard A. Hertling
Acting Assistant Attorney General

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, when the Congress amended the Attorney General's authority to appoint interim United States Attorneys, the President has nominated 13 individuals to serve as United States Attorney (two additional nominations are expected this week). The 13 nominations are:

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

All but Phillip Green have been confirmed by the Senate.

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, there have been 11 new U.S. Attorney vacancies that have arisen. For five of the 11 vacancies, the First Assistant United States Attorney (FAUSA) in the district was selected to lead the office in an acting capacity under the Vacancies Reform Act, *see* 5 U.S.C. § 3345(a)(1) (first assistant may serve in acting capacity for 210 days unless a nomination is made). Those districts are:

- **Central District of California** – FAUSA George Cardona is acting United States Attorney (Cardona is not a candidate for presidential nomination; a nomination is not yet ready);
- **Southern District of Illinois** – FAUSA Randy Massey is acting United States Attorney (Massey is not a candidate for presidential nomination; a nomination was made last Congress, but confirmation did not occur);
- **Northern District of Iowa** – FAUSA Judi Whetstine is acting United States Attorney (Whetstine is not a candidate for nomination and is retiring this month, necessitating an Attorney General appointment; nomination is not yet ready);

- **Eastern District of North Carolina** – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting United States Attorney (Valdrini was not a candidate for presidential nomination; another individual was nominated and confirmed).

For six of the 11 vacancies, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) (“Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant”). Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned (Griffin has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division (Taylor has expressed interest in presidential nomination; nomination is not yet ready);
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In one case, the FAUSA had been serving as acting United States Attorney under the VRA, but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

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From: Miers, Harriet
Sent: Tuesday, January 16, 2007 10:50 AM
To: Kelley, William K.
Subject: RE: Leahy-Feinstein Letter re USA appointments

I believe the letter implies that there was removal for cause too much for my appetite. So I can't sign off on the letter. I believe we should treat these actions as matter of fact management of the department and the desire to have USA's in place who are recommended by the AG. I certainly think that we can make the point about not interfering.....that any such inference is without justification.

From: Kelley, William K.
Sent: Tuesday, January 16, 2007 10:34 AM
To: Miers, Harriet
Subject: FW: Leahy-Feinstein Letter re USA appointments
Importance: High

I assume we agree with the proposition below, but I wanted to see if you had any comments before signing off.

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Tuesday, January 16, 2007 10:31 AM
To: Kelley, William K.
Subject: Leahy-Feinstein Letter re USA appointments
Importance: High

Bill, attached are the "final" drafts of the letter and fact sheet. We REALLY want to get these sent up to the Hill ASAP, but I feel like I need your clearance, as it implicates the President's appointment authority. For your ease of reference, the operative language for your purposes is:

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Kyle Sampson
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U.S. Department of Justice
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(202) 514-2001 wk.
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kyle.sampson@usdoj.gov

From: Kelley, William K.
Sent: Tuesday, January 16, 2007 9:16 AM
To: Miers, Harriet; Snow, Tony; Perino, Dana M.
Subject: FW: Griffin talkers
Importance: High
Attachments: Griffin Talkers.doc

These are DOJ talkers on Tim Griffin and his appointment.

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Tuesday, January 16, 2007 9:14 AM
To: Kelley, William K.
Subject: FW: Griffin talkers and USA fact sheet
Importance: High

For the gaggle.

From: Goodling, Monica
Sent: Tuesday, January 16, 2007 9:13 AM
To: Sampson, Kyle
Subject: Griffin talkers and USA fact sheet

<<Griffin Talkers.doc>> <<Leahy Letter re USA Appts 1.16.2007 fact sheet.doc>> <<Leahy Letter re USA Appts 1.16.2007.doc>>

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

- Timothy Griffin was appointed to serve as the interim U.S. Attorney for the Eastern District of Arkansas following the resignation of Bud Cummins, who resigned on December 20, 2006.
- The Attorney General has told Senator Pryor that the Administration would like to nominate Mr. Griffin and that we are not circumventing the process by making an interim appointment. The Department must have someone that they have confidence in lead the office until such time as the Senate confirms a new U.S. Attorney.
- Mr. Griffin has significant experience as a federal prosecutor at both the Department of Justice and as a military prosecutor. At the time of his appointment, he was serving as a federal prosecutor in the Eastern District of Arkansas. Also, from 2001 to 2002, Mr. Griffin served at the Department of Justice as Special Assistant to the Assistant Attorney General for the Criminal Division and as a Special Assistant U.S. Attorney in the Eastern District of Arkansas in Little Rock. In this capacity, Mr. Griffin prosecuted a variety of federal cases with an emphasis on firearm and drug cases. He also organized the Eastern District's Project Safe Neighborhoods (PSN) initiative, the Bush Administration's effort to reduce firearm-related violence by promoting close cooperation between State and federal law enforcement, and served as the PSN coordinator.
- Prior to rejoining the Department in the fall of 2006, Mr. Griffin completed a year of active duty in the U.S. Army, and is in his tenth year as an officer in the U.S. Army Reserve, Judge Advocate General's Corps (JAG), holding the rank of Major. In September 2005, Mr. Griffin was mobilized to active duty to serve as an Army prosecutor at Fort Campbell, Ky. At Fort Campbell, he prosecuted 40 criminal cases, including *U.S. v. Mikel*, which drew national interest after Pvt. Mikel attempted to murder his platoon sergeant and fired upon his unit's early morning formation. Pvt. Mikel pleaded guilty to attempted murder and was sentenced to 25 years in prison.
- In May 2006, Tim was assigned to the 501st Special Troops Battalion, 101st Airborne Division and sent to serve in Iraq. From May through August 2006, he served as an Army JAG with the 101st Airborne Division in Mosul, Iraq, as a member of the 172d Stryker Brigade Combat Team Brigade Operational Law Team, for which he was awarded the Combat Action Badge and the Army Commendation Medal.
- Prior to being called to active duty, Mr. Griffin served as Special Assistant to the President and Deputy Director of the Office of Political Affairs at the White House, following a stint at the Republican National Committee. Mr. Griffin has also served as Senior Counsel to the House Government Reform Committee, as an Associate Independent Counsel for *In Re: Housing and Urban Development Secretary Henry Cisneros*, and as an associate attorney with a New Orleans law firm.

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

From: Perino, Dana M.
Sent: Tuesday, January 16, 2007 10:40 AM
To: Kelley, William K.; Snow, Tony
Subject: RE: US Attorneys

Agree. Thanks.

From: Kelley, William K.
Sent: Tuesday, January 16, 2007 10:33 AM
To: Snow, Tony; Perino, Dana M.
Subject: US Attorneys

Harriet has persuaded me that we shouldn't say anything about the US Attorneys that even comes close to implying criticism of their performance. So how 'bout:

These are important offices and the President is grateful for the service of all his US Attorneys. The fact that sometimes a decision is made to let someone new have the opportunity to serve the Nation in this important role shouldn't be surprising or remarkable, and any suggestion or insinuation that something nefarious or illegitimate motivates any changes is simply without any basis.

From: Lee, Kenneth K.
Sent: Tuesday, January 16, 2007 10:37 AM
To: Kelley, William K.
Subject: FYI – more on USA (Lam)

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

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

Legal community stunned by Lam report

By: TERI FIGUEROA and WILLIAM FINN BENNETT - Staff Writers

Speculation that the Bush administration allegedly has asked San Diego-based U.S. Attorney Carol Lam, the region's chief federal prosecutor, to step down was met with disbelief and dropped jaws by legal community members with ties to federal court.

"I was in a state of shock," said Peter Nunez, who served as the U.S. attorney in charge of the San Diego offices from 1982 to 1988. "It's just like nothing I've ever seen before in 35-plus years. To be asked to resign and to be publicly humiliated by leaking this to the press is beyond any bounds of decency and behavior. It shocks me. It really is outrageous."

Nunez and others said they had not even heard rumblings that Lam was in the cross hairs for possible removal.

Lam's spokeswoman Friday declined to address the rumor.

"We have no comment," Debra Hartman, spokeswoman for the U.S. attorney's office, wrote in an e-mail to the North County Times.

A spokesman for the attorney general's office in Washington, D.C., declined to comment Friday.

The North County Times could not independently confirm a published report in The San Diego Union-Tribune that Lam had been asked to resign.

Lam may not be the only U.S. attorney politely being asked to pack her bags.

In a Thursday news release, U.S. Sen. Dianne Feinstein announced that she and two other senators were introducing legislation that would prevent the executive branch from trying to do an end run on the Senate's prerogative of confirming U.S. attorneys.

According to the newspaper report, which appeared Friday and cited unnamed sources, Lam was targeted for not making the prosecution of smuggling and gun cases a top priority.

Nunez said the question he has is, "Why?"

"What sin has she committed that justifies asking her to submit her resignation and publicly humiliating her in the process?" Nunez said. "If the reasons are anything close to the newspaper

reports, that's crazy, especially when this administration is so weak on immigration."

Lam's office has made white-collar crime a priority, and has taken on a number of high-profile cases --- among them the successful prosecution of then-Congressman Randy "Duke" Cunningham on charges of bribery and tax evasion --- since her 2002 appointment by the Bush administration.

Other cases that came during her tenure included December's criminal convictions of the chiefs of Golden State Fence Co. for hiring illegal immigrants, and the potential death penalty case for the long-sought and recently nabbed Francisco Javier Arrellano-Felix, the alleged head of a Mexican drug cartel.

Lam is a former San Diego Superior Court judge who at one time presided over criminal trials at the courthouse in Vista. Nunez, who said he hired Lam as an assistant U.S. attorney about 20 years ago, called her a "bright, hardworking, conscientious, diligent person."

Also surprised by the report was Charles La Bella, who served a stint as the interim U.S. attorney in 1998. La Bella said Friday that he found the resignation request, if it is true, to be "unusual."

"In my years with the department, I never saw anything like this," La Bella said.

It's difficult to say whether Lam's case priorities might have been a factor, he said.

"The only people who know are in Washington," La Bella said.

Escondido-based defense attorney Mark Chambers, who handles a lot of cases in federal court, said there was a "change of emphasis" when Lam took over.

"There appeared to be a drop-off in the prosecutions of what we call 'border busts,' people arrested for bringing drugs across the border," Chambers said. "There were major increases in large conspiracy cases that involved a great deal of resources to prosecute and investigate. She went after the big fish."

Chambers said he, too, was surprised by the rumor.

"I'm at a loss to determine the reason. It doesn't make sense to me. I think the U.S. attorney's responsibility is to prosecute high-profile, complicated cases, and I think she was doing that."

As a defense attorney, Chambers said, he often feels that the people who are prosecuted are at the "extreme low end of the pole, and some prosecutorial discretion should have been applied."

"Since she took over the office, I haven't felt that," Chambers said. "The people who were getting prosecuted were clearly high profile, high culpability."

La Bella and Nunez said that while politics can play a role in the appointment of each of the nearly eight dozen U.S. attorneys, once a person steps into the job, politics fall by the wayside.

U.S. attorneys serve by the appointment of, and at the pleasure of, the president, and are subject to confirmation by the U.S. Senate. It is common for an incoming president to appoint new people to the 94 positions.

Nunez, reached by his cell phone Friday, said it is "extremely rare" for an administration to ask one of its own appointees to step down.

"The only time this happens is when there has been an allegation of misconduct," Nunez said. "That doesn't mean the president doesn't have the authority to do this. If he wants to, he can fire them. There's nothing wrong with that --- but if you are going to fire them, you better have a good reason."

Feinstein and the other senators used strong words in the news release describing their proposed legislation.

"It has come to our attention that the Bush Administration is pushing out U.S. Attorneys from across the country under the cloak of secrecy and then appointing indefinite replacements without Senate confirmation," Feinstein wrote.

