
From: Perino, Dana M.
Sent: Sunday, March 04, 2007 10:06 AM
To: Brian.Roehrkasse
Subject: Re: NYT - A New Mystery to Prosecutors: Their Lost Jobs

Eggsactly

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

From: Roehrkasse, Brian
To: Perino, Dana M.
Sent: Sun Mar 04 10:05:11 2007
Subject: Re: NYT - A New Mystery to Prosecutors: Their Lost Jobs

I know...which is change consider the post coverage with eggen has been SO bad. But the post brings in john solomon and becomes far more fair in their coverage and the times brings in eric lipton and becomes far worse.

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

From: Perino, Dana M.
To: Roehrkasse, Brian
Sent: Sun Mar 04 09:25:00 2007
Subject: Fw: NYT - A New Mystery to Prosecutors: Their Lost Jobs

The wp was much better than this. Plus they really distort harriet's involvement.

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

From: White House News Update
To: Perino, Dana M.
Sent: Sun Mar 04 09:09:04 2007
Subject: NYT - A New Mystery to Prosecutors: Their Lost Jobs

A New Mystery to Prosecutors: Their Lost Jobs

By DAVID JOHNSTON, ERIC LIPTON and WILLIAM YARDLEY, The New York Times

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Mr. Bogden, who was named the top federal prosecutor in Nevada in 2001 after 11 years of working his way up at the Justice Department, asked an official at the agency's headquarters if the firing was related to his performance or to that of his office. "That didn't enter into the equation," he said he was told.

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The ouster of Mr. Bogden and seven other United States attorneys has set off a furor in Washington that took the Bush administration by surprise.

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Interviews with several of the prosecutors, Justice Department officials, lawmakers and others provide new details and a fuller picture of the events behind the dismissals. Like Mr. Bogden, some prosecutors believe they were forced out for replacements who could gild résumés; several heard that favored candidates had been identified.

Other prosecutors may have been vulnerable because they had had run-ins with the Justice Department, not over corruption cases against Republicans, but on less visible issues.

Paul Charlton in Arizona, for example, annoyed Federal Bureau of Investigation officials by pushing for confessions to be tape-recorded, while John McKay in Seattle had championed a computerized law enforcement information-sharing system that Justice Department officials did not want. Carol C. Lam of San Diego, who successfully prosecuted former Representative Randy Cunningham, had drawn complaints that she was not sufficiently aggressive on immigration cases.

Justice Department officials deny that the dismissals were politically motivated or that the action resulted from White House pressure.

Brian Roehrkasse, an agency spokesman, said, "These decisions were based on the individual concerns about each U.S. attorney's overall performance. This included performance concerns about ineffectively prosecuting departmental priority areas, failure to follow departmental guidelines, or just overall concerns about an ability to lead and effectively manage a U.S. attorney's office."

United States attorneys have four-year terms but can be removed at any time, and for almost any reason.

But across the country, legal and public officials have expressed dismay over the firings. In Western Michigan, for example, lawyers and a federal judge came to the defense of Margaret M. Chiara, the United States attorney there, saying she was well regarded.

"It just doesn't look right," said James S. Brady, who was United States attorney in Western Michigan during the Carter administration. "It compromises the credibility that justice is being dealt with fairly and impartially. There is a fear that politics have entered in life and death situations."

Discussions began in October at the Justice Department about removing prosecutors who were considered flawed or deficient in carrying out administration policy by law enforcement officials, lawmakers and others, several officials said. The White House eventually approved the list and helped notify Republican lawmakers before the Dec. 7 dismissals, officials said.

While Justice Department officials expected that top assistant prosecutors in each office would probably fill the jobs initially, the officials said they had not chosen permanent successors. However, officials knew that if the replacements were to have a substantial tenure before Mr. Bush left office, they needed to be named quickly.

The list of prosecutors who were targets was approved by Attorney General Alberto R. Gonzales and the deputy attorney general, Paul J. McNulty, the day-to-day manager of the Justice Department since he was appointed in the fall of 2005.

Under Mr. Gonzales, Mr. McNulty has become a powerful deputy with a wide-ranging portfolio. He was a United States attorney in Virginia, but he worked in Congress for more than a decade and was once legal counsel to the House majority leader. He is regarded in legal circles as more attuned to policy and politics than his predecessor, James B. Comey, a former career prosecutor in New York.

That leadership change may explain the removal of prosecutors who had mostly been in place since the start of the Bush administration.

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Justice Department officials, who would speak about the department's decision making only anonymously because they were not authorized to discuss personnel matters publicly, now acknowledge that the dismissals were mishandled. They failed to anticipate how much attention the highly unusual group firing would draw, and the agency's contradictory accounts about whether the dismissals were performance-related helped spur suspicions.

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. Iglesias of New Mexico, which he has expressed publicly in recent days, about being pressured by two Republican lawmakers to rush indictments before last November's elections in a contract kickback investigation involving a former state Democratic official. New Mexico has three Republicans in Congress; Representative Steve Pearce has said he did not call Mr. Iglesias, while aides to Senator Pete V. Domenici and Representative Heather A. Wilson have said they would not comment.

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Some said they suspected that the administration hoped to install its favorites in the jobs, as they did when J. Timothy Griffin, a prosecutor who had worked for Karl Rove, the White House political adviser, was chosen as the temporary replacement for H. E. Cummins III of Arkansas. Mr. Cummins was told last summer to step down after Harriet E. Miers, the former White House counsel, met with Mr. Gonzales's staff on Mr. Griffin's behalf.

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Former Senator Slade Gorton of Washington said, "The administration has a perfect right to ask people to leave and appoint other ones just because they want turnover."

But he said he was unhappy that Mr. McKay, the Seattle prosecutor, was dismissed. He was very effective, Mr. Gorton said, and it was a mistake for the Justice Department to characterize the firing as performance related.

Mr. McKay, who is among the ousted prosecutors who have been summoned to testify before Congress, has said little about his dismissal. In interviews this week, officials in Seattle said he was a strong advocate for the expansion of law enforcement powers under the USA Patriot Act and a determined prosecutor who reorganized the office and allowed senior assistants to focus on complex cases.

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From: Scolinos, Tasia [Tasia.Scolinos@usdoj.gov]
Sent: Sunday, March 04, 2007 11:23 AM
To: Martin, Catherine
Subject: Fw: NYT - A New Mystery to Prosecutors: Their Lost Jobs

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From: Martin, Catherine
Sent: Sunday, March 04, 2007 12:50 PM
To: Tasia.Scolinos@usdoj.gov
Subject: Re: NYT - A New Mystery to Prosecutors: Their Lost Jobs

Yes. I'm on my cell 494-

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

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To: Martin, Catherine
Sent: Sun Mar 04 11:22:39 2007
Subject: Fw: NYT - A New Mystery to Prosecutors: Their Lost Jobs

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

Attachments: 1340525209-attorney letter.doc



attorney letter.doc
(27 KB)

Dan/Cathie -

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

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

Thanks.

Draft Talking Points for 3/6 Hearing:

- * One of the most important responsibilities the Attorney General has is to effectively manage the Department of Justice, including its thousands of employees.
- * Managers, as you know, often times have to make difficult decisions for the betterment of the organization.
- * It is vitally important that the Department take all necessary steps to ensure that its policies and priorities are served in a consistent manner. This is especially true of those who have the high privilege of serving as presidential appointees.
- * DOJ Presidential appointees, both at Main Justice and in the field, are tasked with making prosecutorial decisions but that responsibility does not change or alter in any way the fact that they serve at the pleasure of the President and if they are not executing their responsibilities in a manner that furthers the management and policy goals of departmental leadership it is appropriate that they be replaced with other individuals.
- * At a time when America's well being is threatened by terrorism, violent gangs, child predators and corruption in business and government, this responsibility has never been clearer.
- * It is also important to note that the Clinton Administration fired all existing U.S. Attorneys when he took office presumably to put in individuals who understood the priorities of his Administration. Removing our own political appointees is not substantively different than that decision.
- * That said, it is also important that the Department's management actions be prudently executed once a decision is made.
- * The process by which the U.S. attorneys were informed of our decision fell short of this standard.

We should have informed the individuals at the time we asked for their resignations of the various matters relating to policy, priorities and management justifying our actions.

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

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

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

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

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- Managers, as you know, often times have to make difficult decisions for the betterment of the organization.
- It is vitally important that the Department take all necessary steps to ensure that its policies and priorities are served in a consistent manner. This is especially true of those who have the high privilege of serving as presidential appointees.
- DOJ Presidential appointees, both at Main Justice and in the field, are tasked with making prosecutorial decisions but that responsibility does not change or alter in any way the fact that they serve at the pleasure of the President and if they are not executing their responsibilities in a manner that furthers the management and policy goals of departmental leadership it is appropriate that they be replaced with other individuals.
- At a time when America's well being is threatened by terrorism, violent gangs, child predators and corruption in business and government, this responsibility has never been clearer.
- It is also important to note that the Clinton Administration fired all existing U.S. Attorneys when he took office presumably to put in individuals who understood the priorities of his Administration. Removing our own political appointees is not substantively different than that decision.
- That said, it is also important that the Department's management actions be prudently executed once a decision is made.
- The process by which the U.S. attorneys were informed of our decision fell short of this standard. We should have informed the individuals at the time we asked for their resignations of the various matters relating to policy, priorities and management justifying our actions.
- Our intention in not providing a full explanation initially was to avoid protracted discussions and make these difficult discussions as non-inflammatory as possible for those being asked to resign.
- In hindsight, although the Department continues to believe our decision to remove these individuals was the correct one, it would have been much better to have addressed the relevant issues up front with them.
- All of the United States Attorneys asked to resign in this matter are professionals and we appreciate their service. I have no doubt that they will achieve success in their future endeavors along with the other (56?) U.S. Attorneys who have left their posts for various reasons over the last six years.
- The Department remains focused on making sure that the good work being done by the career lawyers in all of those offices across the country continues uninterrupted and that qualified candidates are nominated as soon as possible for those positions.

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From: Sampson, Kyle [Kyle.Sampson@usdoj.gov]
Sent: Monday, March 05, 2007 3:08 PM
To: Paola, Lindsey N.
Cc: Kelley, William K.
Subject: 5pm Mtg
Importance: High

Lindsey, here's the WAVES info for the 5pm today:

Paul McNulty (should be pre-cleared)

Kyle Sampson

William E. Moschella

Monica Marie Goodling

Brian Roehrkasse

Richard Hertling

Tasia Scolinos

Michael Elston

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

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

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

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

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

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

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

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

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

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

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

fyi

From: Cabral, Catalina
Sent: Monday, March 05, 2007 6:26 PM
To: Moschella, William; Elston, Michael (ODAG); Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO); Roehrkasse, Brian; Scollinos, Tasia; Hertling, Richard; Burton, Faith; Battle, Michael (USAEO); Margolis, David

Subject: Letter For Tomorrow's Hearing from HJC

<<LettertoWEMfromHJCreUSA3.5.07.pdf>>

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

(202) 514-

From: Hertling, Richard [Richard.Hertling@usdoj.gov]
Sent: Tuesday, March 06, 2007 8:24 AM
To: Moschella, William; Sampson, Kyle; Oprison, Christopher G.
Cc: Scudder, Michael Y.
Subject: RE: Letter For Tomorrow's Hearing from HJC

I second that strongly.

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

From: Moschella, William
Sent: Tuesday, March 06, 2007 7:18 AM
To: Sampson, Kyle; 'christopher_g._oprison@who.eop.gov'; Hertling, Richard
Cc: 'Michael_Y._Scudder.'
Subject: Re: Letter For Tomorrow's Hearing from HJC

That is the answer.

Sent from my BlackBerry Wireless Handheld

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

From: Sampson, Kyle
To: 'christopher_g._oprison@who.eop.gov'
<christopher_g._oprison@who.eop.gov>; Moschella, William; Hertling, Richard
CC: 'Michael_Y._Scudder'
Sent: Tue Mar 06 07:16:18 2007
Subject: Re: Letter For Tomorrow's Hearing from HJC

No. If asked, Will will note that the request came in late last night and that the Dep't will work as quickly as possible to respond to it.
Will/Rich, correct me if I'm wrong.