And in a Tuesday letter to U.S. Attorney General Alberto Gonzales, Feinstein also hinted at her suspicions that something might be afoot. While she did not refer specifically to Lam, Feinstein wrote that the Department of Justice had asked "several" U.S. attorneys to step down by the end of the month, "without cause."

"We ... understand the intention is to have your office appoint interim replacements and potentially avoid the Senate confirmation process altogether," she wrote.

A little-known provision in the Patriot Act reauthorization last year changed existing law so that if a vacancy occurs, the attorney general can appoint a replacement for an indefinite period of time.

A spokesman for Feinstein said Friday that he would have no comment beyond the statements that the senator made in her letter.

Brian Roehrkas, a spokesman for the attorney general's office, said by phone Friday that Gonzales is certainly not trying to avoid the Senate confirmation process. There are 93 U.S. attorneys in the country, he said, and at any given time, "a number of them are coming and going."

"In every case, it is the goal of this administration to have a U.S. attorney that is confirmed by the Senate," he said.

For years, U.S. Rep. Darrell Issa has criticized Lam for not doing enough to prosecute smugglers of illegal immigrants. In an October 2005 letter to Attorney General Gonzales, Issa blasted Lam's office for failing to prosecute two cases of smugglers who were repeat offenders.

"This lax prosecutorial standard virtually guarantees that both of these individuals will be arrested on U.S. soil in the future for committing further serious crimes," Issa wrote.

Lam had complained that her office simply lacked the funding to pursue many smuggling cases.

On Friday, Issa spokesman Frederick Hill said that Issa would have no comment on the matter without confirmation that Lam had in fact been asked to step down.

The president of the National Patrol Council, which represents rank-and-file U.S. Border Patrol agents, said Friday that he wishes Lam well and said he hopes that whomever follows her in the

job is willing to do whatever is necessary to prosecute immigration smuggling cases.

President T.J. Bonner said that because Lam was so picky about what she was willing to pursue "that it was nearly impossible to prosecute cases in San Diego."

**Contact staff writer Teri Figueroa at (760) 631- or
Finn Bennett at (760) 740- or**

Contact William

From: Kelley, William K.
Sent: Tuesday, January 16, 2007 2:49 PM
To: Miers, Harriet
Subject: RE: feinstein on the floor (USA issue)

I certainly don't know of any examples. I will tell Kyle that we can't go negative -- Dana agreed this morning when I passed on your comment to that effect.

From: Miers, Harriet
Sent: Tuesday, January 16, 2007 2:48 PM
To: Kelley, William K.
Subject: RE: feinstein on the floor (USA issue)

I would really like to hear one precedent where we have been willing to discuss negatives about a person that is comparable to this situation. The individuals aren't saying anything public. Senators are. Then we are going to go out and say negative things about the people?

From: Kelley, William K.
Sent: Tuesday, January 16, 2007 2:38 PM
To: Miers, Harriet
Subject: RE: feinstein on the floor (USA issue)

Do you want me to raise this with Joel?

From: Miers, Harriet
Sent: Tuesday, January 16, 2007 2:31 PM
To: Kelley, William K.
Subject: RE: feinstein on the floor (USA issue)

I am quite surprised that we would engage on whether a personnel action on a Presidential appointment is justified for the reasons I have earlier stated. We can see what the Chief thinks.

From: Kelley, William K.
Sent: Tuesday, January 16, 2007 1:58 PM
To: Miers, Harriet
Subject: FW: feinstein on the floor (USA issue)
Importance: High

See below. DOJ is pushing back a bit.

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Tuesday, January 16, 2007 1:57 PM
To: Kelley, William K.
Subject: FW: feinstein on the floor (USA issue)

Importance: High

Bill, the media and Senate Dems are alleging that we are forcing USAs out for inappropriate political reasons (Feinstein said words to that effect on the Senate floor this morning!) -- not for their incompetence. I really think that our letter should include the (oblique) language about some USAs sometimes being "removed, or asked or encouraged to resign" because of "substandard performance" and/or "failure to implement effectively the Department's priorities." This is the high road: we don't finger anyone specifically (and never will).

FYI -- our USA in SD is refusing to resign (though we've given her until 5pm eastern); recommendation that she be removed immediately should be over to you by the end of the day.

From: Seidel, Rebecca
Sent: Tuesday, January 16, 2007 1:06 PM
To: Sampson, Kyle; Goodling, Monica
Cc: Moschella, William; Hertling, Richard; Tracci, Robert N
Subject: FW: feinstein on the floor (USA issue)
Importance: High

see below.

From: Hayden, Cindy (Judiciary-Rep)
Sent: Tuesday, January 16, 2007 1:04 PM
To: Seidel, Rebecca
Subject: feinstein on the floor

feinstein on the floor talking about the forcing out of 7 US attorneys

do you guys have rebuttal explanation for the situation

From: Miers, Harriet
Sent: Tuesday, January 16, 2007 6:51 PM
To: Kelley, William K.
Subject: RE: feinstein

My position on discussing in public the specifics of what is a personnel decision remains unchanged.

From: Kelley, William K.
Sent: Tuesday, January 16, 2007 6:02 PM
To: Miers, Harriet
Subject: FW: feinstein
Importance: High

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From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Tuesday, January 16, 2007 5:30 PM
To: Kelley, William K.
Subject: FW: feinstein
Importance: High

i'm updating the letter now to reflect the two usa appts today
lam has resigned
can we send our response? the stronger version? please advise.

From: Roehrkasse, Brian
Sent: Tuesday, January 16, 2007 5:28 PM
To: Elston, Michael (ODAG); Sampson, Kyle; Scolinos, Tasia; Goodling, Monica
Subject: FW: feinstein

This is generating a lot of calls.

From: Johnson, Kevin
Sent: Tuesday, January 16, 2007 5:12 PM
To: Roehrkasse, Brian
Subject: feinstein

FOR IMMEDIATE RELEASE:
Tuesday, January 16, 2007

Contact: Scott Gerber, 202/224-
<http://feinstein.senate.gov>

Senator Feinstein Concerned over Resignations

of at Least Seven U.S. Attorneys Across the Country

- Senator Feinstein to question Attorney General Gonzalez at Judiciary Committee Hearing later this week -

Washington, DC – *In a speech on the Senate Floor, U.S. Senator Dianne Feinstein (D-Calif.) today expressed concern about the fact that a number of U.S. Attorneys have been asked by the Department of Justice to resign their positions prior to the end of their terms and without cause.*

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The following is a transcript of Senator Feinstein's floor speech:

"Mr. President, I have introduced an amendment on this bill which has to do with the appointment of U.S. Attorneys. This is also the subject of the Judiciary Committee's jurisdiction, and since the Attorney General himself will be before that committee on Thursday, and I will be asking him some questions, I speak today in morning business on what I know so much about this situation.

Recently, it came to my attention that the Department of Justice has asked several U.S. Attorneys from around the country to resign their positions -- some by the end of this month -- prior to the end of their terms not based on any allegation of misconduct. In other words, they are forced resignations.

I have also heard that the Attorney General plans to appoint interim replacements and potentially avoid Senate confirmation by leaving an interim U.S. Attorney in place for the remainder of the Bush administration.

How does this happen? The Department sought and essentially was given new authority under a little known provision in the PATRIOT Act Reauthorization to appoint interim appointments who are not subject to Senate confirmation and who could remain in place for the remainder of the Bush administration.

To date, I know of at least seven U.S. Attorneys forced to resign without cause, without any allegations of misconduct. These include two from my home State, San Diego and San Francisco, as well as U.S. Attorneys from New Mexico, Nevada, Arkansas, Texas, Washington and Arizona.

In California, press reports indicate that Carol Lam, U.S. Attorney for San Diego, has been asked to leave her position, as has Kevin Ryan of San Francisco. The public response has been shock. Peter Nunez, who served as the San Diego U.S. Attorney from 1982 to 1988, has said, 'This is like nothing I've ever seen in my 35-plus years.'

He went on to say that while the President has the authority to fire a U.S. Attorney for any reason, it is 'extremely rare' unless there is an allegation of misconduct.

To my knowledge, there are no allegations of misconduct having to do with Carol Lam. She is a distinguished former judge. Rather, the only explanation I have seen are concerns that were expressed about prioritizing public corruption cases over smuggling and gun cases.

The most well-known case involves a U.S. Attorney in Arkansas. Senators Pryor and Lincoln have raised significant concerns about how "Bud" Cummins was asked to resign and in his place the administration appointed their top lawyer in charge of political opposition research, Tim Griffin. I have been told Mr. Griffin is quite young, 37, and Senators Pryor and Lincoln have expressed concerns about press reports that have indicated Mr. Griffin has been a political operative for the RNC.

While the administration has confirmed that 5 to 10 U.S. Attorneys have been asked to leave, I have not been given specific details about why these individuals were asked to leave. Around the country, though, U.S. Attorneys are bringing many of the most important and complex cases being prosecuted. They are responsible for taking the lead on public corruption cases and many of the antiterrorist efforts in the country. As a matter of fact, we just had the head of the FBI, Bob Mueller, come before the Judiciary Committee at our oversight hearing and tell us how they have dropped the priority of violent crime prosecution and, instead, are taking up public corruption cases; ergo, it only follows that the U.S. Attorneys would be prosecuting public corruption cases.

As a matter of fact, the rumor has it -- and this is only rumor -- that U.S. Attorney Lam, who carried out the prosecution of the Duke Cunningham case, has other cases pending whereby, rumor has it, Members of Congress have been subpoenaed. I have also been told that this interrupts the flow of the prosecution of these cases, to have the present U.S. attorney be forced to resign by the end of this month.

Now, U.S. Attorneys play a vital role in combating traditional crimes such as narcotics trafficking, bank robbery, guns, violence, environmental crimes, civil rights, and fraud, as well as taking the lead on prosecuting computer hacking, Internet fraud, and intellectual property theft, accounting and securities fraud, and computer chip theft.

How did all of this happen? This is an interesting story. Apparently, when Congress reauthorized the PATRIOT Act last year, a provision was included that modified the statute that determines how long interim appointments are made. The PATRIOT Act Reauthorization changed the law to allow interim appointments to serve indefinitely rather than for a limited 120 days. Prior to the PATRIOT Act Reauthorization and the 1986 law, when a vacancy arose, the court nominated an interim U.S. Attorney until the Senate confirmed a Presidential nominee. The PATRIOT Act Reauthorization in 2006 removed the 120-day limit on that appointment, so now the Attorney General can nominate someone who goes in without any confirmation hearing by this Senate and serve as U.S. Attorney for the remainder of the President's term in

office. This is a way, simply stated, of avoiding a Senate confirmation of a U.S. Attorney.

The rationale to give the authority to the court has been that since district court judges are also subject to Senate confirmation and are not political positions, there is greater likelihood that their choice of who should serve as an interim U.S. Attorney would be chosen based on merit and not manipulated for political reasons. To me, this makes good sense.

Finally, by having the district court make the appointments, and not the Attorney General, the process provides an incentive for the administration to move quickly to appoint a replacement and to work in cooperation with the Senate to get the best qualified candidate confirmed.

I strongly believe we should return this power to district courts to appoint interim U.S. Attorneys. That is why last week, Senator Leahy, the incoming Chairman of the Judiciary Committee, the Senator from Arkansas, Senator Pryor, and I filed a bill that would do just that. Our bill simply restores the statute to what it once was and gives the authority to appoint interim U.S. Attorneys back to the district court where the vacancy arises.

I could press this issue on this bill. However, I do not want to do so because I have been saying I want to keep this bill as clean as possible, that it is restricted to the items that are the purpose of the bill, not elections or any other such things. I ought to stick to my own statement.

Clearly, the President has the authority to choose who he wants working in his administration and to choose who should replace an individual when there is a vacancy. But the U.S. Attorneys' job is too important for there to be unnecessary disruptions, or, worse, any appearance of undue influence. At a time when we are talking about toughening the consequences for public corruption, we should change the law to ensure that our top prosecutors who are taking on these cases are free from interference or the appearance of impropriety. This is an important change to the law. Again, I will question the Attorney General Thursday about it when he is before the Judiciary Committee for an oversight hearing.

I am particularly concerned because of the inference in all of this that is drawn to manipulation in the lineup of cases to be prosecuted by a U.S. Attorney. In the San Diego case, at the very least, we have people from the FBI indicating that Carol Lam has not only been a straight shooter but a very good prosecutor. Therefore, it is surprising to me to see that she would be, in effect, forced out, without cause. This would go for any other U.S. Attorney among the seven who are on that list.

We have something we need to look into, that we need to exercise our oversight or

From: Miers, Harriet
Sent: Tuesday, January 16, 2007 6:53 PM
To: Kelley, William K.
Subject: RE: feinstein

And of course we should (carefully) make the point that the steps taken could be taken with with or without the use of the specific provision.

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Subject: FW: feinstein
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From: Fiddelke, Debbie S.
Sent: Friday, December 08, 2006 6:56 PM
To: Kelley, William K.
Subject: RE: Nevada US Atty

thanks, let us know if there's anything we can do

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?

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From: Fiddelke, Debbie S.
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To: Wolff, Candida P.; Looney, Andrea B.; O'Hollaren, Sean B.
Subject: FW: Nevada US Atty

fyi

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From: Lee, Kenneth K.
Sent: Thursday, December 14, 2006 9:23 AM
To: Brosnahan, Jennifer R.
Subject: RE: Meeting with Gerry Parsky

Nothing else -- there are vacancies for the U.S. Marshal (S.D. Cal) and the USA (C.D. Cal.) -- and there'll soon be vacancies for the USA in S.D. Cal. And N.D. Cal. But these are all handled via the GOP-side of the Parsky Commission.

So the only one is how to handle the S.D. Cal. District Court judgeship.

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

From: Brosnahan, Jennifer R.
Sent: Thursday, December 14, 2006 9:20 AM
To: Lee, Kenneth K.
Subject: RE: Meeting with Gerry Parsky

Ken - Did you come up with anything else? I've already put this Feinstein call on her to-do list.

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

From: Lee, Kenneth K.
Sent: Saturday, December 09, 2006 5:34 PM
To: Brosnahan, Jennifer R.
Subject: Re: Meeting with Gerry Parsky

Let me go over my notes -- nothing pops up in my head right now; the Parsky commission has worked well so far in avoiding any issues with the Dem Senators.

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

From: Brosnahan, Jennifer R.
To: Lee, Kenneth K.
Sent: Sat Dec 09 16:20:33 2006
Subject: Fw: Meeting with Gerry Parsky

Ken, I'd appreciate any help on the Feinstein point. I figure that Myers/Smith is one topic. Anything else?

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

From: Miers, Harriet
To: Lee, Kenneth K.

HJC 10004

CC: Brosnahan, Jennifer R.; Kelley, William K.

Sent: Sat Dec 09 15:46:17 2006

Subject: RE: Meeting with Gerry Parsky

I had a very good visit with Gerry. He wanted to know what was happening to Janice Sanmartino and I told him she would be considered by the President on Monday.

He asked me what process we wanted to use re the bench for which his daughter will be considered. I told him I would like to know who on the Commission he thought it might be good to ask to run this process and he suggested David Casey (he is very familiar to Senator Feinstein). I also most likely will call Senator Feinstein about this. Jenny, it would be good to make a list of everything that I might want to visit with Senator Feinstein in addition to this issue.

He wanted to discuss Kevin Ryan. Gerry wants me to check into whether the transition timing is set in stone. He wants to know what Justice will say about him ...performance, capabilities, etc. He said that Kevin complained that Battle called him and not someone more senior and Gerry wondered whether someone more senior to Battle could also call. He also wanted us to remind Justice that the Commission would be involved in the selection of the successor. For whatever reason he seemed very sympathetic with Kevin. I told him these steps were considered by Justice over months and that I was committed to support the Justice decisions. He said he had no intention of undercutting their work, but he added he thought the problems were abruptness, timing, and tone of delivery of the message, seniority of the person calling, and lack of reasons given. I explained the "Andy Card" approach to leaving. I also explained (and he seemed to get) that Kevin did not have basis for saying he was caught by surprise.

He spent a lot of time talking about Los Angeles United States Attorney selection to replace Debra Yang. He said the impression out in California is that there are three "Washington candidates" who were individuals considered to be "Imposed" on Los Angeles. He said the office has particular needs right now. He said there is a morale problem and a number of vacant positions (which may be because of lack of funding). He thinks the office is down maybe as much as 25%. He discussed each of the candidates and how they were viewed by the Commission. As a result and after a lot of specific discussion, he indicated that he will personally interview Dan Collins, Tom O'Brien, Dickran Tevizian, and possibly Kimberly Dunn (no one has interviewed her yet). I can fill you in on the pros and cons as he saw them of the various candidates. He really is opposed to a "drop in."

I asked him about getting help pushing all of the nominees in January. He said he expected them to go immediately through and I showed him the dates to show they are stalled.

As always, he was in good spirits and loves the President and Mrs. Bush.

From: Lee, Kenneth K.
Sent: Tuesday, December 12, 2006 5:50 PM
To: Roebke, Heather M.
Subject: RE: Carol Lam

Thanks. I don't know if Harriet's been heavily involved in the USA replacement plan, but I've left a vmail for Kyle to get the details. I'll report back once I hear from him.

From: Roebke, Heather M.
Sent: Tuesday, December 12, 2006 5:49 PM
To: Lee, Kenneth K.
Subject: RE: Carol Lam

It's at 12:45pm

From: Lee, Kenneth K.
Sent: Tuesday, December 12, 2006 5:47 PM
To: Roebke, Heather M.
Subject: RE: Carol Lam

I'm not sure what this call is about, but I do know that Carol Lam was to be notified last week that she would be replaced. What time is the call? I'll call Kyle Sampson to get the scoop on how it went, etc.

From: Roebke, Heather M.
Sent: Tuesday, December 12, 2006 5:41 PM
To: Lee, Kenneth K.
Subject: Carol Lam

Gerald Parsky will be calling Harriet tomorrow to discuss Carol Lam, USA, SD CA. Is she up to speed on this issue?

Heather Roebke
White House Counsel's Office
Washington, D.C. 20502
(202) 456-

From: Lee, Kenneth K.
Sent: Wednesday, December 13, 2006 8:43 AM
To: Miers, Harriet
Subject: US Attorney S.D. Cal. (Lam)

Harriet --

Heather told me last night that you will have a call with Gerry Parsky about Carol Lam, the U.S. Attorney of S.D. Cal. I assume the topic will be about the selection of her successor, but I wanted to give you a download on DOJ's conversation with her last week.

Kyle told me that she apparently took the news relatively well, and understood why DOJ wanted to give someone else an opportunity to serve as US Attorney. She has failed to implement the priorities and initiatives that the President and the Attorney General outlined for the U.S. Attorney offices. For example, she didn't increase gun prosecutions, didn't implement Project Safe Neighborhood (the comprehensive anti-gun violence initiative), and didn't really pursue obscenity cases.

From: Oprison, Christopher G.
Sent: Wednesday, December 13, 2006 3:52 PM
To: Looney, Andrea B.
Subject: RE: Tim Griffin - ED Ark USA spot

As an AG-appointed Interim US Attorney for the remainder of the time.

From: Looney, Andrea B.
Sent: ~~Wednesday, December 13, 2006 3:51 PM~~
To: Oprison, Christopher G.
Subject: RE: Tim Griffin - ED Ark USA spot

Let me double check. Remind me, the plan is to put Tim into the US Attorney office as what? An assistant of some kind?

From: Oprison, Christopher G.
Sent: Wednesday, December 13, 2006 3:20 PM
To: Looney, Andrea B.
Subject: Tim Griffin - ED Ark USA spot
Importance: High

Andrea – to follow on our prior call, have you had a chance to discuss with Candi whether any other names are forthcoming for this position? Harriet has a call with Senator Pryor today and I would like to brief her on the latest. Thanks

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

From: Wolff, Candida P.
Sent: Wednesday, December 13, 2006 5:35 PM
To: Looney, Andrea B.; O'Hollaren, Sean B.
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FYI . . . from Candi.

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From: Roebke, Heather M.
Sent: Wednesday, December 13, 2006 11:47 AM
To: Oprison, Christopher G.; Brosnahan, Jennifer R.
Subject: RE: Sen. Pryor

OK thanks.

From: Oprison, Christopher G.
Sent: Wednesday, December 13, 2006 11:47 AM
To: Roebke, Heather M.; Brosnahan, Jennifer R.
Subject: RE: Sen. Pryor

Only thing I can think of is the potential AG-appointment of Tim Griffin to be US Attorney for the ED Ark. Sens. Pryor and Lincoln were *adamantly* opposed his nomination because of Griffin's past efforts to unseat them. I doubt this has anything to do with the other nomination from ED Ark – JR Howard, the US Marshal candidate.

From: Roebke, Heather M.
Sent: Wednesday, December 13, 2006 11:28 AM
To: Oprison, Christopher G.; Brosnahan, Jennifer R.
Subject: Sen. Pryor

FYI: Senator Pryor (D-AR) is asking for a time this afternoon to speak with Harriet on the phone. His assistant could not provide a topic.

Do either of you know what this might be regarding?

Heather Roebke
White House Counsel's Office
Washington, D.C. 20502
(202) 458-

From: Oprison, Christopher G.
Sent: Wednesday, December 13, 2006 4:02 PM
To: Miers, Harriet
Subject: RE: Tim Griffin

Just got off the phone with her and she indicated she has not raised this with Candi yet, but would do so now. She indicated her office might be hesitant to settle on one name, particularly one that the home state senators object to, because they may need to call on Pryor or Lincoln for their support on legislation in the future.

From: Miers, Harriet
Sent: Wednesday, December 13, 2006 4:00 PM
To: Oprison, Christopher G.
Subject: RE: Tim Griffin

Why don't you put another call into Andrea? Thanks.

From: Oprison, Christopher G.
Sent: Wednesday, December 13, 2006 3:53 PM
To: Miers, Harriet
Cc: Roebke, Heather M.
Subject: RE: Tim Griffin

Followup: just spoke with Scott Jennings - he confirmed the information below, specifically, that Tim Griffin is to be the AG-appointed Interim US Attorney for the ED Ark. He doubted that there would be any other names considered.

From: Oprison, Christopher G.
Sent: Wednesday, December 13, 2006 3:48 PM
To: Miers, Harriet
Cc: Roebke, Heather M.
Subject: Tim Griffin

Harriet

I understand you have a 4pm call today with Senator Pryor re: Tim Griffin. The status as conveyed to me is that Tim Griffin was selected to be the US Attorney for the ED Arkansas but that both home state Senators objected to him given his prior work to unseat them. According to Leslie, DOJ's plan, endorsed by Scott Jennings, was to move Griffin into an AG-appointed US Attorney position after a period assisting the outgoing incumbent. This was briefed to Andrea Looney who indicated she would seek Candi Wolff's views on this course to see if they anticipate surveying for other names or sticking with Griffin as an AG-appointment. I contacted Andrea earlier this week and asked her for an update. She said she would raise this with Candi and get back to me. I have not heard anything yet and have left another message for her. I also called Monica Goodling at DOJ re: the status of the background. She indicated that Griffin is out of background and her understanding is that he is ready to be AG-appointed to serve as the interim USA for the remainder of the time.

You received a note from Griffin recently (dated November 3, 2006) saying "it looks like everything is going to work out so that I can move in as interim US Attorney."

This is the only information I have on Griffin. If you would like, I would be happy to join you on the call with Senator Pryor.