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

From: Oprison, Christopher G. <Christopher_G._Oprison@who.eop.gov>
To: Sampson, Kyle; Moschella, William; Hertling, Richard
CC: Scudder, Michael Y.
Sent: Tue Mar 06 07:11:29 2007
Subject: RE: Letter For Tomorrow's Hearing from HJC

Hey gents - is the department going to be drafting responses to these questions prior to the hearing today? For number 4, can we discuss?
Also, are there any other communications (other than Mike Elston's) that are potentially responsive to number 5?

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

fyi

From: Cabral, Catalina
Sent: Monday, March 05, 2007 6:26 PM
To: Moschella, William; Elston, Michael (ODAG); Sampson, Kyle;
Goodling, Monica; Nowacki, John (USAEO); Roehrkas, Brian; Scolinos,

Tasia; Hertling, Richard; Burton, Faith; Battle, Michael (USAEO);
Margolis, David

Subject: Letter For Tomorrow's Hearing from HJC

<<LettertoWEMfromHJCcreUSA3.5.07.pdf>>

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

(202) 514-

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

Attachments: DRAFT Moschella Testimony4.wpd



DRAFT
lla Testimony

This will be coming to OMB for clearance:

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

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

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

STATEMENT
OF
WILLIAM E. MOSCHELLA
PRINCIPAL ASSOCIATE DEPUTY ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE
BEFORE THE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW
UNITED STATES HOUSE OF REPRESENTATIVES

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

PRESENTED ON

MARCH 6, 2007

**Testimony
of**

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

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

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

March 6, 2007

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

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

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

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

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

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

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

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

Given the reality of turnover among the U.S. Attorneys, our system depends on the dedicated service of the career investigators and prosecutors. While a new Administration may articulate new priorities or emphasize different types of cases, the effect of a U.S. Attorney on an ongoing investigation or prosecution is, in fact, minimal, and that is as it should be. The career civil servants who prosecute federal criminal

cases are dedicated professionals and an effective U.S. Attorney relies on the professional judgment of those prosecutors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Prosecutorial authority should be exercised by the Executive Branch in a unified manner, consistent with the application of criminal enforcement policy under the Attorney General. In no context is accountability more important to our society than on the front lines of law enforcement and the exercise of prosecutorial discretion. United States Attorneys are, and should be, accountable to the Attorney General.

The Administration has repeatedly demonstrated its commitment to having a Senate-confirmed U.S. Attorney in every federal district, thereby calling into question the need for H.R. 580. As noted, when a vacancy in the office of U.S. Attorney occurs, the Department typically looks first to the First Assistant or another senior manager in the office to serve as an acting or interim U.S. Attorney. Where neither the First Assistant nor another senior manager is able or willing to serve as an acting or interim U.S. Attorney, or where their service would not be appropriate under the circumstances, the Administration has looked to other Department employees to serve temporarily. No matter which way a U.S. Attorney is temporarily appointed, the Administration has consistently sought, and will continue to seek, to fill the vacancy—in consultation with home-State Senators—with a presidentially-nominated and Senate-confirmed nominee.

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

From: Hertling, Richard [Richard.Hertling@usdoj.gov]
Sent: Monday, March 05, 2007 10:05 PM
To: Oprison, Christopher G.
Subject: Re: Testimony for Tuesday

I hope it can be cleared. It is a toned down version of the testimony we gave in the Senate.

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

From: Oprison, Christopher G. <Christopher_G._Oprison@who.eop.gov>
To: Hertling, Richard
Sent: Mon Mar 05 21:55:21 2007
Subject: RE: Testimony for Tuesday

Tonight? Not sure you will get it cleared in time for tomorrow

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

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

This will be coming to OMB for clearance.

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

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

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

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

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

<<Moschella Oral Statement.doc>>

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

William E. Moschella
Opening Statement

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

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

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

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

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

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

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

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

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

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

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

I would be happy to take your questions.

From: Oprison, Christopher G.
Sent: Monday, March 05, 2007 7:33 PM
To: Kelley, William K.
Cc: Gibbs, Landon M.
Subject: FW: Moschella Oral Testimony
Importance: High
Attachments: Moschella Oral Statement.doc

Bill - did you want to send this through the normal (but expedited) LRM clearance process, or just vet with Press, OLA, and Communications?

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Monday, March 05, 2007 7:25 PM
To: Kelley, William K.
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<<Moschella Oral Statement.doc>>

Kyle Sampson
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950 Pennsylvania Avenue, N.W.
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(202) 514-2001 wk.
(202) 305- cell
kyle.sampson@usdoj.gov

From: Scolinos, Tasia [Tasia.Scolinos@usdoj.gov]
Sent: Monday, March 05, 2007 7:37 PM
To: Martin, Catherine; Perino, Dana M.
Subject: FW: Moschella Oral Testimony
Importance: High
Attachments: Moschella Oral Statement.doc

William E. Moschella
Opening Statement

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

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

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

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

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

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

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

I would be happy to take your questions.

From: Oprison, Christopher G.
Sent: Monday, March 05, 2007 9:33 PM
To: Moschella, William
Cc: Sampson, Kyle; Kelley, William K.; Scudder, Michael Y.; Fielding, Fred F.; Gibbs, Landon M.
Subject: RE: Moschella Oral Testimony
Attachments: Moschella Oral Statement - MYS (2).doc

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Kyle Sampson
Chief of Staff
U.S. Department of Justice
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Washington, D.C. 20530
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(202) 305- cell
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To: Oprison, Christopher G.
Cc: Sampson, Kyle; Kelley, William K.; Scudder, Michael Y.; Fielding, Fred F.; Gibbs, Landon M.; Scolinos, Tasia; McNulty, Paul J; Elston, Michael (ODAG); Goodling, Monica
Subject: RE: Moschella Oral Testimony

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

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To: 'Richard.Hertling'; 'Adrien.Silas
Cc: Green, Richard E.; Simms, Angela M.
Subject: Fw: Moschella Oral Testimony

Attachments: Moschella Oral Statement - MYS (2) (2).doc

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Sent: Mon Mar 05 21:38:38 2007
Subject: RE: Moschella Oral Testimony



Moschella Oral
Statement - MYS...

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Thank you for your help, Landon!

Angie

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Cc: 'Sampson, Kyle'; Kelley, William K.; Scudder, Michael Y.; Fielding, Fred F.; Gibbs, Landon M.
Subject: RE: Moschella Oral Testimony

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

Chris

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

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

From: Oprison, Christopher G.
Sent: Monday, March 05, 2007 8:40 PM
To: Sampson, Kyle
Subject: RE: Moschella Oral Testimony

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

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

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

<<Moschella Oral Statement.doc>>

Kyle Sampson
Chief of Staff
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-
(202) 305-

kyle.sampson

Moschella Oral Testimony

From: Gibbs, Landon M.
Sent: Tuesday, March 06, 2007 9:51 AM
To: Green, Richard E.; Simms, Angela M.
Subject: FW: Moschella Oral Testimony
Attachments: moschellafinal.2.doc; moschellafinal.1.doc

DOJ just confirmed that this will be the final testimony. The EOP has cleared it.

William E. Moschella
Opening Statement

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

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

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

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

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

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

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

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

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

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

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

I would be happy to take your questions.

William E. Moschella
Opening Statement

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

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

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I would be happy to take your questions.

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From: Silas, Adrien
Sent: Monday, March 05, 2007 10:18 PM
To: Gibbs, Landon M.
Cc: Green, Richard E.; Simms, Angela M.; Hertling, Richard; Moschella, William
Subject: US Atty - ODAG Tstmny

Attachments: USAttys01.doc.doc



USAttys01.doc.doc
(80 KB)

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

<<USAttys01.doc.doc>>



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

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

As the chief federal law-enforcement officers in their districts, our 93 U.S. Attorneys represent the Attorney General and the Department of Justice throughout the United States. U.S. Attorneys are not just prosecutors; they are government officials charged with managing and

implementing the policies and priorities of the President and the Attorney General. The Attorney General has set forth key priorities for the Department of Justice, and in each of their districts, U.S. Attorneys lead the Department's efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families including child pornography, obscenity, and human trafficking.

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

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

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

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

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

The leadership of an office is more than the direction of individual cases. It involves managing limited resources, maintaining high morale in the office, and building relationships with federal, state and local law enforcement partners. When a U.S. Attorney submits his or her

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

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

Since January 20, 2001, 124 new U.S. Attorneys have been nominated by the President and confirmed by the Senate. On March 9, 2006, the Congress amended the Attorney General's authority to appoint interim U.S. Attorneys, and 18 vacancies have occurred since that date. This amendment has not changed our commitment to nominating candidates for Senate confirmation. In fact, the Administration has nominated a total of 16 individuals for Senate consideration since the appointment authority was amended, with 12 of those nominees having been confirmed to date. Of the 18 vacancies that have occurred since the time that the law was amended, the Administration has nominated candidates to fill six of these positions, has interviewed candidates for nomination for eight more positions, and is waiting to receive names to set up interviews for the remaining positions. Call 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 (AVRA), 5 U.S.C. 3345(a)(1), when the First Assistant is selected to lead the office, or the Attorney General's appointment authority in 28 U.S.C. 546 when another Department employee is chosen. Under the VRA, the First Assistant may serve in an acting capacity for only 210 days, unless a nomination is made during that period. Under an Attorney General appointment, the interim U.S. Attorney serves until a nominee is confirmed the Senate. There is no other statutory authority for filling such a vacancy, and thus the use of the Attorney General's appointment

authority, as amended last year, signals nothing other than a decision to have an interim U.S. Attorney who is not the First Assistant. It does not indicate an intention to avoid the confirmation process, as some have suggested.

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

Prior to last year=s amendment, the Attorney General could appoint an interim U.S. Attorney for the first 120 days after a vacancy arose; thereafter, the district court was authorized to appoint an interim U.S. Attorney. In cases in which a Senate-confirmed U.S. Attorney could not be appointed within 120 days, the limitation on the Attorney General=s appointment authority resulted in recurring problems. Some district courts recognized the conflicts inherent in the appointment of an interim U.S. Attorney who would then have matters before the court 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, A Inter-Branch Appointments After the Independent Counsel: Court Appointment of United States Attorneys*, 86 Minn. L. Rev. 363, 428 (2001) (concluding that court appointment of interim U.S. Attorneys is unconstitutional).

Prosecutorial authority should be exercised by the Executive Branch in a unified manner, consistent with the application of criminal enforcement policy under the Attorney General. In no context is accountability more important to our society than on the front lines of law enforcement and the exercise of prosecutorial discretion. United States Attorneys are, and should be, accountable to the Attorney General.

The Administration has repeatedly demonstrated its commitment to having a Senate-confirmed U.S. Attorney in every federal district, thereby calling into question the need for H.R. 580. As noted, when a vacancy in the office of U.S. Attorney occurs, the Department typically looks first to the First Assistant or another senior manager in the office to serve as an acting or interim U.S. Attorney. Where neither the First Assistant nor another senior manager is able or willing to serve as an acting or interim U.S. Attorney, or where their service would not be appropriate under the circumstances, the Administration has looked to other Department employees to serve temporarily. No matter which way a U.S. Attorney is temporarily appointed, the Administration has consistently sought, and will continue to seek, to fill the vacancy in

consultation with home-State Senators with a presidentially-nominated and Senate-confirmed nominee.

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

From: Gibbs, Landon M.
Sent: Tuesday, March 06, 2007 11:35 AM
To: 'Adrien.Silas.'
Cc: Green, Richard E.; Simms, Angela M.; 'Richard.Hertling';
'William.Moschella'; Nancy.Scott-Finan; Oprison, Christopher G.
Subject: FW: US Atty - ODAG Tstmny
Attachments: Moschella Testimony.doc



Moschella
Testimony.doc (89 KB)

The EOP approves the attached version of the testimony.

Thanks,

Landon Gibbs
Deputy Associate Director
Office of Counsel to the President
(202) 456



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

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 B 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 APreserving 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 familiesCincluding 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 JusticeCincluding the office of United States AttorneyCwas 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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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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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 (AVRA), 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.

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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

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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, A 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: Oprison, Christopher G.
Sent: Tuesday, March 06, 2007 11:37 AM
To: Gibbs, Landon M.; 'Adrien.Silas'
Cc: Green, Richard E.; Simms, Angela M.; 'Richard.Hertling';
'William.Moschella' Nancy.Scott-Finan
Subject: RE: US Atty - ODAG Tstmny

Note on page 3 of the redline a question regarding the characterization of "approximately half of the U.S. Attorneys."

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

From: Gibbs, Landon M.
Sent: Tuesday, March 06, 2007 11:35 AM
To: 'Adrien.Silas'
Cc: Green, Richard E.; Simms, Angela M.; 'Richard.Hertling';
'William.Moschella' 'Nancy.Scott-Finan'; Oprison, Christopher G.
Subject: FW: US Atty - ODAG Tstmny

The EOP approves the attached version of the testimony.

Thanks,

Landon Gibbs
Deputy Associate Director
Office of Counsel to the President
(202) 456

From: Hertling, Richard
Sent: Tuesday, March 06, 2007 12:50 PM
To: Oprison, Christopher G.; Gibbs, Landon M.; Silas, Adrien
Cc: Green, Richard E.; Simms, Angela M.; Moschella, William; Scott-Finan, Nancy
Subject: RE: US Atty - ODAG Tstmny

The number is a little under 50 percent (44 percent). I think we are changing the testimony to read "more than 40 percent."

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

From: Oprison, Christopher G.
[mailto:Christopher_G_Oprison]
Sent: Tuesday, March 06, 2007 11:37 AM
To: Gibbs, Landon M.; Silas, Adrien
Cc: Green, Richard E.; Simms, Angela M.; Hertling, Richard; Moschella, William; Scott-Finan, Nancy
Subject: RE: US Atty - ODAG Tstmny

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Thanks,

Landon Gibbs
Deputy Associate Director
Office of Counsel to the President
(202) 456

From: Green, Richard E.
Sent: Tuesday, March 06, 2007 1:29 PM
To: Jukes, James J.
Cc: Simms, Angela M.
Subject: FW: US Atty - ODAG Tstmny

Attachments: Moschella Testimony.doc



Moschella
stimony.doc (89 KB)

Here's the written testimony. The edits are not precisely against the original version, but rather presumably against some interim version. Oral testimony to follow.

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Sent: Tuesday, March 06, 2007 11:35 AM
To: 'Adrien.Silas'
Cc: Green, Richard E.; Simms, Angela M.; 'Richard.Hertling';
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Landon Gibbs
Deputy Associate Director
Office of Counsel to the President
(202) 456-



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

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 B 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 APreserving 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.

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 in consultation with home-state Senators.

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Moschella Oral Testimony

From: Green, Richard E.
Sent: Tuesday, March 06, 2007 1:31 PM
To: Jukes, James J.
Cc: Simms, Angela M.
Subject: FW: Moschella Oral Testimony
Attachments: moschellafinal.2.doc; moschellafinal.1.doc

Oral testimony. (E-mail sent to Justice before written testimony was cleared).

From: Gibbs, Landon M.
Sent: Tuesday, March 06, 2007 10:16 AM
To: 'Adrien.Silas
Cc: Green, Richard E.; Simms, Angela M.; 'Richard.Hertling; William.Moschella
'Nancy.Scott-Finara
Subject: FW: Moschella Oral Testimony

The oral testimony attached that Will just sent has been cleared by the EOP. We are still holding on the prepared testimony.

Thanks,

Landon

William E. Moschella
Opening Statement

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

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

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

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

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

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

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

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

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

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

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

I would be happy to take your questions.

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

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

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

~~Deleted: President's and the Attorney General's~~

~~Deleted: the Department's~~

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

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

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

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

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

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

Deleted: both

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

Deleted: of them

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

Deleted: taken any action

I would be happy to take your questions.

Deleted:

From: Moschella, William [William.Moschella@usdoj.gov]
Sent: Tuesday, March 06, 2007 6:57 AM
To: Oprison, Christopher G.
Subject: Re: NYT - Former Prosecutor Says Departure Was Pressured

Just read it. David Margolis, our 42 year career veteran, says it was a no-brainer that DiBaggio was asked to leave.

Sent from my BlackBerry Wireless Handheld

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

From: Oprison, Christopher G. <Christopher_G_Oprison@who.eop.gov>
To: Sampson, Kyle; Hertling, Richard; Moschella, William
Sent: Tue Mar 06 06:54:36 2007
Subject: FW: NYT - Former Prosecutor Says Departure Was Pressured

you probably heard about this one, but if not . . .

From: White House News Update
Sent: Tuesday, March 06, 2007 6:34 AM
To: Oprison, Christopher G.
Subject: NYT - Former Prosecutor Says Departure Was Pressured

Former Prosecutor Says Departure Was Pressured

By ERIC LICHTBLAU, The New York Times

WASHINGTON, March 5 — The former federal prosecutor in Maryland said Monday that he was forced out in early 2005 because of political pressure stemming from public corruption investigations involving associates of the state's governor, a Republican.

"There was direct pressure not to pursue these investigations," said the former prosecutor, Thomas M. DiBiagio. "The practical impact was to intimidate my office and shut down the investigations."

Mr. DiBiagio, a controversial figure who clashed with a number of Maryland politicians, had never publicly discussed the reasons behind his departure. But he agreed to an interview with The New York Times because he said he was concerned about what he saw as similarities with the recent firings of eight United States attorneys.

As in those cases, there are conflicting accounts of the circumstances that led to Mr. DiBiagio's ouster. The Justice Department disputes his version.

His office had been looking into whether associates of Gov. Robert L. Ehrlich Jr. had improperly funneled money from gambling interests to promote legalized slot machines in Maryland. Mr. DiBiagio said that several prominent Maryland Republicans had pressed him to back away from the inquiries and that one conversation had so troubled him that he reported it to an F.B.I. official as a threat.

But he said that the Justice Department had offered little support and that that made it "impossible for me to stay."

Several current and former officials in the Baltimore office said Mr. DiBiagio voiced concerns in 2004 that the corruption inquiries were jeopardizing his career, a view that they shared.

The Justice Department rejected Mr. DiBiagio's explanation. An official in the department,

David Margolis, said he told Mr. DiBiagio in 2004 that he had to leave because "we had lost confidence in him."

Mr. Margolis said the prosecutor's harsh management style had caused resentments in the office that ran "wide and deep" and called "an absolute fairy tale" the idea that Mr. DiBiagio's departure was tied to the gambling case or any other investigation.

Mr. Ehrlich, who was defeated for re-election in November, denied any involvement in Mr. DiBiagio's departure and said there was nothing to the gambling investigations.

Like Mr. DiBiagio, several of the newly departing prosecutors were overseeing sensitive political corruption investigations when they left office.

The controversy over the dismissals continued to grow on Monday, as the head of the Justice Department office that oversees prosecutors stepped down, a watchdog group filed an ethics complaint, and House and Senate committees prepared for testimony on Tuesday from some of the ousted prosecutors.

Because Mr. Ehrlich was the sole statewide Republican in Maryland at the time of Mr. DiBiagio's appointment in 2001, he had a critical role in recommending him to the White House for the position.

Mr. DiBiagio, a former assistant prosecutor, was a political unknown, but he and the governor had become friends as young lawyers in Maryland. The bond disintegrated soon after the prosecutor took office.

Mr. Ehrlich and his advisers acknowledged on Monday that they were unhappy with Mr. DiBiagio's handling of an earlier corruption investigation that led to the indictment in 2003 of Mr. Ehrlich's state police superintendent, Edward R. Norris, over his misuse of police money.

The gambling investigation caused less concern in the governor's office because officials there considered it without merit, Mr. Ehrlich said. But because of lingering suspicions in Maryland political circles that Mr. Ehrlich's people had a hand in Mr. DiBiagio's departure in early 2005, a longtime aide to the governor, Jervis Finney, called Mr. DiBiagio a few months ago to deny any involvement, Mr. Finney said.

Mr. Finney said in an interview Monday that he wanted to "clean things up" and to let Mr. DiBiagio know that "neither Gov. Bob Ehrlich or his representatives had asked the Department of Justice to push him out."

Mr. DiBiagio said he did not accept the explanation:

"I believe it was that investigation that played an integral role in what was done to me," Mr. DiBiagio, now at a law firm here, said about the gambling inquiries. "I clearly got the message that I had alienated my political sponsor and I would not have any political support to stay another term. Clearly, they wanted me to leave."

Mr. DiBiagio pointed to tense conversations in 2003 and 2004 with advisers to the governor who, he said, intimated that the corruption investigations could derail his career. He would not name them publicly.

The former prosecutor said he was particularly troubled by one visit in June 2004 in which, he said, a lawyer allied with the governor said the gambling inquiries were disrupting legislative consideration of the slots question and should be shut down.

Mr. DiBiagio said the lawyer inquired about his political future, asked whether he was interested in being a judge and suggested that his life could be closely scrutinized.

Mr. DiBiagio said he described the conversation in a memorandum for his records and reported it to an official of the Federal Bureau of Investigation in Baltimore as a possible threat.

Soon after the meeting, Mr. DiBiagio told a Justice Department official in Washington about his office's gambling investigation and said, "Powerful politicians and businessmen are very upset that we are looking into this matter," according to an e-mail message that The Times reviewed.

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"I've been for slots for 20 years," he said. "It wasn't any shock that I was for slots. There wasn't anything to this."

The investigation appears to have ended after Mr. DiBiagio left office in January 2005.

In Maryland law enforcement circles, Mr. DiBiagio had as many detractors as supporters. The Justice Department publicly rebuked him in mid-2004 over a leaked memorandum that spoke of his desire to bring three "front page" corruption cases before November, a memorandum widely interpreted in Baltimore as an effort to pursue Democrats.

In response, the department said all public corruption cases in Maryland would have to obtain approval by superiors in Washington. Soon, the department initiated an unscheduled performance review of Mr. DiBiagio. Mr. Margolis said the review had shown deep resentment over the prosecutor's aggressive management.

Several officials in the Baltimore prosecutor's office said that although Mr. DiBiagio had been an unpopular manager, the timing of the events leading to his departure appeared to be linked, at least partly, to the corruption investigations.

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From: Perino, Dana M.
Sent: Tuesday, March 06, 2007 7:28 AM
To: Brian.RoehrKasse ; tasia.scolinos@usdoj.gov
Cc: Martin, Catherine
Subject: Re: NYT - Former Prosecutor Says Departure Was Pressured

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To: Scolinos, Tasia; Perino, Dana M.
Sent: Tue Mar 06 07:21:22 2007
Subject: Fw: NYT - Former Prosecutor Says Departure Was Pressured

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To: RoehrKasse, Brian
Sent: Tue Mar 06 06:34:26 2007
Subject: NYT - Former Prosecutor Says Departure Was Pressured

Former Prosecutor Says Departure Was Pressured

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But he said that the Justice Department had offered little support and that that made it "impossible for me to stay."

Several current and former officials in the Baltimore office said Mr. DiBiagio voiced concerns in 2004 that the corruption inquiries were jeopardizing his career, a view that they shared.

The Justice Department rejected Mr. DiBiagio's explanation. An official in the department, David Margolis, said he told Mr. DiBiagio in 2004 that he had to leave because "we had lost confidence in him."

Mr. Margolis said the prosecutor's harsh management style had caused resentments in the office that ran "wide and deep" and called "an absolute fairy tale" the idea that Mr. DiBiagio's departure was tied to the gambling case or any other investigation.