Christopher G. Oprison
Associate Counsel to the President
(202) 456

From: Jennings, Jeffery S.
Sent: Friday, December 15, 2006 4:20 PM
To: Oprison, Christopher G.
Subject: FW: Tim Griffin

501-837 is cell

From: Oprison, Christopher G.
Sent: Friday, December 15, 2006 1:21 PM
To: Jennings, Jeffery S.
Subject: Tim Griffin

Do you have contact information for Tim? Cell or home number? Thanks.

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

From: Jones, Blair C.

Sent: Friday, December 15, 2006 2:50 PM

To: Mamo, Jeanie S.

Subject: Tim Griffin/US Attorney Rumor

FYI - Stephens Media Group is calling about the US Attorney position for Arkansas and if Tim Griffin is a possible candidate for the job after the current occupant, U.S. Attorney Bud Cummins, steps down. They also want to verify if Griffin was a WH staffer. I am giving the standard "don't speculate on personnel" line and am going to confirm that he was a former Special Assistant to the President and Deputy Director of Political Affairs.

HJC 10015

From: Oprison, Christopher G.
Sent: Friday, December 15, 2006 3:18 PM
To: Miers, Harriet; Kelley, William K.
Subject: FW: U.S. Attorney -- E.D. Ark.

fyi

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Friday, December 15, 2006 2:37 PM
To: Oprison, Christopher G.
Cc: Goodling, Monica
Subject: RE: U.S. Attorney -- E.D. Ark.

Alas, no. But I have a window between 3:15pm-3:30pm. Let me know.

From: Oprison, Christopher G. [mailto:Christopher_G._Oprison@who.eop.gov]
Sent: Friday, December 15, 2006 2:35 PM
To: Sampson, Kyle
Cc: Goodling, Monica
Subject: RE: U.S. Attorney -- E.D. Ark.

Kyle - this is one issue that is front/center on my radar screen. I have had several conversations with Scott Jennings and with the Counsel about the controversy but, as you might suspect, I am lacking some crucial background knowledge. Will you be available to discuss today at 3:30?

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Friday, December 15, 2006 2:32 PM
To: Oprison, Christopher G.
Cc: Goodling, Monica
Subject: U.S. Attorney -- E.D. Ark.

Chris, we haven't met yet, but I'm sure we will.

Wanted to give you a heads up. Bud Cummins, the U.S. Attorney in Little Rock, announced to his troops today that he is resigning effective Wednesday, December 20. The AG spoke to Sen. Pryor (who had called him about this earlier in the week) and informed him that we were going to put Tim Griffin in as U.S. Attorney under an AG appointment. We're in the process now of giving Sen. Lincoln notice and then will put out a press release today, announcing Griffin's appointment. There is a lot of back story here that you may or may not know. Call if you want to discuss. Thanks.

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

HJC 10016

From: Oprison, Christopher G.
Sent: Friday, December 15, 2006 4:52 PM
To: Miers, Harriet; Kelley, William K.
Subject: FW: U.S. Attorney -- E.D. Ark.
Importance: High

fyi

I spoke with Kyle, Monica and, most importantly, Tim. Please let me know if you are available to meet to discuss.

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Friday, December 15, 2006 4:45 PM
To: Oprison, Christopher G.
Cc: Goodling, Monica
Subject: U.S. Attorney -- E.D. Ark.
Importance: High

The Senators' Chiefs of Staff now have been notified of our intention (1) to put Griffin in as USA under an AG appointment and (2) to issue a press release out of DOJ today stating the same.

Chris, I think the White House (you) needs to continue the dialogue with the Senators re our desire to have the President nominate, and the Senate confirm, Griffin. They think they smell a rat, i.e., that we are doing an end around of their advice and consent authority by exercising the new, unlimited AG appointment authority.

Monica, please be sure that the Griffin meeting with Sen. Pryor gets scheduled.

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, December 18, 2006 12:52 PM
To: Miers, Harriet; Kelley, William K.
Subject: FW: FYI

see below

The contention that Senator Pryor's office was caught unaware is not consistent with what the AG's office indicated to me. Perhaps a three-way conference call with the AG and Senator Pryor might be in order? If only to clear the air.

From: Goodling, Monica [mailto:Monica.Goodling@usdoj.gov]
Sent: Monday, December 18, 2006 12:46 PM
To: Oprison, Christopher G.
Cc: Sampson, Kyle
Subject: FYI

Chris -- FYI, see below. (As you'll see, the Arkansas Dem-Gaz did not call our public affairs office and got the type of appointment wrong.)

Prosecutor post is filled in recess
Surprise notice that ex-Rove aide named U.S. attorney irks Pryor
ARKANSAS DEMOCRAT-GAZETTE, December 16, 2006
BY LINDA SATTER

A surprise late-afternoon announcement Friday that J. Timothy Griffin will become the new U.S. attorney for the Eastern District of Arkansas drew the ire of U.S. Sen. Mark Pryor, whose spokesman said the maneuver amounts to "basically circumventing the normal process."

"We think the people of the Eastern District of Arkansas deserve to know who their U.S. attorney is," Michael Teague, Pryor's spokesman, said shortly after learning that U.S. Attorney General Alberto Gonzales had made the appointment, which takes effect Wednesday.

"The proper way to do this is in the Senate Judiciary Committee, [where] several things are done to make sure that whoever fills this post is qualified."

The announcement caught even the current U.S. attorney, Bud Cummins, off guard as he hiked through deer woods with his son.

Shortly after being notified that the announcement was being moved up, Cummins said over a cell phone in the woods that he had been planning to announce next week that his resignation — in the works for several months — would be effective Wednesday.

As he has in the past few months, the 2001 Bush nominee declined to reveal any specific plans for his future except to say, "I'm going to pursue opportunities in the private sector."

Cummins also said, "It's been a great honor to serve. ... I appreciate President Bush giving me this opportunity to serve in this exciting time."

Griffin, 34, once an aide to former presidential adviser Karl Rove, has been working as a "special assistant" under Cummins for several months. He said that because he won't officially take over until Wednesday, he didn't want

to comment on the announcement.

Teague said he believes the timing of the announcement might have had something to do with Pryor's telephone calls this week with various officials, including conversations earlier Friday with Gonzales himself. Pryor made the calls in response to reporters' queries about Cummins' departure and rumors that Griffin was either going to be nominated soon or moved into office through a congressional recess appointment.

"No one would be straight with us and let us get to the bottom of this," Teague said.

He said Griffin called Pryor "a couple of months ago," apparently to get a feel for whether the Democratic senator would support his nomination, but Pryor wouldn't commit to anything.

Normally, the White House requests names of potential replacements for U.S. attorneys and other positions from the state's senators or congressmen, and then chooses a nominee from among those names. The nominee then must undergo a background check and Senate confirmation — which could be tough for Griffin in the new Democrat-controlled body. Griffin, a longtime behind-the-scenes Republican operative and political strategist, has worked for the Republican National Committee.

"If he was the nominee, potentially the senator would support him, but the way they're doing it, it is basically circumventing the process," Teague complained. "There are 100 U.S. attorneys around the country. The question is, what makes this one different? The U.S. marshal [candidate, J.R. Howard, also for the Eastern District of Arkansas] is going through the process. Why isn't the U.S. attorney?"

Teague noted that an interim appointment could keep Griffin at the helm of the top prosecutor's post in the state's Eastern District for the two years remaining in Bush's term.

"This process circumvents a way to find out about his legal background," Teague said. "We know about his political background, which is unbalanced. If he's just interim for the next two years, every decision he makes during that time is going to be somewhat suspect."

The state's only Republican congressman, John Boozman, said last month that he hadn't been asked to submit names to replace Cummins.

By the time the announcement was released late Friday afternoon, the attorney general's office was closed. Efforts to reach the office of the state's other senator, Democrat Blanche Lincoln, for comment were unsuccessful. Teague noted that while Cummins has said for several months that he is leaving to pursue other job opportunities before his presidential appointment expires in two years, Cummins, 47, has also said publicly that he loves the job and would stay forever if he could.

"Within legal circles and in the community, it's been viewed as him being forced out to open this position for Tim," Teague said.

Cummins said only that he is ready to move on, has always known his position was temporary and had told the White House a year ago that he planned to leave to give them time to find a replacement.

Teague noted that Griffin's previous experience appears to be "primarily research and campaigns. The citizens of eastern Arkansas deserve a U.S. attorney who has spent more time in the courtroom, not the campaign war-room."

Cummins had previously clerked for a federal judge.

The announcement of Griffin's appointment — sent by the U.S. Department of Justice through Cummins' office — notes that the Magnolia native "recently completed a year of active duty in the U.S. Army, and is in his tenth year as an officer in the U.S. Army Reserve, Judge Advocate General's Corps (JAG), holding the rank of Major.

"In September 2005, Mr. Griffin was mobilized to active duty to serve as an Army prosecutor at Fort Campbell, Ky. At Fort Campbell, he prosecuted 40 criminal cases."

The announcement notes that Griffin served in Iraq.

"The one thing that stands out," Teague said, "is that he worked for Karl Rove in the West Wing of the White House. Is he getting special treatment?"

Teague said that from Pryor's standpoint, "Bud Cummins has been a fantastic U.S. attorney. He's kept them on the legal road and is respected on both sides of the aisle. He is textbook. Now we get basically a campaign worker replacing him. Is he going to make good legal decisions, or he is going to make political decisions?"

Former Bush aide named to U.S. attorney post

Saturday, Dec 16, 2006

By Aaron Sadler

Stephens Washington Bureau

WASHINGTON - A former Republican political operative and top aide to President Bush was named late Friday as interim U.S. attorney for the Eastern District of Arkansas.

HJC 10019

The appointment of Tim Griffin drew criticism from Arkansas senators Mark Pryor and Blanche Lincoln, both Democrats. Pryor accused the Bush administration of circumventing the traditional nomination process on behalf of a political ally.

The open-ended appointment differs from a normal presidential selection, where Griffin would face Senate hearings and a confirmation vote.

Pryor believes the Senate should be able to quiz Griffin about his qualifications, especially given his background as Bush's deputy director of political affairs under Karl Rove, spokesman Michael Teague said.

Before that, Griffin worked in opposition research for the Republican National Committee.

"We hope it's not the White House's intention to go around the Constitution, go around the nomination process and reward a fellow who's done some political work for them," Teague said.

Rep. John Boozman, R-Rogers, defended the appointment. He said Griffin might face unfair treatment from Senate Democrats because of his political ties.

"There might be a tendency because he did work for the president in that capacity politically to hold that against him and not look at the fact he's very well-qualified," said Boozman, the only Republican in the state's congressional delegation.

"In going before the Senate, there are all kinds of politics," Boozman said.

Griffin, 38, will take over for Bud Cummins, who resigns Wednesday. The Eastern District includes Little Rock and 41 counties in the eastern and north central part of Arkansas.

Griffin on Friday declined to comment on his appointment.

The Magnolia native just completed a year of active duty in the U.S. Army Reserve, including a stint in Iraq. He is a major in the Judge Advocate General's corps.

A graduate of Hendrix College and Tulane University law school, he worked as a special assistant U.S. attorney in the eastern district in 2001-02.

The interim selection leaves open the possibility for Bush to officially appoint Griffin or someone else to the post sometime in the future.

Conceivably, Griffin could serve as interim U.S. attorney indefinitely.

Teague said Pryor hopes the president makes a permanent selection - subject to Senate confirmation - after Congress reconvenes in January.

If Bush acts on a nomination before Congress returns, the appointee would serve as a "recess appointment" and Senate confirmation would not be required until the next congressional session in two years.

Attorney General Alberto Gonzales and White House Counsel Harriet Miers gave Pryor no time frame for when Bush might select a permanent replacement, Teague said.

Teague said Pryor was not available to comment because he was at the hospital visiting Sen. Tim Johnson, D-S.D., who underwent brain surgery this week.

Pryor supports full Senate hearings for the next U.S. attorney and did not rule out support for Griffin.

"He very well may be the person," qualified to serve, Teague said, but "he should have to go through the normal nomination process."

Sen. Blanche Lincoln, D-Ark., said in a statement that she was impressed by Cummins' work and his service.

Lincoln said she also would expect Bush to replace Cummins through the normal Senate confirmation process. HJC 10020

Teague said the timing of the announcement late Friday afternoon gave the appearance that the administration was attempting to keep the appointment quiet.

"His actions are always going to be suspect if you're not going to do this in the right way and in an open manner," Teague said. "It's hard to say if you're going to support or not support someone if you don't go through the process of who they are."

A report by the BBC in 2004 connected Griffin to a possible effort to disenfranchise black voters in Florida. The report said an e-mailed list of 1,886 names was to be used to challenge residents' voting status.

In a November 2000 Time magazine report, Griffin was depicted as a zealous researcher who sought to discredit Democratic candidate Al Gore at any opportunity.

The magazine said a poster hanging behind Griffin's desk said: "On my command - unleash hell on Al."

Boozman said the time in Iraq and as a prosecutor shows there is more to Griffin than just his political background.

"I think he is a very intelligent guy who's done a lot of different things. He's going to do well," Boozman said.

From: Perkins, Paul R.
Sent: Tuesday, December 19, 2006 8:42 AM
To: Kelley, William K.; Oprison, Christopher G.
Subject: J. Timothy Griffin (USA, ED AR)

Richard Klingler wanted me to let you guys know that the President approved J. Timothy Griffin for U.S. Attorney for the Eastern District of Arkansas on June 23, 2006.

From: Miers, Harriet [Harriet_Miers@who.eop.gov]
Sent: Tuesday, December 19, 2006 7:09 PM
To: Karl Rove
Subject: FW: Another Griffin article

FYI. This does not seem to be developing as we thought.

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

From: Oprison, Christopher G.
Sent: Tuesday, December 19, 2006 6:39 PM
To: Miers, Harriet; Kelley, William K.
Subject: FW: Another Griffin article

Fyi - see below

Also, Richard Klingler confirmed with Paul Perkins earlier today that Tim had been approved by the President as a nominee in June 2006 but, after Senator Pryor indicated he would oppose Tim's nomination, the plan turned to putting Tim up as an AG appointment.

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

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Tuesday, December 19, 2006 6:27 PM
To: Oprison, Christopher G.
Subject: RE: Another Griffin article

My thoughts:

1. I think we should gum this to death: ask the Senators to give Tim a chance, meet with him, give him some time in office to see how he performs, etc. If they ultimately say, "no never" (and the longer we can forestall that, the better), then we can tell them we'll look for other candidates, ask them for recommendations, evaluate the recommendations, interview their candidates, and otherwise run out the clock. All of this should be done in "good faith," of course.
2. Officially, Tim is the U.S. Attorney, and will identify himself as such on pleadings and other official documents. I think it's fine for us to refer to him as an "interim U.S. Attorney" in talking points, with the understanding that by "interim U.S. Attorney" we mean AG-appointed (as opposed to Presidentially-appointed and Senate confirmed) U.S. Attorney.
3. Overall, I think we should take the temperature way down -- our guy is in there so the status quo is good for us. Ask for them to consider him; note that he is qualified and doing a good job whenever asked; pledge to desire a Senate-confirmed U.S. Attorney; and otherwise hunker down.
4. The only thing really at risk here is a repeal of the AG's appointment authority. We intend to have DOJ leg affairs people on notice to work hard to preserve this (House members won't care about this; all we really need is for one Senator to object to language being added to legislative vehicles that are moving through). There is some risk that we'll lose the authority, but if we don't ever exercise it then what's the point of having it? (I'm not 100 percent sure that Tim was the guy on which to test drive this authority, but know that getting him appointed was important to Harriet, Karl, etc.)

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

From: Oprison, Christopher G. [mailto:Christopher_G._Oprison@who.eop.gov]
Sent: Tuesday, December 19, 2006 6:16 PM
To: Sampson, Kyle
Subject: RE: Another Griffin article

Thanks. I raised that issue with Harriet earlier. Seems to me that (1) Pryor and Lincoln are taking steps to back DOJ/WH into a corner on Tim Griffin and commit to not commit on him as a nominee; and (2) "interim" may be a source of confusion or, worse, a term that Pryor's and Lincoln's office can springboard from to press for their own nominee rather than rallying behind Tim. What are your thoughts? If this is a Section 546 AG HJC 10023

appointment for unlimited duration, Tim can call himself "US Attorney" rather than "interim" or "acting" and our talkers should avoid referring to him as "interim." What are your thoughts?

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

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Tuesday, December 19, 2006 5:36 PM
To: Oprison, Christopher G.
Subject: FW: Another Griffin article

fyi

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

From: Scolinos, Tasia
Sent: Tuesday, December 19, 2006 5:34 PM
To: Sampson, Kyle; Goodling, Monica
Cc: Roehrkassee, Brian
Subject: RE: Another Griffin article

I agree - those are stronger talkers.

BR- who in our office took this call? Let's make sure they have these new points if we get another call. Thanks.

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

From: Sampson, Kyle
Sent: Tuesday, December 19, 2006 5:30 PM
To: Goodling, Monica; Scolinos, Tasia
Subject: RE: Another Griffin article

Monica/Tasia, I'm a little concerned about this:

"A Justice Department spokesman has said officials will work with the Arkansas Congressional delegation "in the near future" to make a nomination, and that Griffin was nominated on an interim basis because of the timing of Cummins' resignation."

I think would prefer:

- * When a U.S. Attorney vacancy arises, someone needs to be appointed -- even if on an interim basis -- to fill the vacancy and do the work of the U.S. Attorney.
- * Griffin was appointed on an interim basis because of the timing of Cummins' resignation.
- * It is our hope that, in every federal district, we'll be able to have a U.S. Attorney who was nominated by the President and confirmed by the Senate.

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

From: Goodling, Monica
Sent: Tuesday, December 19, 2006 12:22 PM
To: 'Oprison, Christopher G.'; Sampson, Kyle
Subject: Another Griffin article

FYI

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

From: griffin
Sent: Tuesday, December 19, 2006 10:49 AM
To: Goodling, Monica
Subject: Another one

Lincoln calls appointment of Rove assistant 'unfortunate'

By ANDREW DeMILLO Associated Press Writer

LITTLE ROCK (AP) Arkansas Sen. Blanche Lincoln called President Bush's decision to appoint political adviser Karl Rove's former assistant as interim U.S. attorney for eastern Arkansas "unfortunate" because she believes it bypasses the normal approval process. HJC 10024

"I think it's very unfortunate that the president would choose not to go down the normal route," Lincoln, D-Ark., told The Associated Press in an interview on Monday.

The Justice Department announced Friday that Tim Griffin would replace Bud Cummins, who plans to resign Dec. 20. There is no maximum amount of time someone can serve as an interim U.S. attorney.

"This is a person who's going to be implementing the law of the land, and I have concerns from what I read in terms of his political nature," Lincoln said. "People need to know that and the way you know that is by going through the processes. The reason we have processes and committees and hearings is so there will be a transparency in the people that are going to serve, and that won't exist in this case."

Arkansas' lone Republican in Congress, Rep. John Boozman, last week said Griffin was highly qualified for the position. But Griffin, who worked on President Bush's re-election campaign in 2004, likely wouldn't have faced a fair hearing in the soon-to-be Democratically controlled Senate, Boozman said.

A native of Magnolia, Griffin now serves as special assistant U.S. attorney for the eastern district of Arkansas. Griffin has previously served as special assistant to President Bush and deputy director of political affairs at the White House, as well as deputy communications director for the Republican National Committee.

He recently finished a year of active duty in Iraq and is an Army Reserve major, serving in the Judge Advocate General's Corps.

A spokesman for Sen. Mark Pryor, D-Ark., on Friday criticized the appointment for avoiding the normal appointment process.

"The senator is concerned that, by announcing an interim (appointment) and not making a nomination, they're determining who the nominee is," Pryor spokesman Michael Teague said Friday. "They're basically circumventing the constitutional process."

A Justice Department spokesman has said officials will work with the Arkansas congressional delegation "in the near future" to make a nomination, and that Griffin was nominated on an interim basis because of the timing of Cummins' resignation.

Lincoln said the White House had contacted her earlier in the year and said they were interested in appointing him to Bud Cummins' position. She said her office had expressed concern about his appointment.

"I don't know that much more about him than you could find if you Googled him," Lincoln said. "That's what we did."

From: Oprison, Christopher G.
Sent: Tuesday, December 19, 2006 1:01 PM
To: Miers, Harriet; Kelley, William K.
Subject: FW: Another Griffin article

fyi

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

From: Goodling, Monica [mailto:Monica.Goodling@usdoj.gov]
Sent: Tuesday, December 19, 2006 12:22 PM
To: Oprison, Christopher G.; Sampson, Kyle
Subject: Another Griffin article

FYI

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

From: griffin
Sent: Tuesday, December 19, 2006 10:49 AM
To: Goodling, Monica
Subject: Another one

Lincoln calls appointment of Rove assistant 'unfortunate'

By ANDREW DeMILLO Associated Press Writer

LITTLE ROCK (AP) Arkansas Sen. Blanche Lincoln called President Bush's decision to appoint political adviser Karl Rove's former assistant as interim U.S. attorney for eastern Arkansas "unfortunate" because she believes it bypasses the normal approval process.

"I think it's very unfortunate that the president would choose not to go down the normal route," Lincoln, D-Ark., told The Associated Press in an interview on Monday.

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"I don't know that much more about him than you could find if you Googled him," Lincoln said. "That's what we did."

Scott Jennings

From: Scott Jennings
Date: 12/20/2006 12:15:11 PM
To: Sampson, Kyle Kyle.Sampson@usdoj.gov;
Cc:
Bcc:
Subject: Washington USATTY

Can you give me a couple of talking points on why McKay was in our group to move on?

His brother has a letter in to Karl, and I know I will be asked for a response.

Thanks man -

Jennings

From: Jennings
Sent: 12/21/2006 8:15:22 PM
To: Scott Jennings;

Bcc:
Subject: FW: Domenici US Attorney Recommendations

From: Looney, Andrea B.
Sent: Thursday, December 21, 2006 3:15 PM
To: Jennings, Jeffery S.
Subject: RE: Domenici US Attorney Recommendations

Pat Rogers and Glen Ellington

From: Jennings, Jeffery S.
Sent: Thursday, December 21, 2006 3:15 PM
To: Looney, Andrea B.
Subject: RE: Domenici US Attorney Recommendations

Who are the other two?

From: Looney, Andrea B.
Sent: Thursday, December 21, 2006 3:15 PM
To: Jennings, Jeffery S.; Brosnahan, Jennifer R.
Subject: RE: Domenici US Attorney Recommendations

es

From: Jennings, Jeffery S.
Sent: Thursday, December 21, 2006 3:14 PM
To: Looney, Andrea B.; Brosnahan, Jennifer R.
Subject: RE: Domenici US Attorney Recommendations

Is Jim Bibb among this group?

From: Looney, Andrea B.
Sent: Thursday, December 21, 2006 2:53 PM
To: Jennings, Jeffery S.; Brosnahan, Jennifer R.
Subject: Domenici US Attorney Recommendations

Senator Domenici plans to recommend a total of 4 candidates, with their first choice being Charles Peifer. A letter should be forthcoming. They believe Bingaman will be supportive of Peifer.

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

HJC 10027-B

From: Looney, Andrea B.
Sent: Thursday, December 21, 2006 3:18 PM
To: Jennings, Jeffery S.
Subject: RE: Domenici US Attorney Recommendations

Bell said he won't take it, but they have him on the list.

From: Jennings, Jeffery S.
Sent: Thursday, December 21, 2006 3:16 PM
To: Looney, Andrea B.
Subject: RE: Domenici US Attorney Recommendations

I can't imagine Pat Rogers will take it – That's a red herring. He'd be the best but he won't do it.