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Mr. Finney said in an interview Monday that he wanted to "clean things up" and to let Mr. DiBiagio know that "neither Gov. Bob Ehrlich or his representatives had asked the Department of Justice to push him out."

Mr. DiBiagio said he did not accept the explanation.

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From: Scolinos, Tasia [Tasia.Scolinos@usdoj.gov]
Sent: Tuesday, March 06, 2007 8:20 AM
To: Perino, Dana M.; Roehrkasse, Brian
Cc: Martin, Catherine
Subject: RE: NYT - Former Prosecutor Says Departure Was Pressured

Margolis carries a tremendous amount of credibility with our beat reporters - if we issue anything it will be in his name. I am also calling the bureau chief to complain - Eric is a sloppy reporter and this is riddled with inaccuracies.

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Subject: Re: NYT - Former Prosecutor Says Departure Was Pressured

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The Justice Department rejected Mr. DiBiagio's explanation. An official in the department, David Margolis, said he told Mr. DiBiagio in 2004 that he had to leave because "we had lost confidence in him."

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From: Roehrkasse, Brian
Sent: Tuesday, March 06, 2007 8:31 AM
To: Perino, Dana M.; Martin, Catherine
Subject: FW: NYT - Former Prosecutor Says Departure Was Pressured

My blood is boiling.

From: Roehrkasse, Brian
Sent: Tuesday, March 06, 2007 8:31 AM
To: 'Eric Lichtblau'
Cc: Scolinos, Tasia; 'David Johnston'
Subject: FW: NYT - Former Prosecutor Says Departure Was Pressured

Eric,

I am severely disappointed in your story today. You left out two extremely relevant facts from a rather remarkable on-the-record interview with Dave Margolis. First, Margolis told you he had no knowledge of the Ehrlich investigation when he made the decision. Second, you ignored the fact that he is a 42-year career employee of the Department who oversees ethics issues. And in our follow up conversation after the interview, I specifically asked you to include his credentials since it provides an important distinction from the current situation. You also left out the less important, but still relevant fact that Ehrlich's counsel called Margolis and asked that we not remove DiBiagio.

Frankly, I expected far better reporting from you and am disappointed that you gave into the pressure to sensationalize.

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The controversy over the dismissals continued to grow on Monday, as the head of the Justice Department office that oversees prosecutors stepped down, a watchdog group filed an ethics complaint, and House and Senate committees prepared for testimony on Tuesday from some of the ousted prosecutors.

Because Mr. Ehrlich was the sole statewide Republican in Maryland at the time of Mr. DiBiagio's appointment in 2001, he had a critical role in recommending him to the White House for the position.

Mr. DiBiagio, a former assistant prosecutor, was a political unknown, but he and the governor had become friends as young lawyers in Maryland. The bond disintegrated soon after the prosecutor took office.

Mr. Ehrlich and his advisers acknowledged on Monday that they were unhappy with Mr. DiBiagio's handling of an earlier corruption investigation that led to the indictment in 2003 of Mr. Ehrlich's state police superintendent, Edward R. Norris, over his misuse of police money.

The gambling investigation caused less concern in the governor's office because officials there considered it without merit, Mr. Ehrlich said. But because of lingering suspicions in Maryland political circles that Mr. Ehrlich's people had a hand in Mr. DiBiagio's departure in early 2005, a longtime aide to the governor, Jervis Finney, called Mr. DiBiagio a few months ago to deny any involvement, Mr. Finney said.

Mr. Finney said in an interview Monday that he wanted to "clean things up" and to let Mr. DiBiagio know that "neither Gov. Bob Ehrlich or his representatives had asked the Department of Justice to push him out."

Mr. DiBiagio said he did not accept the explanation.

"I believe it was that investigation that played an integral role in what was done to me," Mr. DiBiagio, now at a law firm here, said about the gambling inquiries. "I clearly got the message that I had alienated my political sponsor and I would not have any political support to stay another term. Clearly, they wanted me to leave."

Mr. DiBiagio pointed to tense conversations in 2003 and 2004 with advisers to the governor who, he said,

intimated that the corruption investigations could derail his career. He would not name them publicly.

The former prosecutor said he was particularly troubled by one visit in June 2004 in which, he said, a lawyer allied with the governor said the gambling inquiries were disrupting legislative consideration of the slots question and should be shut down.

Mr. DiBiagio said the lawyer inquired about his political future, asked whether he was interested in being a judge and suggested that his life could be closely scrutinized.

Mr. DiBiagio said he described the conversation in a memorandum for his records and reported it to an official of the Federal Bureau of Investigation in Baltimore as a possible threat.

Soon after the meeting, Mr. DiBiagio told a Justice Department official in Washington about his office's gambling investigation and said, "Powerful politicians and businessmen are very upset that we are looking into this matter," according to an e-mail message that The Times reviewed.

In the gambling investigation, prosecutors secured a grand jury subpoena for the records of Mr. Ehrlich's communications director, Paul E. Schurick.

Investigators were said to be interested in tracing substantial payments made by a gambling company to a political marketing business in Maryland with ties to Maryland Republicans, people involved in the issue said.

Mr. Ehrlich said Monday that he had no knowledge of any improper transactions to support the slots initiative, and he said the investigation was unfounded.

"I've been for slots for 20 years," he said. "It wasn't any shock that I was for slots. There wasn't anything to this."

The investigation appears to have ended after Mr. DiBiagio left office in January 2005.

In Maryland law enforcement circles, Mr. DiBiagio had as many detractors as supporters. The Justice Department publicly rebuked him in mid-2004 over a leaked memorandum that spoke of his desire to bring three "front page" corruption cases before November, a memorandum widely interpreted in Baltimore as an effort to pursue Democrats.

In response, the department said all public corruption cases in Maryland would have to obtain approval by superiors in Washington. Soon, the department initiated an unscheduled performance review of Mr. DiBiagio. Mr. Margolis said the review had shown deep resentment over the prosecutor's aggressive management.

Several officials in the Baltimore prosecutor's office said that although Mr. DiBiagio had been an unpopular manager, the timing of the events leading to his departure appeared to be linked, at least partly, to the corruption investigations.

"We had several investigations that were very sensitive publicly, and what did him in was the probes into prominent Republicans," said a former official involved in the inquiries who insisted on anonymity.

The state's attorney in Baltimore, Patricia C. Jessamy, who worked often with Mr. DiBiagio, said she believed that he had alienated too many important people to succeed.

"He was a good prosecutor," she said. "But he did not play politics well, and that was his downfall."

You are currently subscribed to News Update (wires) as:

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From: Martin, Catherine
Sent: Tuesday, March 06, 2007 9:58 AM
To: Scolinos, Tasia
Cc: Perino, Dana M.
Subject: Post editorial on us attys

Makes Will's testimony today all the more important....He has got to find a way to work in the specifics into the questioning....

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

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

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

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

Makes Will's testimony today all the more important....He has got to find a way to work in the specifics into the questioning....

From: Hertling, Richard [Richard.Hertling@usdoj.gov]
Sent: Tuesday, March 06, 2007 10:27 AM
To: Oprison, Christopher G.
Subject: Moschella written testimony

Chris: I am wondering if you have had a chance to look over our revised written statement for this afternoon. We have attempted to tone down our opposition to the pending bill, but we would be happy to accommodate additional edits suggested by WHCO. We would, however, like to submit written testimony.

From: Hertling, Richard [Richard.Hertling@usdoj.gov]
Sent: Tuesday, March 06, 2007 10:32 AM
To: Oprison, Christopher G.
Subject: RE: Moschella written testimony

Thank you!

-----Original Message-----
From: Oprison, Christopher G.
[mailto:Christopher_G_Oprison@who.eop.gov]
Sent: Tuesday, March 06, 2007 10:31 AM
To: Hertling, Richard
Subject: Re: Moschella written testimony

Just sent a redline to Bill and Fred.
Christopher G. Oprison
Associate Counsel to the President

-----Original Message-----
From: Hertling, Richard
To: Oprison, Christopher G.
Sent: Tue Mar 06 10:26:58 2007
Subject: Moschella written testimony

Chris: I am wondering if you have had a chance to look over our revised written statement for this afternoon. We have attempted to tone down our opposition to the pending bill, but we would be happy to accommodate additional edits suggested by WHCO. We would, however, like to submit written testimony.

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From: Perino, Dana M.
Sent: Tuesday, March 06, 2007 10:58 AM
To: Looney, Andrea B.; Wolff, Candida P.; Fiddelke, Debbie S.; Kelley, William K.; Oprison, Christopher G.; O'Hollaren, Sean B.; tasia.scolinos@usdoj.gov; Martin, Catherine
Cc: Frech, Christopher W.
Subject: Re: US atty hearing

How do I answer whether we think it was inappropriate for lawmakers to call us attys?

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

From: Looney, Andrea B.
To: Wolff, Candida P.; Fiddelke, Debbie S.; Kelley, William K.; Oprison, Christopher G.; Perino, Dana M.; O'Hollaren, Sean B.
CC: Frech, Christopher W.
Sent: Tue Mar 06 10:54:45 2007
Subject: Re: US atty hearing

Iglesias just said Domenici called and asked if public reports of corruption investigation were true. Iglesias said yes. Domenici asked if they would be filed before Nov. Iglesias said no. Domenici hung up. Iglesias said he felt sick and pressured. Heather Wilson called and asked if he would disclose sealed indictments, Iglesias said no. She responded "well, I guess I have to take your word."

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From: Looney, Andrea B.
To: Wolff, Candida P.; Fiddelke, Debbie S.; Kelley, William K.; Oprison, Christopher G.; Perino, Dana M.
CC: Frech, Christopher W.
Sent: Tue Mar 06 10:35:12 2007
Subject: US atty hearing

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From: Kelley, William K.
Sent: Tuesday, March 06, 2007 11:02 AM
To: Perino, Dana M.; Looney, Andrea B.; Wolff, Candida P.; Fiddelke, Debbie S.; Oprison, Christopher G.; O'Hollaren, Sean B.; tasia.scolinos@usdoj.gov; Martin, Catherine
Cc: Frech, Christopher W.
Subject: Re: US atty hearing

Can we just say that we'll leave it to Congress to examine those questions?

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From: Perino, Dana M.
To: Looney, Andrea B.; Wolff, Candida P.; Fiddelke, Debbie S.; Kelley, William K.; Oprison, Christopher G.; O'Hollaren, Sean B.; 'tasia.scolinos@usdoj.gov'; Martin, Catherine
CC: Frech, Christopher W.
Sent: Tue Mar 06 10:57:54 2007
Subject: Re: US atty hearing

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To: Wolff, Candida P.; Fiddelke, Debbie S.; Kelley, William K.; Oprison, Christopher G.; Perino, Dana M.; O'Hollaren, Sean B.
CC: Frech, Christopher W.
Sent: Tue Mar 06 10:54:45 2007
Subject: Re: US atty hearing

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CC: Frech, Christopher W.
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From: Perino, Dana M.
Sent: Tuesday, March 06, 2007 11:05 AM
To: Kelley, William K.; Looney, Andrea B.; Wolff, Candida P.; Fiddelke, Debbie S.; Oprison, Christopher G.; O'Hollaren, Sean B.; tasia.scolinos@usdoj.gov; Martin, Catherine
Cc: Frech, Christopher W.
Subject: Re: US atty hearing

I could try. What about this bud cummins email? This is bad.