From: Looney, Andrea B.
Sent: Thursday, December 21, 2006 3:15 PM
To: Jennings, Jeffery S.
Subject: RE: Domenici US Attorney Recommendations

Pat Rogers and Glen Ellington

From: Jennings, Jeffery S.
Sent: Thursday, December 21, 2006 3:15 PM
To: Looney, Andrea B.
Subject: RE: Domenici US Attorney Recommendations

Who are the other two?

From: Looney, Andrea B.
Sent: Thursday, December 21, 2006 3:15 PM
To: Jennings, Jeffery S.; Brosnahan, Jennifer R.
Subject: RE: Domenici US Attorney Recommendations

Yes

From: Jennings, Jeffery S.
Sent: Thursday, December 21, 2006 3:14 PM
To: Looney, Andrea B.; Brosnahan, Jennifer R.
Subject: RE: Domenici US Attorney Recommendations

Is Jim Bibb among this group?

From: Looney, Andrea B.
Sent: Thursday, December 21, 2006 2:53 PM
To: Jennings, Jeffery S.; Brosnahan, Jennifer R.

3/9/2007

HJC 10027-C

Subject: Domenici US Attorney Recommendations

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

From: Miers, Harriet
Sent: Tuesday, December 26, 2006 12:42 PM
To: kr@georgewbush.com
Subject: Re: Arkansas Democrat Gazette Lead Editorial Today

Yes, saw it. Very good!

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

From: Karl Rove
To: Miers, Harriet; Kelley, William K.
Sent: Tue Dec 26 12:48:21 2006
Subject: FW: Arkansas Democrat Gazette Lead Editorial Today

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EDITORIALS

Don't be fooled
Person vs. perception

TIM GRIFFIN will make a fine U.S. attorney for the Eastern District of Arkansas.
Enter hysteria from left.

Mr. Griffin is an experienced lawyer and prosecutor, a cum laude graduate of both Hendrix College and Tulane University in New Orleans. He even went to grad school at Oxford, the one across the big pond. He has experience in the private and public sectors.

Gnashing of teeth, rending of garments on cue. All that's just a smokescreen!
Despite his rough-and-tumble years in Washington, this son of Magnolia, Ark., knows and loves the Natural State.

Wrath, fury, charges of rewarding blind political loyalty over real qualifications.
But didn't Tim Griffin leave a highranking post in the White House to spend a year serving in Iraq? Scarcely the act of a blind partisan.

Irrelevant! It was probably just a PR stunt! He's still a GOP hit man!
YOU KNOW how easy it'd be to do a slash-and-burn piece on Tim Griffin? We mean a real verbal kneecap job on the guy? Google "tim griffin" and "republican"—and stand back. He's as easy to demonize as his old boss, Karl Rove.

And since Mr. Griffin has now been appointed the next U.S. attorney for the Eastern District of Arkansas, well, let the demonizing begin!

It already has from Arkansas' junior senator, Mark Pryor. Or, rather from the junior senator's flack, Michael Teague. He/they are shocked—shocked!—at the idea of the president's making a political appointment to a political office. And to appoint Mr. Griffin during a congressional recess, why, that's . . . playing politics!

To quote Mark Pryor's mouthpiece: "The one thing that stands out is that [Tim Griffin] worked for Karl Rove in the West Wing of the White House. Is he getting special treatment? . . . Is he going to make good legal decisions, or is he going to make political decisions?"

Gosh, we don't remember Mark Pryor/Michael Teague/the DNC expressing similar reservations when President Bill Clinton was plunking all those Democrats into U.S. attorney slots during his seemingly endless tenure.

But here's the difference: Tim Griffin is . . . a Republican.
Horrors!

Not only that, but he spent the '04 campaign running Oppo Research for the Republican National Committee. He can't deny it: In the politics-ain't-beanbag world of, well, politics, yes, Tim Griffin played hardball.

So he must be evil incarnate, right?

Wrong.

There's no doubt Mr. Griffin has been a Republican loyalist, operative, opporesearcher and all-around hand for the Grand Ol' Party, which can sling mud as fast as . . . the other grand ol' party. There's also no doubt that he's perfectly qualified for this post, having twice served as deputy federal prosecutor, and having worked as a lawyer in the

Justice Department. (He was a special assistant to Michael Chertoff in the criminal division of the U.S. attorney general's office.) Whatever Mr. Griffin's politics—and at least you don't have to guess about 'em—he's sharp as a new box of tacks, and the kind of God-and-country Arkansan you'd expect to do just what he did. That is, leave behind a desk job as Karl Rove's deputy to serve in Iraq. Tim Griffin may have played hardball, but far as we know he never threw at anybody's head.

Always a good source for information, not just rumor and scuttlebutt, we called Mr. Griffin on an occasional basis when he lived in Washington. Inevitably, the conversation would go from politics to the real stuff—the Hogs and their chances in whatever season was in full bloom in Arkansas. Inevitably, we'd ask Tim how the gig was going, and he'd say, every time: It's okay. But it's not Arkansas.

We can't remember a young, off-to-Washington politico who was so regularly homesick. And who kept getting dragged back to the Beltway by one exciting job offer after another. How does a young Republican turn down a personal appeal from Karl Rove? Remember, before Mr. Rove was this election's goat, he was last election's genius.

But why let the actual person get in the way of Mark Pryor's caricature of him? Here's the party line of the other party: Tim Griffin wouldn't have a snowball's chance at this post if he didn't have all those suspicious connections to the Bush White House. And look how close he is to Karl Rove. And look at those vicious campaigns he worked on. (Never mind that Democrats have plenty of their own Tim Griffins. Just check out the bright young types in their war rooms.) Well, as the kids used to say and maybe still do, Duh. That's the way these things work. That's why they're called political appointments. The most we the people can hope for is that the political appointees have qualifications other than their politics.

LUCKILY, we know Tim Griffin. We've known him for a long time. He may be the smartest guy we know. If he's not, he's on the short list. And we're confident he'll do the job right. If you're looking for legal qualifications—and Camp Pryor claims to be—then just look a little closer at Tim Griffin's background:

Now in his 10th year as an officer in the Army Reserve, Major Griffin of the Judge Advocate General's Corps served as a prosecutor at Fort Campbell, Ky. Remember that case about the private who tried to murder his platoon sergeant? Major Griffin prosecuted it—as well as some 40 other criminal cases.

When he previously served as a special assistant U.S. attorney in Arkansas, Tim Griffin handled drug and firearm cases. He also organized the Eastern District of Arkansas' state-federal effort to reduce gun violence, which was styled Project Safe Neighborhoods. For a partisan appointee, Tim Griffin makes a pretty nonpartisan law-and-order guy.

But something tells us that Mark Pryor isn't especially interested in carefully appraising this appointee's record in the law, but in how much hay he can make of Tim Griffin's association with Karl Rove, the man everybody loves to hate this year. After all, Mark Pryor's own résumé didn't exactly scream Perry Mason before he ran for attorney general of Arkansas. He'd spent a decade in private law practice (did he ever try a case?) while serving a few less than distinguished terms in the Legislature and, naturally, lobbying the Ledge once he was out. Then when he got to be Arkansas' attorney general, what brilliant stroke did he exhibit in that office—besides letting the payday lenders loose on the state?

Mark Pryor may not be the greatest legal mind ever to serve in the U.S. Senate (may not be?) but, boy, he's got plenty of nerve. Because that's what it takes for somebody with his nondescript record at the bar to challenge Tim Griffin's.

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About the only knock on him is that he's too Republican for Mark Pryor. But that's Mark Pryor's problem, not Tim Griffin's.

----- End of Forwarded Message

Karl Rove

From: Karl Rove
Sent: 12/26/2006 11:55:11 AM
To: Kelley, William K. william_k_kelley@who.eop.gov;
Bcc:
Subject: Re: Arkansas Democrat Gazette Lead Editorial Today

Bahhhhh.

On 12/26/06 12:45 PM, "Kelley, William K." <William_K_Kelley@who.eop.gov> wrote:

Strong (except for the goat part.)

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

From: Karl Rove
To: Miers, Harriet; Kelley, William K.
Sent: Tue Dec 26 12:48:21 2006
Subject: FW: Arkansas Democrat Gazette Lead Editorial Today

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HJC 10029-A

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----- End of Forwarded Message

From: Oprison, Christopher G.
Sent: Thursday, December 28, 2006 6:29 PM
To: Kelley, William K.; Miers, Harriet
Subject: FW: EDAR article

fyi

From: Goodling, Monica [mailto:Monica.Goodling@usdoj.gov]
Sent: Thursday, December 28, 2006 6:24 PM
To: Sampson, Kyle; Oprison, Christopher G.
Subject: EDAR article

FYI

(Chris -- We already spoke with Tim about not handling his own press, and he understands that he needs to work through our Public Affairs office in the future.)

New U.S. Attorney Says Job Matters, Not How He Got It (ARKDG)

By Linda Satter

Arkansas Democrat-Gazette, December 27, 2006

Newly appointed as interim U. S. attorney for the Eastern District of Arkansas through a maneuver that has drawn criticism

from the state's two reigning Democrats, Tim Griffin says he hopes to turn the spotlight off the way he got the job and onto his

plan to aggressively fight crime through cooperative efforts.

"I am honored by the attorney general's decision to name me U. S. attorney," Griffin said Wednesday, his first day on the

job. "I look forward to working with Sen. [Mark] Pryor and Sen. [Blanche] Lincoln to make Arkansas safer," he said after a long

day that began with being sworn in by Chief U. S. District Judge Leon Holmes and ended with many of his books and papers yet

to be moved into a corner office from a smaller space down the hall that he has occupied since September. Just five days earlier, the U. S. Department of Justice announced that Attorney General Alberto Gonzales planned to appoint the 38-year-old lawyer from Magnolia to the post that Bud Cummins earlier announced he was vacating after five years.

Sens. Pryor and Lincoln immediately expressed dismay that the interim appointment came during a congressional recess, under a provision of the Patriot Act that allows the fill- ing of a vacancy without going through the usual process of being

nominated by the White House, screened by the Senate Judiciary Committee and voted on by the Senate. The surprise announcement "denied the Senate the opportunity to carefully consider and evaluate Mr. Griffin's qualifications and denied the American people the transparency the standard nomination process provides,"

Lincoln said through

a spokesman.

Pryor's press secretary, Michael Teague, complained that unless the appointment is followed up by a formal nomination, it

could end up being a sneaky way for the Bush administration to reward an insider with a plum job without having to prove his

qualifications and ability to be nonpartisan. Teague cited Griffin's strong ties to the Republican Party and his reputation as an

aggressive former GOP campaign researcher, at one point under Karl Rove, Bush's main political adviser and deputy chief of

staff.

"We hope we're wrong that they're trying to circumvent the process by never nominating him," Teague reiterated on Friday,

but he added that the administration might think that Griffin will "just evolve into the U. S. attorney" from the interim post he now

holds. Later Friday, Justice Department spokesman Brian Roehrkasse addressed those concerns directly, indicating that Griffin's

appointment is indeed meant to be temporary, at least until it can go through the formal nomination process. "We have asked

that Sen. Pryor meet with the acting U. S. attorney," Roehrkasse said. "We are hopeful that by working with the two U. S.

senators from Arkansas, we will make a nomination that the senators support and the Congress approves." Roehrkasse explained, "When a U. S. attorney resigns, there is a need for someone to fill that position." He noted that

often, the first assistant U. S. attorney in the affected district will serve as the acting U. S. attorney until the formal nomination

process begins for a replacement. But in this case, "the first assistant is on maternity leave," he said, referring to Jane Duke, who

gave birth to twins earlier than expected the same week of the announcement. "Tim was chosen because of his significant experience working as a federal prosecutor in both Arkansas and in the Justice Department in Washington, D. C.," Roehrkasse

said.

Asked how soon the formal nomination process might begin, he said, "We've put the meeting request out there.

That's

what we're working on right now." Under the Patriot Act, the intent of appointments by the attorney general is to aid national

security by ensuring that key law enforcement posts aren't left unoccupied. Ryan James, spokesman for Arkansas' only

Republican U. S. congressman, John Boozman, also defended Griffin's appointment on Friday, noting that it is not the same as a

"true recess appointment," in which the president nominates someone to the position, often for the duration of the

current

Congress. "It's not unprecedented to make acting appointments, for whatever reason," James said, noting that President Clinton

did the same thing.

He said Boozman believes that a full Senate confirmation process could be unfair to Griffin because of the combination of

a new Democratic-majority Congress being seated in January and Griffin's prior association with Rove, a Republican stalwart.

The process could quickly become very political, and, "He may not get a fair shake as far as his qualifications," James said

of Griffin. James added that Boozman believes that Griffin is qualified.

Griffin acknowledged Wednesday, after being sworn in as the district's 43rd chief federal prosecutor, "The way one is appointed to be U. S. attorney is a political process. It is a political appointment. But the moment you become U. S. attorney,

politics stop.... There is no room for politics in the U. S. attorney's office. Politics stop at the door."

He added, "My job is to make sure all Arkansans are treated equally under the law."

Indeed, U. S. attorneys across the country are generally of the same political party as the president who nominates them.

While they are required to be lawyers, many have little actual courtroom experience and heavily rely on the "career" prosecutors

in the office to handle the day-to-day legal machinations.

Many also have used the office as a steppingstone to an elected office. Griffin declined to discuss his future beyond his

new job.

Griffin's legal experience includes 10 years as a JAG (Judge Advocate General) officer in the U. S. Army Reserve, and the

prosecution of 40 criminal cases as an Army prosecutor at Fort Campbell, Ky., including a case in which a soldier pleaded guilty

to the attempted murder of his platoon sergeant. Griffin also served as senior counsel to the House Government Reform

Committee and was an associate with a New Orleans law firm.

He graduated with honors, both from Hendrix College in Conway and Tulane Law School in New Orleans.

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. Griffin, who now supervises about 25 attorneys and 35 support staff

members, has worked as an assistant under Cummins since September, and also worked in the Arkansas office in 2001 and

2002 as a special assistant, to gain experience.

During that time, he organized and coordinated the department's Project Safe Neighborhoods initiative, a Bush administration effort to reduce firearm-related violence through close cooperation between state and federal law officers that he

says is still a pet project of his.

Griffin said that since 2001, the office has seen a 390 percent increase in the number of firearm-related cases it has taken

on — often taking over local cases, with local prosecutors' consent, to ensure that violators face the stricter penalties available in

federal court. That includes an absence of parole. Griffin noted that he has talked with his counterpart in the state's Western

District, U. S. Attorney Bob Balfe, about "working as closely as possible, forging a seamless relationship, particularly where our

districts meet, so we can be aggressive in fighting crime in the Eastern District, the Western District or both." He said he also

plans to work closely with U. S. attorneys in neighboring states "because criminals aren't concerned with artificial borders." He

recently completed a year of active duty in the U. S. Army, including a stint in Iraq. He and his wife of two years, Elizabeth, have

no children.

"I've had a lot of jobs in my life, and what I've tried to do in each and every one of them is perform with excellence," Griffin

said. "Bud has set a great example as U. S. attorney. He set the standard, and I am going to work hard to meet that standard to

the best of my ability."

To those who doubt him, he said, "I am going to ask them to judge me on my performance."

From: Oprison, Christopher G.
Sent: Wednesday, January 10, 2007 2:48 PM
To: Miers, Harriet; Kelley, William K.
Subject: FW: Griffin meeting summaries

fyi re: Tim Griffin's meetings with Senators Lincoln and Pryor.

Also, there was a question raised by Senator Pryor re: the status of J.R. Howard's nomination. Bill, have you had a chance to review his BI?

From: Goodling, Monica [mailto:Monica.Goodling@usdoj.gov]
Sent: Wednesday, January 10, 2007 2:41 PM
To: Sampson, Kyle; Oprison, Christopher G.
Subject: Griffin meeting summaries

Kyle/Chris -- I'm pasting below a summary of the two Hill meetings that occurred yesterday between Tim Griffin and the two Senators. The summary was prepared by our OLA representative, who attended the meetings with Tim. I also spoke with Tim, who had a more optimistic view of how the meetings went.

We have three get-backs -- status of the U.S. Marshal candidate (he's ready for nomination once Bill Kelley clears him), a list of appointees since the Patriot Act change (we'll handle here), and the status of Tim's nomination (BI was delivered to me last night at 10 p.m. and I'll review today/tomorrow and send over). Please let me know if you have any questions. Thanks, Monica

Tim Griffin Meeting with Senator Blanche Lincoln

January 9, 2007, 2:30 pm

Senator Lincoln asked Tim whether there was anything that he wanted to share with her and her legislative director, Jim Stowers. Tim went over his resume with them. Senator Lincoln said that having experience is important and that his background was appropriate for the position—that was more than adequate. She said that she was disappointed in the way that it was handled; that she did not know why; that there were no enormous issues and that she was not notified of any urgency of the appointment. She said that what had been done said that the process does not matter and the handling his appointment in this way causes divisiveness. She reiterated that three times. The meeting with Senator Lincoln lasted less than a half hour.

Tim Griffin Meeting with Senator Mark Pryor

January 9, 2007, 3:30 pm

Senator Pryor began the meeting, which included the Senator's chief of staff Bob Russell, by saying that he was unhappy about the process; that the appointment was not a substitution for the process; and that

he wanted Tim to go through the process. I told him that the plan was for Tim to be nominated. He also said that the Marshal nominee, J.R. Howard, was tied to Tim's nomination. He asked that we check on the timing on the Howard nomination. He asked Tim when his background investigation would be done, and Tim told him that he had been advised that it was done. Senator Pryor raised the issue of Bud being "forced out" and Tim went into all of the conversations he had had with the prior USA about the prior USA's departure date. Senator Pryor asked Tim whether he knew when he got there that he would be appointed. Tim said that he wanted to be and tried to see that he would get detailed down there as he was leaving the Army; that he had called Bud about it and Bud told him that there was a place for him. They asked whether the First Assistant was ever in play to be appointed. Both the Senator and his chief of staff said that they had a problem with saying that her pregnancy precluded her from being appointed. Senator Pryor told Tim that the problem is that it looks as if you orchestrated the whole thing. Tim said that was not true. Senator Pryor asked Tim whether he was the interim or the U.S. Attorney and Tim said once you become the interim you are the U.S. Attorney. Senator Pryor asked Tim if he were nominated and not approved, would he withdraw and step down. Tim said he did not know. Senator Pryor said that he suggested Tim do that and play it straight, otherwise there was a cloud over him. Senator Pryor said that he would be sure that he was given a hearing, given an up-or-down vote, and given a fair day but that he wanted to get it resolved. (He also talked about voting for all but one of the Administration's nominees and how he had carried the water for Leon Holmes) Senator Pryor told Tim that it was presumptuous of him if he had not practiced law in Arkansas to think he could be the U.S. Attorney and presumptuous of the White House to do this; that there are a lot of good lawyers in the state AG's office, including Republicans. He told Tim that he was not a known entity but folks did know his family. Senator Pryor said that he was glad to hear that Tim was going to be nominated. Tim's response was that he would put his experience up against anyone in the state. Senator Pryor asked Tim about the Michael case (JAG) and Tim walked him through it. Senator Pryor asked why the Independent Counsel (David Barrett) case had taken so long. Tim started talking about the case beginning as a false statement to the FBI case and then getting into tax violations and there was a back-and-forth between the Reno Justice Department and Barrett. Senator Pryor asked Tim whether any of the attorneys who had worked for him were appointed as US Attorney or were in the White House. Tim replied that the folks who worked for him at the RNC were researchers and not attorneys. Senator Pryor asked about the "caging" article and said that Arkansas did not always have a good record on race and that caging is a race sensitive term. He did state that what Tim had been doing was challenging minority voters. Tim walked him through the work and Senator Pryor had questions about whether they only focused on battleground states and Tim assured Senator Pryor that they were only checking addresses not checking names. Senator Pryor responded that he was laying the groundwork to set up challenges to the votes. Tim said that those decisions were above me but in the end votes were not challenged. The Senator also asked what percent of the addresses were bad and Tim did not know. The Senator's chief of staff told Tim that the process would give him the opportunity to tell the full story about this and that people would think "my God, what else was he involved in" and that it only behooved him to go through the process. Tim responded that he had not done anything illegal and that the article itself is false. Senator Pryor asked him how long he had been back in Little Rock and whether he had been active in politics since his return. Tim responded "no." At the end, they asked for the names of the appointees made since the Patriot Act changed the process and the time frame for both Tim and J.R. Senator Pryor concluded the meeting by saying that sending out the press release at 4:15 on a Friday does not speak well and only feeds the perception that this is a political game. Tim again reiterated that he did not orchestrate this. The meeting lasted over an hour.

From: Oprison, Christopher G.
Sent: Thursday, January 11, 2007 2:40 PM
To: Paola, Lindsey N.
Subject: FW: Pending BIs

Is Bill ready for Jenny and me?

From: Kelley, William K.
Sent: Thursday, January 11, 2007 2:38 PM
To: 'Sampson, Kyle'
Cc: Paola, Lindsey N.; Brosnahan, Jennifer R.; Perkins, Paul R.; Fahrenkopf, Leslie; Oprison, Christopher G.; Stanton, Cheryl M.
Subject: RE: Pending BIs

All four of these folks are cleared for nomination. Thanks.

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Monday, January 08, 2007 8:09 PM
To: Kelley, William K.
Subject: Pending BIs
Importance: High

Bill, I have the following pending BIs on my list:

1. **John Wood**, to be U.S. Attorney for the Western District of Missouri;

REDACTED

Robert Pomeroy, to be U.S. Marshal for the District of Massachusetts, also is pending; I take it from JSC that his BI problems are insuperable and we now want to go with Reed Hillman? Do I owe you anything on Hillman?

Status on these?

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: Miers, Harriet
Sent: Friday, January 12, 2007 1:42 PM
To: Oprison, Christopher G.
Subject: Re: Tim Griffin

Hmmmmmm.

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

From: Oprison, Christopher G.
To: Kelley, William K.; Miers, Harriet
Sent: Fri Jan 12 13:37:37 2007
Subject: Tim Griffin

Harriet, Bill

Tim Griffin just called and told me he was called to attend a meeting with the AG and DAG on Tuesday. He asked if I had heard about this, which I had not. He sounded concerned about the reason for the meeting. I told him he should contact Monica.

I sent an email to Kyle to inquire if there is anything the WH should be aware of. Kyle said this was an internal DOJ matter and he would handle it.

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

From: Kelley, William K.
Sent: Friday, January 12, 2007 1:58 PM
To: Miers, Harriet
Subject: RE: Tim Griffin

Can't hurt. I'll call Kyle.

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

From: Miers, Harriet
Sent: Friday, January 12, 2007 1:49 PM
To: Kelley, William K.
Subject: Re: Tim Griffin

Should one of us inquire?

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

From: Kelley, William K.
To: Miers, Harriet
Sent: Fri Jan 12 13:45:07 2007
Subject: RE: Tim Griffin

Nope.

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

From: Miers, Harriet
Sent: Friday, January 12, 2007 1:44 PM
To: Kelley, William K.
Subject: Fw: Tim Griffin

Do you know what this about?

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

From: Oprison, Christopher G.
To: Kelley, William K.; Miers, Harriet
Sent: Fri Jan 12 13:37:37 2007
Subject: Tim Griffin

Harriet, Bill

Tim Griffin just called and told me he was called to attend a meeting with the AG and DAG on Tuesday. He asked if I had heard about this, which I had not. He sounded concerned about the reason for the meeting. I told him he should contact Monica.