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

From: Kelley, William K.
To: Perino, Dana M.; Looney, Andrea B.; Wolff, Candida P.; Fiddelke, Debbie S.; Oprison, Christopher G.; O'Hollaren, Sean B.; 'tasia.scolinos@usdoj.gov'; Martin, Catherine
CC: Frech, Christopher W.
Sent: Tue Mar 06 11:02:01 2007
Subject: Re: US atty hearing

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To: Looney, Andrea B.; Wolff, Candida P.; Fiddelke, Debbie S.; Kelley, William K.; Oprison, Christopher G.; O'Hollaren, Sean B.; 'tasia.scolinos@usdoj.gov'; Martin, Catherine
CC: Frech, Christopher W.
Sent: Tue Mar 06 10:57:54 2007
Subject: Re: US atty hearing

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To: Wolff, Candida P.; Fiddelke, Debbie S.; Kelley, William K.; Oprison, Christopher G.; Perino, Dana M.; O'Hollaren, Sean B.
CC: Frech, Christopher W.
Sent: Tue Mar 06 10:54:45 2007
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CC: Frech, Christopher W.
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From: Scolinos, Tasia [Tasia.Scolinos@usdoj.gov]
Sent: Tuesday, March 06, 2007 11:06 AM
To: Perino, Dana M.; Kelley, William K.; Looney, Andrea B.; Wolff, Candida P.; Fiddelke, Debbie S.; Oprison, Christopher G.; O'Hollaren, Sean B.; Martin, Catherine
Cc: Frech, Christopher W.; Roehrkasse, Brian
Subject: RE: US atty hearing

Very bad. We are clearing a strongly worded statement now to get out as soon as we can.

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

From: Perino, Dana M.
Sent: Tuesday, March 06, 2007 11:05 AM
To: Kelley, William K.; Looney, Andrea B.; Wolff, Candida P.; Fiddelke, Debbie S.; Oprison, Christopher G.; O'Hollaren, Sean B.; Scolinos, Tasia; Martin, Catherine
Cc: Frech, Christopher W.
Subject: Re: US atty hearing

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To: Perino, Dana M.; Looney, Andrea B.; Wolff, Candida P.; Fiddelke, Debbie S.; Oprison, Christopher G.; O'Hollaren, Sean B.; 'tasia.scolinos@usdoj.gov'; Martin, Catherine
CC: Frech, Christopher W.
Sent: Tue Mar 06 11:02:01 2007
Subject: Re: US atty hearing

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To: Looney, Andrea B.; Wolff, Candida P.; Fiddelke, Debbie S.; Kelley, William K.; Oprison, Christopher G.; O'Hollaren, Sean B.; 'tasia.scolinos@usdoj.gov'; Martin, Catherine
CC: Frech, Christopher W.
Sent: Tue Mar 06 10:57:54 2007
Subject: Re: US atty hearing

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To: Wolff, Candida P.; Fiddelke, Debbie S.; Kelley, William K.; Oprison, Christopher G.; Perino, Dana M.; O'Hollaren, Sean B.
CC: Frech, Christopher W.
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To: Wolff, Candida P.; Fiddelke, Debbie S.; Kelley, William K.; Oprison, Christopher G.;

Perino, Dana M.

CC: Frech, Christopher W.

Sent: Tue Mar 06 10:35:12 2007

Subject: US atty hearing

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From: Perino, Dana M.
Sent: Tuesday, March 06, 2007 1:18 PM
To: Roehrkasse, Brian; Scolinos, Tasia
Cc: Martin, Catherine
Subject: RE: Statement by Brian Roehrkasse on False Accusation by former U.S. Attorney Bud Cummins

Is grandstanding too harsh?

From: Roehrkasse, Brian
Sent: Tuesday, March 06, 2007 12:03 PM
To: Perino, Dana M.; Scolinos, Tasia
Subject: FW: Statement by Brian Roehrkasse on False Accusation by former U.S. Attorney Bud Cummins

FYI

From: Roehrkasse, Brian
Sent: Tuesday, March 06, 2007 12:01 PM
To: 'Thomas Ferraro'; 'Kellman, Laurie'; 'HYen'; 'Taylor, Marisa'; 'Rachel Van Dongen'; 'Keith Perine'; 'Jim Vicini'; 'David Johnston'; 'Dan Eggen'; 'kjohnson'; Ari Shapiro; 'Lambidakis, Stephanie'; 'rschmidt5'; 'Ryan, Jason A'
Subject: Statement by Brian Roehrkasse on False Accusation by former U.S. Attorney Bud Cummins

Statement by Brian Roehrkasse on False Accusation by Bud Cummins

A private and collegial conversation between Mike Elston and Bud Cummins is now somehow being twisted into a perceived threat by former disgruntled employees grandstanding before Congress – despite the fact that Bud Cummins testified under oath that he did not view it "as a threat." Mike Elston did not tell any U.S. Attorney what they should or should not say publicly about their departure and any suggestion that such a conversation took place is ridiculous and not based on fact.

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

From: Roehrkaske, Brian
Sent: Tuesday, March 06, 2007 1:21 PM
To: Perino, Dana M.; Scolinos, Tasia
Cc: Martin, Catherine
Subject: RE: Statement by Brian Roehrkaske on False Accusation by former U.S. Attorney Bud Cummins

Yes, it is. But we're dialing back. Specter gave Cummins a grilling abt the email and got him to concede it was probably friendly advice. I am going to send out that transcript and a slightly revised statement.

From: Perino, Dana M.
Sent: Tuesday, March 06, 2007 1:18 PM
To: Roehrkaske, Brian; Scolinos, Tasia
Cc: Martin, Catherine
Subject: RE: Statement by Brian Roehrkaske on False Accusation by former U.S. Attorney Bud Cummins

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

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From: Scolinos, Tasia [Tasia.Scolinos@usdoj.gov]
Sent: Wednesday, March 07, 2007 1:57 PM
To: Martin, Catherine
Subject: FW: US Attorney leadership assessment writeup.doc
Attachments: US Attorney leadership assessment writeup.doc

<<US Attorney leadership assessment writeup.doc>>

Kevin Ryan (NDCA): Appointed Aug. 2, 2002; term expired Aug. 2, 2006.

- Significant management problems have manifested during his tenure.
- The district has become one of the most fractured offices in the Nation.
- Morale has fallen to the point that it is harming our prosecutorial efforts.
- The USA has lost the confidence of many of his career prosecutors.
- The problems here have been so significant that it has required multiple on-site visits by management and personnel experts from EOUSA.
- Although our Evaluation and Review Staff (EARS) reports are not an evaluation of the performance of a United States Attorney by his or her supervisor – in this case, we had two office-wide evaluations that detailed the problems within the management of this office, which dictated the need for a change.

Carol Lam (SDCA): Appointed Nov. 18, 2002; term expired Nov. 18, 2006

- This is one of our largest offices in the country. In addition to all of the complex legal issues that occur in these extra-large districts, San Diego also faces a tremendous responsibility to effectively manage a border.
- She continually failed to perform in relation to significant leadership priorities – these were priorities that were well-known within the Department. They were discussed at our annual mandatory USA conferences, in speeches by Department leaders, in memos, in conference calls, and in a host of other ways.
- First, the President and Attorney General have made clear that border enforcement is a top priority. It's important to our national security and to our domestic security. Regardless of what was done by the office in this area, she failed to tackle this responsibility as aggressively and as vigorously as we expected and needed her to do. At the end of the day, we expected more.
- Ex: The President has made clear that he expects strong immigration enforcement efforts, but SDCA has only brought a fraction of the cases that other significant border districts are doing. While some good numbers on alien smuggling:
 - Only 422 illegal re-entry cases in 2005 where AZ did 1,491 and NM did 1,607;
 - Only 470 illegal entry cases in 2005 where AZ did 3,409 and NM did 1,194;
 - In June 2006, Sen. Feinstein wrote a letter to the AG complaining about the high prosecution guidelines which kept these numbers low.
- Writing about her concern for Ms. Lam's "restrictive prosecutorial guidelines," Sen. Feinstein stressed "the importance of vigorously prosecuting these type of cases so that California isn't viewed as an easy entry point for alien smugglers because there is no fear of prosecution if caught."
- More than 18 other members of Congress complained about her "catch and release" policies and her failure to let alien smugglers back out onto the street by raising prosecution guidelines too high.
- Second, the President and both Attorneys General in this Administration made clear that, after terrorism, gun crime is the top priority and an important tactic to fighting violent crime.
- SDCA has only brought a fraction of the cases of other extra-large districts. Despite its size and population, it ranks 91 out of 93 districts in terms of average numbers of firearms cases since FY 2000 (doing only an average of 18 cases).
- Third, rather than focusing on the management of her office, this USA spent a significant amount of her time trying cases – this is discouraged in extra-large districts, because these are offices that require full-time managers.

John McKay (WDWA): Appointed Oct. 30, 2001; term expired Oct. 30, 2005

- Demonstrated a pattern of poor judgment in relation to the tactics he used to push for policy changes that were not in the best interest of the Department and without regard to the Department's appropriate channels and methods of evaluating policy.
- Placed extensive focus, and engaged in a significant amount of travel outside of the district to advocate policy changes, rather than focusing on running the office.
- The Department was aware that his district had a bad record with downward departures, failure to appeal downward departures, and that his policy focus was distracting him from the work of the office.

Paul Charlton (AZ): Appointed Nov. 14, 2001; term expired Nov. 14, 2005

- Repeatedly took actions contrary to DOJ policy and procedure.
- Failed to implement the AG's instruction on a death penalty case, when federal law places the decision with the AG.
- Like McKay, Charlton demonstrated a pattern of poor judgment in relation to the tactics he used to push for policy changes without regard to the Department's appropriate channels and methods of evaluating policy. He tried to mandate the FBI to institute a new policy to videotape all interviews with suspects without regard to the national policy taken by the FBI or all of the many reasons why this raises significant concerns that require substantial discussion.
- Despite the national focus the Attorney General requested for offices to focus on the federal crime of obscenity, which coarsens society, McKay failed to support the Department's prosecution of a case that was developed within his district.
- Worked outside of proper channels in seeking resources, without regard to the process or the impact his action would have on our other USAOs.
- [Contrary to guidance from Main Justice that it was poor judgment, he put an employee on "leave without pay" status so she could become a paid press secretary for a Republican running in the 2002 gubernatorial campaign against Governor Napolitano, the former U.S. Attorney. (Shortly thereafter, the employee left the USAO permanently.)]

David Iglesias (NM): Appointed Oct. 17, 2001; term expired Oct. 17, 2005

- One of our large offices, New Mexico is a critically-important border district.

- Again, the President and Attorney General have made clear that border enforcement is a top priority. It's important to our national security and to our domestic security. Regardless of what was done by the office in this area, he failed to tackle this responsibility as aggressively and as vigorously as we expected and needed him to do.
- There was a perception that he traveled a lot, but that even when he was in the office he still delegated a vast majority of the management to his First Assistant. We expect our U.S. Attorneys, particularly those in critical districts, to be hands-on managers working hard to advance the work of the Department.
- Quite simply, now that Mr. Iglesias finished his four-year term (and then some) this was an area where we thought we could make a change to bring more dynamic leadership to the office.

Dan Bogden (Nevada): Appointed Nov. 2, 2001; term expired Nov. 2, 2005

- Similarly, Nevada is what we consider to be a very important district that was underserved.
- Given the large tourist population that visits each year, it's well-known that Las Vegas could present a target for terrorism. It has also struggled with violent crime, drugs, and organized crime. This is an office where we have the right to expect excellence and aggressive prosecution in a number of priority areas.
- Despite the national focus the Attorney General requested for offices to place on the federal crime of obscenity, which coarsens society, the USA failed to support the Department's prosecution of a case that was developed within his district.
- This is another district where, now that Mr. Bogden has finished his four-year term (and then some), we thought we could make a change to bring more dynamic leadership to the office.

From: Saliterman, Robert W.
Sent: Wednesday, March 07, 2007 2:18 PM
To: Martin, Catherine; Sullivan, Kevin F.; Perino, Dana M.
Subject: RE: US Attorney leadership assessment writeup.doc

for what it's worth, the question that stuck out in my mind from reading these was whether these issues were raised with the attorneys and when they were raised. if DOJ was mad the USAs were traveling too much but there isn't any record of us warning them before firing them, it seems a lot less credible...

also, it seems like just saying they didn't prosecute enough cases involving "obscenity" (which according to these talkers "coarsens society") doesn't give enough information and that we're grasping at straws to come up with something

these also don't have anything on bud cummins

From: Martin, Catherine
Sent: Wednesday, March 07, 2007 2:00 PM
To: Sullivan, Kevin F.; Saliterman, Robert W.; Perino, Dana M.
Subject: FW: US Attorney leadership assessment writeup.doc

Here are bullet points on the US Atty firings. Still no transcript from the hearing. Kevin, I'm not sure what your purpose was for the talkers you asked Rob to pull together but this may be a good holding pattern for us.