I sent an email to Kyle to inquire if there is anything the WH should be aware of. Kyle said this was an internal DOJ matter and he would handle it.

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

From: Mamo, Jeanie S.
Sent: Friday, January 12, 2007 6:50 PM
To: Lee, Kenneth K.; Brosnahan, Jennifer R.
Cc: Kelley, William K.
Subject: RE: Who handles US Attorneys? Did we ask John Carroll in CA to resign? Is DOJ handling? HELP!!

Intern got name wrong.. clearly!! Thanks..

From: Lee, Kenneth K.
Sent: Friday, January 12, 2007 6:47 PM
To: Brosnahan, Jennifer R.; Mamo, Jeanie S.
Cc: Kelley, William K.
Subject: RE: Who handles US Attorneys? Did we ask John Carroll in CA to resign? Is DOJ handling? HELP!!

I don't think there's a U.S. Attorney in California named John Carroll (Carol Lam, Debra Wong, McGregor Scott and Kevin Ryan are or were the most recent U.S. Attorneys in California). There's also a John McKay in W.D. Washington.

I did see a recent article that quoted an anonymous source saying that Carol Lam is being pushed out at S.D. Cal. (She hasn't announced her resignation yet, however).

<http://www.signonsandiego.com/news/metro/20070112-9999-1n12lam.html>

And, yes, DOJ has been handling the resignations.

From: Brosnahan, Jennifer R.
Sent: Friday, January 12, 2007 6:29 PM
To: Mamo, Jeanie S.
Cc: Lee, Kenneth K.; Kelley, William K.
Subject: RE: Who handles US Attorneys? Did we ask John Carroll in CA to resign? Is DOJ handling? HELP!!

Ken handles US Attorneys in California.

I'm also copying Bill, who may be able to help you more than we can. (But yes, I believe DOJ is handling the US Atty resignation matters.)

From: Mamo, Jeanie S.
Sent: Friday, January 12, 2007 6:09 PM
To: Brosnahan, Jennifer R.
Subject: Who handles US Attorneys? Did we ask John Carroll in CA to resign? Is DOJ handling? HELP!!

From: Fiddelke, Debbie S.
Sent: Monday, January 15, 2007 7:54 PM
To: Mamo, Jeanie S.; Looney, Andrea B.
Subject: Re: Heads Up on WSJ USA Story

Andrea - fyi.
Jeanie - Thanks..

-----Original Message-----
From: Mamo, Jeanie S.
To: Fiddelke, Debbie S.
Sent: Mon Jan 15 17:45:56 2007
Subject: FW: Heads Up on WSJ USA Story

Deb - below is a Las Vegas Review-Journal story on the USAs and a heads up on a WSJ story coming tomorrow and TPs from DOJ, fyi..

From: Mamo, Jeanie S.
Sent: Monday, January 15, 2007 5:16 PM
To: 'Roehrkasse, Brian'; Perino, Dana M.; Lawrimore, Emily A.
Cc: Smith, Kimberly A
Subject: RE: Heads Up on WSJ USA Story

Fyi:

Jan. 15, 2007
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Nevada U.S. attorney given walking papers

By <<http://www.reviewjournal.com/about/print/rjstaff.html>> FRANCIS MCCABE REVIEW-JOURNAL

The Bush administration has forced Daniel Bogden out of his position as U.S. attorney for the District of Nevada, Nevada's two senators said Sunday.

It was unclear whether Bogden was fired or asked to resign and for what reason. Exactly when it all happened also was unknown Sunday. Repeated attempts to contact Bogden and his office were unsuccessful. The Review-Journal's phone calls to his spokeswoman, Natalie Collins, were not returned by Sunday night.

Sen. John Ensign, R-Nev., had recommended Bogden, a longtime prosecutor in Reno, to the Bush administration in April 2001. On Sunday, Ensign said Nevada owes a debt of gratitude to Bogden. "His priorities, to prevent terrorism and prosecute violent and drug crimes, have made our communities and families safer," Ensign said.

But a source inside the Nevada U.S. attorney's office said Bogden was seen as indecisive, secretive and insular. Morale in the Southern Nevada office was low and that was partly Bogden's fault and partly the result of inadequate staffing and funding from the Justice Department, the source said.

The Nevada U.S. attorney's office also had at least three major setbacks in Las Vegas last year.

In mid-October, the federal racketeering case against about 40 Hells Angels members unraveled. They had been charged in connection with the motorcycle group's deadly melee with their rivals, the Mongols, inside Harrah's casino in Laughlin during the 2002 Laughlin River Run. In the end, only six Hells Angels faced reduced charges, and charges against the remaining bikers were dismissed.

In February, U.S. District Judge James Mahan threw out a \$14 million securities fraud case against Las Vegas attorneys Daniel Chapman and Sean Flanagan and New York attorney Herbert Jacobi after an assistant U.S. attorney failed to produce more than 600 pages of documents.

Also in February, U.S. District Judge Robert Jones dismissed charges against Dr. R.D. Prabhu, a politically active Las Vegas pulmonologist. Prosecutors had alleged that Prabhu had submitted false Medicare claims. He had faced a potential penalty of \$22 million.

But Bogden's office also has scored victories at the federal courthouse in downtown Las Vegas, including the convictions of former Clark County commissioners Mary Kincaid-Chauncey and Dario Herrera. They were indicted in 2003 on charges of accepting bribes from Michael Galardi, who was then the owner of strip clubs. Kincaid-Chauncey and Herrera were convicted in May and checked into federal prisons last week.

Bogden is not the only U.S. attorney targeted by the Bush administration.

In San Diego, U.S. Attorney Carol Lam, who prosecuted a public corruption case involving Galardi and former Clark County commissioner Lance Malone in California, was asked to resign in recent weeks, according to the San Diego Union-Tribune. Lam, a 2002 Bush appointee, reportedly was targeted because she failed to make smuggling and gun cases a top priority, according to the Union-Tribune.

Another example is New Mexico U.S. Attorney David Iglesias, who was asked to resign near the end of 2006 and agreed to do so.

"I asked (why) and wasn't given any answers," Iglesias told the Union-Tribune. "I ultimately am OK with that. We all take these jobs knowing we serve at the pleasure of the president."

Some Democratic members of Congress are questioning the motives behind the moves because they have discovered, to their chagrin, that a provision of the Patriot Act allows the U.S. attorney general to make interim appointments that have no time limits and do not have to be confirmed by the Senate.

"The attorney general could have legitimate reasons for asking for specific resignations, or this could be motivated by political concerns or worse, derailing ongoing investigations," Sen. Dianne Feinstein, D-Calif., has said.

Feinstein, along with Sen. Patrick Leahy, D-Vt., and Sen. Mark Pryor, D-Ark., already have introduced legislation to change that portion of the Patriot Act.

A spokesman for Senate Majority Leader Harry Reid said the Nevada Democrat agrees that the law needs to be amended.

In December, Pryor and Sen. Blanche Lincoln, D-Ark., protested the appointment of Tim Griffin as interim U.S. attorney for the Eastern District of Arkansas. Griffin was White House deputy director of political affairs under Karl Rove and also served as head of opposition research for the Republican National Committee.

Pryor said Griffin should have to face a Senate confirmation vote.

"Arkansas has learned firsthand the unintended consequence of a little-known provision in the Patriot Act," Pryor said. "Unfortunately, the spirit and intent in which this provision was constructed has been abused and needs to be corrected."

During the 2006 reauthorization of the Patriot Act a provision was added that bolstered the attorney general's power regarding appointment of replacement U.S. attorneys. In the past, the attorney general had limited authority only to make interim appointments that were valid only for a limited time.

A Justice Department spokesman told the Union-Tribune that the department is not trying to avoid the Senate confirmation process.

"In every case, it is a goal of this administration to have a U.S. attorney that is confirmed by the Senate," spokesman

Brian Roehrka said. "It is wrong for a member of Congress to believe that this is in any way an attempt to circumvent the confirmation process."

Of 11 U.S. attorney vacancies since the attorney general gained the authority to make the appointments in March, the Bush administration has nominated four people and interviewed seven others, all of whom are expected to complete the confirmation process, according to the Justice Department.

Review-Journal writer Molly Ball and the Stephens Washington Bureau contributed to this report.

From: Roehrka, Brian
Sent: Monday, January 15, 2007 4:07 PM
To: Perino, Dana M.; Lawrimore, Emily A.; Mamo, Jeanie S.
Cc: Smith, Kimberly A
Subject: FW: Heads Up on WSJ USA Story

FYI - Please send any follow up calls on this to me tomorrow.

From: Roehrka, Brian
Sent: Monday, January 15, 2007 4:06 PM
To: Goodling, Monica; Elston, Michael (ODAG); Moschella, William; Sampson, Kyle
Cc: Scolinos, Tasia
Subject: Heads Up on WSJ USA Story

Our new Wall Street Journal beat reporter will publish a story tomorrow about the recent resignations of U.S. Attorneys. Through his reporting, he believes at least six U.S. Attys were forced to resign including USAs Ryan, Cummins, Lam, Bogden, Igelsias and Charlton. I didn't confirm, deny or otherwise comment beyond cautioning him that he better be careful his sources are accurate. He did speak with at least Cummins and Igelsias, and possibly others.

When he first contacted me about this story he raised questions about political motivations and the correlation to the recent legislative changes on the AG's appointment authority. However, with all of the background information we provided on the appointment authority and pointing him towards our recent nominations, I don't think it will be as politically focused. More likely, he will write that the Department is pushing out USAs because they are underperforming or not embracing the Department's priorities.

The story will be very critical of how the Bud Cummins situation was handled. He thinks despite the political pedigree, that Griffin is very qualified, but just the way in which it was handled with Cummins and Pryor will make it nearly impossible for him to be nominated or confirmed. The good news on this front is he finds Feinstein and Pryor's criticism that we don't intend to nominate USAs suspect and unwarranted.

Talking Points:

* In every case, it is a goal of this Administration to have a U.S. Attorney that is confirmed by the Senate. It is inconceivable for a member of Congress to believe that use of an appointment authority to fill a vacancy is in any way an attempt to circumvent the confirmation process. When a United States Attorney submits his or her resignation, the Administration has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's office. Following such a situation, we consult with the home-state Senators prior to nomination regarding candidates for Senate consideration.

* Our record since this authority was amended demonstrates we are committed to working with the Senate to nominate candidates for U.S. Attorney positions. Specifically, since March 9, 2006, the Administration has nominated 13 individuals to serve as U.S. Attorney (12 have been confirmed). Additionally, since the appointment authority was

amended, there have been 11 vacancies created by outgoing U.S. Attorneys -- of those 11 vacancies, the Administration nominated candidates to fill four of these positions to date and has already interviewed candidates for the other seven positions.

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

From: Perino, Dana M.
Sent: Tuesday, January 16, 2007 9:04 AM
To: Mamo, Jeanie S.; Sullivan, Kevin F.; Martin, Catherine
Subject: FW: Heads Up on WSJ USA Story
Attachments: Talking Points on US Attorney Vacancies.doc; Leahy Letter re USA Appts 1.16.2007 fact sheet.doc

Not sure this is what tony's after, but fyi

From: Roehrkasse, Brian
Sent: Tuesday, January 16, 2007 9:01 AM
To: Perino, Dana M.
Subject: FW: Heads Up on WSJ USA Story

Here you go.... We are responding to Leahy with a letter that basically reiterates the talking points.

From: Perino, Dana M.
Sent: Tuesday, January 16, 2007 8:58 AM
To: Roehrkasse, Brian; Lawrimore, Emily A.; Mamo, Jeanie S.
Cc: Smith, Kimberly A
Subject: RE: Heads Up on WSJ USA Story

Brian – Tony Snow's asking for more background on this. Can you provide?

From: Roehrkasse, Brian
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