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Sent: Wednesday, March 07, 2007 1:58 PM
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- Although our Evaluation and Review Staff (EARS) reports are not an evaluation of the performance of a United States Attorney by his or her supervisor – in this case, we had two office-wide evaluations that detailed the problems within the management of this office, which dictated the need for a change.

Carol Lam (SDCA): Appointed Nov. 18, 2002; term expired Nov. 18, 2006

- This is one of our largest offices in the country. In addition to all of the complex legal issues that occur in these extra-large districts, San Diego also faces a tremendous responsibility to effectively manage a border.
- She continually failed to perform in relation to significant leadership priorities – these were priorities that were well-known within the Department. They were discussed at our annual mandatory USA conferences, in speeches by Department leaders, in memos, in conference calls, and in a host of other ways.
- First, the President and Attorney General have made clear that border enforcement is a top priority. It's important to our national security and to our domestic security. Regardless of what was done by the office in this area, she failed to tackle this responsibility as aggressively and as vigorously as we expected and needed her to do. At the end of the day, we expected more.
- Ex: The President has made clear that he expects strong immigration enforcement efforts, but SDCA has only brought a fraction of the cases that other significant border districts are doing. While some good numbers on alien smuggling:
 - Only 422 illegal re-entry cases in 2005 where AZ did 1,491 and NM did 1,607;
 - Only 470 illegal entry cases in 2005 where AZ did 3,409 and NM did 1,194;
 - In June 2006, Sen. Feinstein wrote a letter to the AG complaining about the high prosecution guidelines which kept these numbers low.
- Writing about her concern for Ms. Lam's "restrictive prosecutorial guidelines," Sen. Feinstein stressed "the importance of vigorously prosecuting these type of cases so that California isn't viewed as an easy entry point for alien smugglers because there is no fear of prosecution if caught."
- More than 18 other members of Congress complained about her "catch and release" policies and her failure to let alien smugglers back out onto the street by raising prosecution guidelines too high.
- Second, the President and both Attorneys General in this Administration made clear that, after terrorism, gun crime is the top priority and an important tactic to fighting violent crime.
- SDCA has only brought a fraction of the cases of other extra-large districts. Despite its size and population, it ranks 91 out of 93 districts in terms of average numbers of firearms cases since FY 2000 (doing only an average of 18 cases).
- Third, rather than focusing on the management of her office, this USA spent a significant amount of her time trying cases – this is discouraged in extra-large districts, because these are offices that require full-time managers.

John McKay (WDWA): Appointed Oct. 30, 2001; term expired Oct. 30, 2005

- Demonstrated a pattern of poor judgment in relation to the tactics he used to push for policy changes that were not in the best interest of the Department and without regard to the Department's appropriate channels and methods of evaluating policy.
- Placed extensive focus, and engaged in a significant amount of travel outside of the district to advocate policy changes, rather than focusing on running the office.
- The Department was aware that his district had a bad record with downward departures, failure to appeal downward departures, and that his policy focus was distracting him from the work of the office.

Paul Charlton (AZ): Appointed Nov. 14, 2001; term expired Nov. 14, 2005

- Repeatedly took actions contrary to DOJ policy and procedure.
- Failed to implement the AG's instruction on a death penalty case, when federal law places the decision with the AG.
- Like McKay, Charlton demonstrated a pattern of poor judgment in relation to the tactics he used to push for policy changes without regard to the Department's appropriate channels and methods of evaluating policy. He tried to mandate the FBI to institute a new policy to videotape all interviews with suspects without regard to the national policy taken by the FBI or all of the many reasons why this raises significant concerns that require substantial discussion.
- Despite the national focus the Attorney General requested for offices to focus on the federal crime of obscenity, which coarsens society, McKay failed to support the Department's prosecution of a case that was developed within his district.
- Worked outside of proper channels in seeking resources, without regard to the process or the impact his action would have on our other USAOs.
- [Contrary to guidance from Main Justice that it was poor judgment, he put an employee on "leave without pay" status so she could become a paid press secretary for a Republican running in the 2002 gubernatorial campaign against Governor Napolitano, the former U.S. Attorney. (Shortly thereafter, the employee left the USAO permanently.)]

David Iglesias (NM): Appointed Oct. 17, 2001; term expired Oct. 17, 2005

- One of our large offices, New Mexico is a critically-important border district.

- Again, the President and Attorney General have made clear that border enforcement is a top priority. It's important to our national security and to our domestic security. Regardless of what was done by the office in this area, he failed to tackle this responsibility as aggressively and as vigorously as we expected and needed him to do.
- There was a perception that he traveled a lot, but that even when he was in the office he still delegated a vast majority of the management to his First Assistant. We expect our U.S. Attorneys, particularly those in critical districts, to be hands-on managers working hard to advance the work of the Department.
- Quite simply, now that Mr. Iglesias finished his four-year term (and then some) this was an area where we thought we could make a change to bring more dynamic leadership to the office.

Dan Bogden (Nevada): Appointed Nov. 2, 2001; term expired Nov. 2, 2005

- Similarly, Nevada is what we consider to be a very important district that was underserved.
- Given the large tourist population that visits each year, it's well-known that Las Vegas could present a target for terrorism. It has also struggled with violent crime, drugs, and organized crime. This is an office where we have the right to expect excellence and aggressive prosecution in a number of priority areas.
- Despite the national focus the Attorney General requested for offices to place on the federal crime of obscenity, which coarsens society, the USA failed to support the Department's prosecution of a case that was developed within his district.
- This is another district where, now that Mr. Bogden has finished his four-year term (and then some), we thought we could make a change to bring more dynamic leadership to the office.

From: Scolinos, Tasia [Tasia.Scolinos@usdoj.gov]
Sent: Wednesday, March 07, 2007 1:58 PM
To: Martin, Catherine
Subject: FW: US Attorney leadership assessment writeup.doc
Attachments: US Attorney leadership assessment writeup.doc

<<US Attorney leadership assessment writeup.doc>>

Kevin Ryan (NDCA): Appointed Aug. 2, 2002; term expired Aug. 2, 2006

- Significant management problems have manifested during his tenure.
- The district has become one of the most fractured offices in the Nation.
- Morale has fallen to the point that it is harming our prosecutorial efforts.
- The USA has lost the confidence of many of his career prosecutors.
- The problems here have been so significant that it has required multiple on-site visits by management and personnel experts from EOUSA.
- Although our Evaluation and Review Staff (EARS) reports are not an evaluation of the performance of a United States Attorney by his or her supervisor – in this case, we had two office-wide evaluations that detailed the problems within the management of this office, which dictated the need for a change.

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

Importance: High

Attachments: 3-07-07 PJL USAttys ltr to AG.pdf



3-07-07 PJL
Attys ltr to AG

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

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

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

From: Cohen, Bruce (Judiciary-Dem)

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

<<3-07-07 PJL
Paris, Jeremy

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

PATRICK J. LEAHY, VERMONT, CHAIRMAN

EDWARD M. KENNEDY, MASSACHUSETTS
JOSEPH R. BIDEN, JR., DELAWARE
HERB KOHL, WISCONSIN
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SHELDON WHITEHOUSE, RHODE ISLAND

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ORRIN G. HATCH, UTAH
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JEFF SESSIONS, ALABAMA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
SAM BROWNBACK, KANSAS
TOM COBURN, OKLAHOMA

BRUCE A. COHEN, *Chief Counsel and Staff Director*
MICHAEL O'NEILL, *Republican Chief Counsel and Staff Director*

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

March 7, 2007

Honorable Alberto Gonzales
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Gonzales:

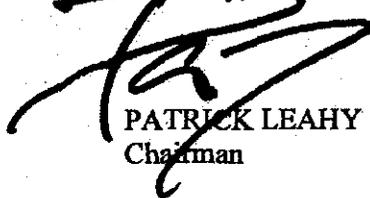
Yesterday, as you know, committees in both the Senate and the House of Representatives held hearings to address the abrupt dismissal of more than a half dozen Senate-confirmed United States Attorneys.

During the course of those hearings, witnesses identified several Department of Justice officials who were involved in the decision to dismiss these U.S. Attorneys or in the execution of that decision.

As part of the Committee's ongoing investigation into this matter, we should have the benefit of hearing directly from these officials. To that end, I would like to work out a process for the Department promptly to make these witnesses available for interviews, depositions, or hearing testimony, on a voluntary basis.

I fully expect that we will be able to come to a convenient arrangement. To avoid any future delay, however, I am listing these Department officials on tomorrow's Executive Business Meeting agenda, so that we will be in a position to authorize subpoenas next week if necessary.

Sincerely,



PATRICK LEAHY
Chairman

cc: Hon. Arlen Specter

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

Kyle - who do you expect SJC to call? Elston, Battle, Mercer, McNulty, you?

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

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Sent: Wednesday, March 07, 2007 5:00 PM
To: Kelley, William K.
Cc: Oprison, Christopher G.
Subject: FW: f PJL ltr to AG on US Attys
Importance: High

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Sent: Wednesday, March 07, 2007 4:56 PM
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-----Original Message-----

From: Cohen, Bruce (Judiciary-Dem)

To: Hertling, Richard
CC: Bharara, Preet (Judiciary-Dem) <<3-07-07 PJL USAttys ltr to AG.pdf>>; Paris, Jeremy (Judiciary-Dem)
Sent: Wed Mar 07 16:47:51 2007
Subject: f PJL ltr to AG on US Attys

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

From: Sampson, Kyle [Kyle.Sampson@usdoj.gov]
Sent: Wednesday, March 07, 2007 5:03 PM
To: Oprison, Christopher G.; Kelley, William K.
Subject: RE: f P JL ltr to AG on US Attys

They put subpoenas on their mark-up agenda for Sampson, Goodling, Elston, Mercer, Battle.

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

From: Oprison, Christopher G.
[mailto:Christopher_G_Oprison@who.eop.gov]
Sent: Wednesday, March 07, 2007 5:02 PM
To: Sampson, Kyle; Kelley, William K.
Subject: RE: f P JL ltr to AG on US Attys

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(Judiciary-Dem)
Sent: Wed Mar 07 16:47:51 2007
Subject: f P JL ltr to AG on US Attys

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

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

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

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

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

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

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

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

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

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

Eric Schultz

Communications Director

U.S. Senator Charles Schumer

313 Hart Senate Office Building

Washington DC 20510

p: 202-224-

Scott Jennings
12/15/2006 3:05:22 AM
Jay McCleskey - Political;

Subject: RE: USATTY - NM

Talked to Weh tonight - you guys are going to have to get Bell sold on Bibb. Like, fast.

From: Jay McCleskey - Political
Sent: Thu 12/14/2006 4:37 PM
To: Scott Jennings
Subject: Re: USATTY - NM

This coming from a guy who hired lister.

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

From: Scott Jennings
To: Jay McCleskey - Political
Sent: Thu Dec 14 16:34:51 2006
Subject: Re: USATTY - NM

They said they had several names- Dom was weary of Bibb as an unknown quantity

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

From: Jay McCleskey - Political
To: Scott Jennings
Sent: Thu Dec 14 16:29:52 2006
Subject: Re: USATTY - NM

WTF. Are you serious? Is he pushing Marco Gonzales?

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

From: Scott Jennings
To: Jay McCleskey - Political
Sent: Thu Dec 14 16:26:47 2006
Subject: RE: USATTY - NM

Domenici may be opposed.

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

From: Jay McCleskey - Political
Sent: Thursday, December 14, 2006 4:17 PM
To: Scott Jennings
Subject: Re: USATTY - NM

Love it.

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

From: Scott Jennings

To: Jay McCleskey - Political

Sent: Thu Dec 14 16:10:18 2006

Subject: USATTY - NM

Jim Bibb - thoughts?

From: Tim Griffin
Sent: Friday, December 15, 2006 4:17 PM
To: Oprison, Christopher G.
Cc: griffin
Subject: here is the article.

Names mentioned for 2 federal posts in state

BY LINDA SATTER ARKANSAS DEMOCRAT-GAZETTE

As the year draws closer to an end, the likelihood of seeing new faces at the helm of two top federal posts in the Eastern District of Arkansas grows stronger.

U.S. Attorney Bud Cummins confirmed Wednesday what he had said in late August — that he plans to leave his position by the end of the year. He has said that he loves the job and “would like to do it forever,” but knows that political appointments such as his are temporary and that he needs to think ahead and concentrate on providing for his family.

Cummins still wouldn't say Wednesday what he might be doing next, but he acknowledged, “I still expect to leave by the end of year.”

He also noted, “I don't have any role in the subsequent or interim appointment.”

Although it is not official, it is generally known in legal and political circles that his successor is likely to be Tim Griffin, a Magnolia native who has been working as an assistant U.S. attorney under Cummins for several months now, on loan from the U.S. Department of Justice in Washington, as he did during a stint in 2002 to get trial experience.

Meanwhile, state Crime Laboratory Director J. R. Howard, whose name was the only one submitted to the White House several months ago as a replacement for U.S. Marshal Ray Carnahan, who resigned in late April, is on pins and needles waiting to see if and when he will get the job.

“Those things are not a done deal until they are a done deal,” he said Wednesday. “I would love to be [appointed], and I'm excited about the opportunity.”

Cummins, 47, a father of four, said three months ago that although he didn't have a new job lined up, he had informally “let it be known” over the past year that he would be bowing out, so that the Bush administration would have time to find a replacement.

Neither he nor Griffin, 33, would comment publicly on the possibility that the latter is expected to succeed Cummins, who took over the job from Paula Casey, a Clinton appointee, on Dec. 21, 2001. In between his two stints as a deputy federal prosecutor, Griffin served as the Republican National Committee's director of research and deputy communications director; then was a special assistant to the president and deputy director of political affairs, two steps down from Karl Rove; then-White House deputy chief of staff; and finally, was called to active duty with the Army Reserve for a one-year stint. He also married a Camden woman, Elizabeth Crain, in April 2005.

Arkansas' 3rd District congressman, John Boozman, said recently that the White House would not ask him, as the only Republican member of the state's delegation, to submit names of potential successors until Cummins formally submits a resignation.

“I have not heard from the White House yet as to a list of names,” Boozman said. He added that occasionally, the White House will nominate someone to fill a vacancy without seeking input from senators or representatives, especially if the White House is already familiar with the candidate.

“Occasionally, the president will just pull one out of the hat,” Boozman said.

After the White House decides on a candidate, it submits the nomination to the U.S. Senate for a

confirmation vote. The only time the Senate does not vote on a presidential nominee is if, while Congress is in recess, the president appoints someone whose name already has been submitted to the Senate.

That is a fairly rare move and carries a provision that the appointee can serve in the position only until the end of that Congress, which in this case would be two years.

While Boozman did not offer much information on the U.S. attorney position, he said that Howard's name was the only one he submitted to the White House for the marshal's position.

Before Gov. Mike Huckabee appointed Howard in April 2004 to be the executive director of the state Crime Laboratory, Howard spent 33 years with the Arkansas State Police, most recently as commander of law enforcement operations.

Ryan James, a spokesman for Boozman, said last week, "According to our chief of staff, he has already gone through the background check and now is just waiting for confirmation from the White House." Howard, 59, said Wednesday that he's "hopeful" he might be considered by the Senate before the next recess, noting, "With all the changes going on in Congress, there will be a lot going on" after the first of the year.

He was referring to the November election that handed over control of both houses of Congress to the Democrats, while President Bush remains in office for another two years.

Meanwhile, Howard said, "I sure haven't been making any plans. I don't want to seem like I'm taking something for granted, because I'm not."

He said that he was interviewed by the Justice Department in Washington in June, and since then, "I've even been leery of driving by [the federal courthouse]. It might jinx the thing. I've made it a point to kind of lay low."

Howard said his interest in law enforcement was sparked when he was a physical science and chemistry teacher at Huntsville High and spent some of his offhours riding with a state trooper he had befriended. His wife, Kathy, directs the psychology department at Harding University. The couple have two daughters, Little Rock lawyer Lindsey Bell and Leigh Howard, a first-year pediatric resident at Vanderbilt University.

The man he may replace, Carnahan, is a friend of his who resigned abruptly in April during an investigation by federal prosecutors in the Western District of Arkansas into an encounter on Oct. 1, 2005, between him and a state Game and Fish Commission wildlife officer. Carnahan and the officer clashed when the officer stopped the marshal as he drove through the Ouachita National Forest in Scott County with some family members.

Carnahan ultimately pleaded guilty to a misdemeanor charge of obstructing a governmental operation and paid a \$500 fine.

After Carnahan resigned, he was replaced temporarily by Brian Murray, formerly the chief deputy U.S. marshal for the Eastern District. Murray soon retired, however, and Deputy U.S. Marshal Chip Massanelli has been serving as the interim chief since then.

Jon Seaton

From: Jon Seaton
Sent: 12/18/2006 8:21:55 AM
o: Mike McKay
Cc:
Bcc:
Subject: RE: Letter to Karl Rove

Mike:

Confirming receipt, I will be hand-delivering to Karl this afternoon.

If there is anything I can do to be of assistance, please let me know. Are there any circumstances to John's resignation as US Attorney that we can be helpful with?

Best,

Jon

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

From: Mike McKay
Sent: Friday, December 15, 2006 2:37 PM
To: Jon Seaton
Subject: Letter to Karl Rove

Jon,

I would be grateful if you could get the attached letter to Karl Rove.
Thanks to you as well for your assistance on this.

Best,

Mike

Michael D. McKay
McKay Chadwell, PLLC
600 University St., Suite 1601
Seattle, WA 98101
Direct: 206-233-
Fax: 206-233-

www.mckay-chadwell.com

PRIVILEGED AND CONFIDENTIAL

This message is private and privileged. If you are not the person for whom this message is intended, please delete it and notify me immediately. Please do not copy or send this message to anyone else.

THE WHITE HOUSE
WASHINGTON

Date: 1/2/07

To: Scott Jennings

From: Deputy Chief of Staff Karl Rove

- FYI
- Appropriate Action
- Direct Response
- Prepare Response For My Signature
- Per Our Conversation
- Let's Discuss
- Per Your Request
- Please Return
- Deadline
- Other

Comments: _____



McScott Jennings

MCKAY CHADWELL, PLLC
1601 ONE UNION SQUARE • 600 UNIVERSITY STREET
SEATTLE, WASHINGTON 98101
(206) 233-2800 • FAX (206) 233-2809

Michael D. McKay
direct line (206) 233-

Washington, D.C. Office
2300 M Street NW, Suite 800
Washington, D.C. 20017
(202) 416-
Fax (202) 833-

15 December 2006

Mr. Karl Rove
The White House
1600 Pennsylvania Avenue N.W.
Washington, D.C. 20502

Re: U.S. Attorney John McKay's Application for Federal District Judge

Dear Karl:

Brother John received a call from the White House Counsel's office yesterday. During that call he was informed that he will not be nominated for the Federal Judge position here in the Western District of Washington. While we are disappointed with this decision, we are sincerely grateful for the close look that he received by the White House during this process. I know that this would not have occurred without your personal assistance.

This has not been a good week. Last Friday, John was asked to step down as U.S. Attorney. A loyal soldier, he submitted his letters of resignation three business days later and will leave office next month.

Since 1980, I have been a strong member of the Bush team. Please know that, in spite of this deep disappointment, I remain so and am available to help if there is anything I can do for you or your office out here in the Pacific Northwest.

With warm regards.

Very truly yours,

MCKAY CHADWELL, PLLC

Michael D. McKay

Rich Beeson

From: Rich Beeson
Sent: 12/23/2006 11:48:46 AM
To: Karl Rove kr@georgewbush.com;
Cc:
Bcc:
Subject:

Karl -- I know this is WAY above my pay grade, so please forgive my impetuosity, but I understand that Jim Bibb is one of the names who have been recommended to be US Attorney for New Mexico.

I did Jim's race for AG this last cycle and got to know him very well. He is one of the best human beings I have ever known. He will make the President proud and serve his country well if he is selected.

As Senator Armstrong used to say, "I will speak for him, or against him, whichever will help him more."

I hope you and your family have a Merry Christmas. Thank you for the Christmas card.

Karl Rove

From: Karl Rove
Sent: 12/23/2006 11:58:03 AM
To: Rich Beeson
Cc:
Bcc:
Subject: Re:

Your support is duly noted and welcomed. Now back to digging out.

From: Rich Beeson
Date: Sat, 23 Dec 2006 11:48:46 -0500
To: Karl Rove <kr@georgewbush.com>

Karl -- I know this is WAY above my pay grade, so please forgive my impetuosity, but I understand that Jim Bibb is one of the names who have been recommended to be US Attorney for New Mexico.

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I hope you and your family have a Merry Christmas. Thank you for the Christmas card.

From:
Sent: 1/1/4501
To: Scott Jennings /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=SJennings;
Cc:
Bcc:
Subject: WA US Attorney Situtation

Reichert is having a hard time figuring out what to do. Reichert doesn't want to bring the panel back and it looks like they've given up.

I told his CoS that they could just submit us some names, rather than forming this panel.

We might want to start things about some people.

Michael J. Britt
Associate Director
Office of Political Affairs, The White House
Washington, DC 20502
Phone: 202.456
Fax: 202.456
mbritt@gwb43.com

Scott Jennings

From: Scott Jennings
Sent: 1/3/2007 10:30:10 AM
To: Kirk, Dennis D Mr OGC
Cc:
Bcc:
Subject: RE: New Contact Info (UNCLASSIFIED)

He will be a great US Attorney.

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

From: Kirk, Dennis D Mr OGC
Sent: Wednesday, January 03, 2007 8:55 AM
To: Scott Jennings
Subject: FW: New Contact Info (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Scott,

Our old friend, Tim Griffin, is back in play. Seems good candidate for Senate in 2008?

Very respectfully,

Dennis Dean Kirk, Esq.
Special Assistant to the General Counsel
United States Army
104 Pentagon, Room 3C546
Washington, DC 20310-0104
13-695- (O)
03-614 (F)

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

From: Tim Griffin
Sent: Sunday, December 31, 2006 11:26 AM
To: Tim Griffin
Subject: New Contact Info

Dear All, in September I completed my year of Army active duty (and military leave from the White House). I am still in the Army Reserve but back in the civilian world. Elizabeth and I have returned to Arkansas and on 20 December, I was sworn in as U.S. Attorney for the Eastern District of Arkansas. Here is my new contact info:

Tim Griffin
U.S. Attorney
Eastern District of Arkansas
P O. Box 1229
Little Rock, Arkansas 72203
Work: 501 340 2600
Cell: 501 837

Please continue to use this email:

Stay in touch. take care and God bless. TG

If you feel you have received this email in error, please let me know, and I will remove your name from my list.

Classification: UNCLASSIFIED

From: "Tim Griffin" <griffinjag@comcast.net>
Date: Thursday, January 04, 2007, 2:05:29 AM
To: "Karl Rove" <kr@georgewbush.com>
Subject: RE: Kerrie Rushton

LOL. I know where the true power lies!

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

From: Karl Rove [mailto:KR@georgewbush.com]
Sent: Wednesday, January 03, 2007 8:03 PM
To: griffinjag@comcast.net
Subject: Re: Kerrie Rushton

If I'm meeting with, then I'd think that was good news because I'm generally rolled out for blessing someone else's decision.

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

From: Tim Griffin <griffinjag@comcast.net>
To: Karl Rove
Sent: Wed Jan 03 21:01:15 2007
Subject: RE: Kerrie Rushton

My pleasure—I think you are meeting with her later this week.

Take care and I will keep you updated on things. I am meeting with Sen. Pryor next Tuesday in D.C.

Happy New Year, TG

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

From: Karl Rove [mailto:KR@georgewbush.com]
Sent: Wednesday, January 03, 2007 7:57 PM
To: griffinjag@comcast.net
Subject: Re: Kerrie Rushton

Thanks, buddy. I'm sure Pete will give her a very serious look.

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

From: Tim Griffin <griffinjag@comcast.net>
To: Karl Rove
Sent: Wed Jan 03 20:49:50 2007
Subject: Kerrie Rushton

Karl, thank you for the Christmas card. We loved it.

I just wanted to put in a word for Kerrie Rushton. She didn't ask me to, but she is awesome. Below is the email I sent Pete when he asked about her.

Pete, It is great to hear from you. I will keep it short and to the point:
If you hire Kerrie, she will be the best employee you have ever hired. She

is bright, diligent, punctual, articulate, creative, hard working, etc. On top of that, she is so very easy to work with. I recommend you hire her! I hired about 60 people during my tenure at the RNC over three election cycles, and I rank her as one of the best.

Thank you Karl for everything, TG

Jon Seaton

From: Jon Seaton
Sent: 1/5/2007 6:08:16 PM
o: Peter Schalestock /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=PeterSchalestock;
Cc:
Bcc:
Subject: RE: US Atty

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

Thanks man. This is starting to ramp up.

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

-Jon

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

Can we get Harry Korrell considered for this?

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

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

206-669

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

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

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From: Jon Seaton
Sent: 1/5/2007 6:41:13 PM
To: Peter Schalestock /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=PeterSchalestock;
Cc:
Bcc:
Subject: Re: US Atty

Perfect. Thank you.

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

From: Peter Schalestock
To: Jon Seaton
Sent: Fri Jan 05 18:24:40 2007
Subject: RE: US Atty

Jon,

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

On the political side, Harry has been active in Republican politics for at least a decade (I met him in 1996 when he called to volunteer on Rick White's congressional campaign, which I was managing). He served as the state chair for the Republican National Lawyers Ass'n, and in a leadership role for the Federalist Society. He was co-chair of Washington Lawyers for Bush in 2004, and volunteered a considerable amount of time in that effort. He was the lead litigation counsel for the Dino Rossi recounts and election contest, for which he contributed hundreds of hours of work pro bono in addition to the work that was paid. He has been a strong supporter of Republican candidates, including Rob McKenna and the President, and was invited to a 2004 White House Christmas party.

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

I am glad to hear that Rick also is under consideration. Obviously I know him quite well, and either he or Harry would do an excellent job.

Peter

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

Harry J.F. Korrell

Partner- Seattle, Washington Office

Representative Employment Law Experience

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

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

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

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

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

Other Litigation Experience

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

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

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

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

Memberships and Activities
Washington State and Washington D.C. Bar Associations

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

U.S. Supreme Court

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

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

Education
J.D. University of Chicago School of Law

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

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

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Rod Adair

From: Rod Adair
Sent: 1/6/2007 11:56:05 AM
To: Karl Rove /O=REPUBLICAN NATIONAL COMMITTEE/OU=RNC/CN=RECIPIENTS/CN=KR;
Cc:
Bcc:
Subject: US Attorney

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

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

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

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

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

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Happy New Year!

Rod Adair
State Senator

R-KUSWELL

Chaves & Lincoln Counties

627

www.rodadair.com

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-Condoleezza Rice

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Republican and co-founder of the NAACP

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

Karl Rove

From: Karl Rove
Sent: 1/6/2007 12:30:49 PM
To: Rod Adair
Cc:
Bcc:
Subject: Re: US Attorney

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

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

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State Senator
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Chaves & Lincoln Counties
627-
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Cc:
Bcc:
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From: Karl Rove [mailto:kr@georgewbush.com]
Sent: Saturday, January 06, 2007 10:31 AM
To: Rod Adair
Subject: Re: US Attorney

Thanks — I'd make certain you share your views

with your State's GOP Senator and Republican House Members.

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Karl Rove

From: Karl Rove
Sent: 1/6/2007 5:24:01 PM
To: radair
Cc:
Bcc:
Subject: Re: US Attorney

Their opinions matter.

What group was this? How was involved? When did it take place? Who was the lawyer who was willing to take on the issue?

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

From: Rod Adair
To: Karl Rove
Sent: Sat Jan 06 14:23:29 2007
Subject: RE: US Attorney

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-Robert Byrd, Kluxer, 1941-48

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—Original Message—

From: Lee, Kenneth K.

Sent: Thursday, January 04, 2007 9:08 AM

To: Jennings, Jeffery S.

Subject: FW: Scanned Document - Sent from the EW Leg. Affairs Xerox

Scott – per our discussion today.

Thanks.

—Original Message—

From: Looney, Andrea B.

Sent: Wednesday, January 03, 2007 4:59 PM

To: Lee, Kenneth K.

Subject: FW: Scanned Document - Sent from the EW Leg. Affairs Xerox

VI: letter from McCain and Kyl regarding a US Attorney recommendation.

—Original Message—

From: Dial, M. Katelin

Sent: Wednesday, January 03, 2007 4:09 PM

To: Looney, Andrea B.

Subject: FW: Scanned Document - Sent from the EW Leg. Affairs Xerox

Here is a scanned version too. Copy in your chair.

JOHN MCCAIN
ARIZONA

CHAIRMAN
COMMITTEE ON INDIAN AFFAIRS
COMMITTEE ON ARMED SERVICES
COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION

United States Senate

January 3, 2007

Honorable George W. Bush
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500-0003

Dear Mr. President:

We are writing to recommend Diane J. Humetewa to fill the vacancy of retiring United States Attorney Paul Charlton. As you may know, Mr. Charlton tendered his resignation as U.S. Attorney for the District of Arizona effective January 31, 2007. We recommend that Diane Humetewa be appointed as Acting U.S. Attorney thereafter and until her confirmation.

Diane is currently a Senior Litigation Counsel at the Arizona U.S. Attorney's Office (USAO), which engages her in a multitude of tasks and roles. She advises the U.S. Attorney, attorney staff, and the Victim Witness Program on legal and litigation matters. She is the Tribal Liaison to Arizona's 21 Indian tribes, their lawyers and criminal justice agencies on USAO-related matters. She is a national trainer on USAO practice and policy. Moreover, she also carries an extensive criminal caseload.

Diane Humetewa has been associated with the U.S. Attorney's Office for the District of Arizona in one capacity or another since the late 1980's. She has served no less than six U.S. Attorneys. She began her career there as a victim advocate for then-U.S. Attorney Stephen M. McNamee (now a United States Federal judge for the District of Arizona) in 1987.

While in law school, Ms. Humetewa clerked for U.S. Attorney Linda A. Akers. She later returned as a Special Assistant U.S. Attorney where she prosecuted Major Crimes in Indian Country and trained law enforcement personnel on the Violence Against Women Act and Federal Child Abuse Reporting laws.

After several years, Diane moved to the civil division where she defended the United States in Federal Tort Claims Act and U.S. Bankruptcy matters. Her litigation experience includes an extensive caseload of Major Crimes Act violations in Arizona's Indian Country and general federal crimes, including: child sex crimes, homicides, Native American Graves Protection and Repatriation Act (NAGPRA), Archeological Resource Protection Act (ARPA) violations, and immigration crimes. She has extensive federal trial work, including NAGPRA, ARPA, homicide, assaults, sex crimes, bank robbery, juvenile delinquency and juvenile-adult transfer hearings.

241 RUSSELL SENATE OFFICE BUILDING
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5353 NORTH 16TH STREET
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PHOENIX, AZ 85018
(602) 952-2410

4702 SOUTH LAKEHURST DRIVE
SUITE 1
TEMPE, AZ 85283
(480) 987-0288

407 WEST CONGRESS STREET
SUITE 103
TUCSON, AZ 85701
(520) 670-8224

TELEPHONE FOR HEARING IMPAIRED
(602) 952-8170

Honorable George W. Bush
January 3, 2007
Re: Diane Humetewa
Page 2

Additionally, Diane worked on the Senate Indian Affairs Committee during both of Senator McCain's tenures as Chairman. She is intimately familiar with law enforcement in Indian Country, as well as a host of other issues that bear on the relationship of the United States to Indian Country such as gaming, welfare reform, the NAGPRA, the Indian Child Welfare Act and the Cobell litigation.

Diane is a native Arizonan. She grew up mostly in Arizona and received all of her education there. She graduated from Arizona State University's College of Law in 1993. She has a sound appreciation of legal issues unique to Arizona and the region. Once appointed, we anticipate swift Senate confirmation. Indeed, upon your nomination, she was confirmed recently by the Senate as a Member of the Board of Trustees of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation.

Thank you for your time and careful consideration to our request.

Sincerely,


John McCain
United States Senator


Jon Kyl
United States Senator

Enclosure

cc: United States Attorney General Alberto Gonzales

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.

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Recognition and Achievements:

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Hopi Tribal Scholarship (Fall 1992-Spring 1993)

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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]

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- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

PETE V. DOMENICI
NEW MEXICO

COMMITTEES:
ENERGY AND NATURAL RESOURCES
APPROPRIATIONS
BUDGET
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
INDIAN AFFAIRS

United States Senate
WASHINGTON, DC 20510-3101

January 5, 2007

Duplicate:
Leslie

The President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

In response to your request for the names of candidates to serve as the U.S. Attorney for the District of New Mexico, I am pleased to forward you an outstanding list of qualified New Mexicans.

My staff and I have thoroughly vetted these potential nominees and are confident that each is fully qualified to carry out the duties of the U.S. Attorney with distinction.

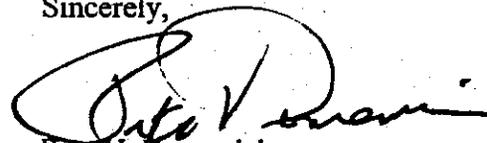
The four potential nominees are as follows, in alphabetical order:

- James William Bibb of Santa Fe, New Mexico
- T. Glenn Ellington of Santa Fe, New Mexico
- Charles R. Peifer of Albuquerque, New Mexico
- Patrick J. Rogers of Albuquerque, New Mexico

I am taking the liberty of enclosing biographical information on all four.

Thank you for your consideration and it is a pleasure to work with you on this.

Sincerely,



Pete V. Domenici
United States Senator

cc: Attorney General Alberto Gonzalez
The Honorable Harriet Miers

THE WHITE HOUSE
WASHINGTON

1686
Leslie

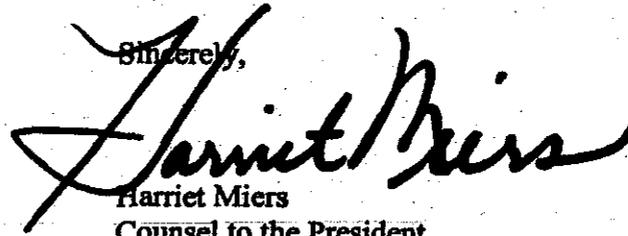
January 5, 2007

Dear Senator Domenici:

On behalf of President Bush, I am writing to thank you for your letter forwarding your recommendations of James Bibb, T. Glenn Ellington, Charles Peifer, and Patrick Rogers to fill the United States Attorney position for the District of New Mexico. Please be assured that each of the individuals you have recommended will be evaluated carefully and will be given every consideration in this process.

In the event that additional information from you would be helpful, we will contact you directly. And, of course, please do not hesitate to contact us with any questions or to discuss the recommendations.

Sincerely,



Harriet Miers
Counsel to the President

The Honorable Pete Domenici
United States Senate
Washington, D.C. 20510