# CONTINUING INVESTIGATION INTO THE U.S. ATTORNEYS CONTROVERSY

## HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCIAL AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

MAY 3, 2007

**Serial No. 110–10**

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://judiciary.house.gov

U.S. GOVERNMENT PRINTING OFFICE

35–115 PDF WASHINGTON : 2007

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# CONTENTS

MAY 3, 2007

OPENING STATEMENT


| | Page |
|---|---|
| The Honorable Linda T. Sánchez, a Representative in Congress from the State of California, and Chairwoman, Subcommittee on Commercial and Administrative Law | 1 |
| The Honorable Chris Cannon, a Representative in Congress from the State of Utah, and Ranking Member, Subcommittee on Commercial and Administrative Law | 3 |
| The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, Chairman, Committee on the Judiciary, and Member, Subcommittee on Commercial and Administrative Law | 5 |


WITNESSES


| | |
|---|---|
| Mr. James B. Comey, former Deputy Attorney General, Department of Justice Oral Testimony | 7 |


APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD


| | |
|---|---|
| Response to Post-Hearing Questions from James B. Comey, former Deputy Attorney General, Department of Justice | 44 |

# CONTINUING INVESTIGATION INTO THE U.S. ATTORNEYS CONTROVERSY

**THURSDAY, MAY 3, 2007**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCIAL
AND ADMINISTRATIVE LAW,
COMMITTEE ON THE JUDICIARY,
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 9:36 a.m., in Room 2141, Rayburn House Office Building, the Honorable Linda Sánchez (Chairwoman of the Subcommittee) presiding.

Present: Representatives Sánchez, Conyers, Johnson, Lofgren, Watt, Cohen, Ellison, Cannon, Jordan, and Feeney.

Staff present: Eric Tamarkin, Majority Counsel; and Daniel Flores, Minority Counsel.

Ms. SÁNCHEZ. This hearing of the Committee on the Judiciary, Subcommittee on Commercial and Administrative Law, will come to order.

I will recognize myself for a short statement.

It has been nearly 5 months since an unprecedented number of U.S. attorneys were fired midterm, without cause and without explanation. Five months have passed since December 7, 2006, and we are still trying to understand why these talented and experienced U.S. attorneys were forced to resign.

As the facts unfold, we are left with more questions than answers. What we have learned so far is troubling and warrants further inquiry.

We have learned that the Bush administration exploited the change in interim appointment limits of U.S. attorneys by purging high-performing U.S. attorneys.

When the fired U.S. attorneys received notification that they would be fired, several were in the midst of high-profile public corruption investigations involving Republican officials.

We have learned that U.S. attorneys were rated on a removal list based in large part on whether they were loyal Bushies.

However, after numerous interviews with Justice Department officials and reviewing of department documents, it is still unclear who within the Administration was responsible for placing those particular U.S. attorneys on the list.

The Justice Department testified before this Subcommittee that the U.S. attorneys were removed for "performance-related reasons."

However, internal department evaluations, letters of commendation from department officials and numerous awards from outside groups clearly contradict that testimony. In fact, mounting evi-

dence suggests that reasons set forth by the department are misleading, and that the U.S. attorneys were improperly dismissed.

Although the president has a right to dismiss U.S. attorneys, he does not have the right to remove them in order to interfere with ongoing investigations, or to retaliate against a U.S. attorney for not prosecuting cases that would benefit a particular political party. Politics should not be injected into decisions to bring the full force of the law against an individual.

If even a single U.S. attorney lost his or her job either for prosecuting Republicans or for refusing to prosecute Democrats, this would represent a serious threat to the very notions of fairness on which our justice system rests.

In order to restore the American people's faith in the administration of justice, we must know with absolute certainty that those who are charged with crimes are charged based on the evidence, and not because of political consideration.

Despite our attempts to expedite the Judiciary Committee's investigation, we have been barred from learning whether these U.S. attorneys were fired for an improper purpose.

While we appreciate the Justice Department's general cooperation with our investigation, the department has withheld materials that are clearly related to the mass firings and were requested by the Committee, including unredacted documents with key information.

Chairman Conyers has issued a subpoena for their production and the deadline for their production has passed.

Although the president has publicly pledged to get to the truth of the matter, the White House continues to be an obstacle in concluding this investigation.

On March 9th, Chairman Conyers and I sent a letter to White House Counsel Fred Fielding requesting testimony and documents from White House officials with direct knowledge of the facts and circumstances in the U.S. attorneys controversy.

Despite Chairman Conyers' repeated attempts to reach an agreement on the terms under which White House testimony and documents will be shared with the Committee, the White House has refused negotiation.

We continue to be hopeful that the White House will cooperate with this investigation. However, after nearly 2 months of stonewalling, we still have not received any information from the White House.

Such tactics do not inspire public confidence in the Administration but serve only to increase public doubt in the Administration's integrity and commitment to equal justice under the law.

Our investigation has also revealed that Administration officials discussed firing U.S. attorneys while using Republican National Committee e-mail accounts. As a result, this Committee has also requested that the Republican National Committee produce copies of e-mails from White House officials concerning the issue.

Instead of allowing the RNC to immediately comply with the request, the White House has slowed the production of documents by asserting a flimsy argument that they must review all of the documents for claims of executive privilege.

It is my hope that this morning's testimony from James Comey, the former Deputy Attorney General, will bring us one step closer to resolving this matter.

I want to thank Mr. Comey for his gracious cooperation with our subpoena, and make clear that he is participating in this hearing under compulsion.

I would now like to recognize my colleague, Mr. Cannon, the distinguished Ranking Member of the Subcommittee, for his opening remarks.

Mr. CANNON. I thank the Chairlady.

I would like to point out that from the beginning of this, we have heard the word "corruption" bandied about. We now have thousands and thousands of pages of documents, many interviews of people, and so far this seems to be a fishing expedition that has come up dry.

I know the minority is—or the majority, unfortunately—is wishing or casting its nets and hoping to catch someone from the White House. But thus far, despite the complaints, there has been nothing, at least that I can see out there, that warrants the continued reference to stonewalling and corruption and other, I think, extreme statements by the majority.

Nevertheless, the minority remains committed to ensuring that the material facts come out in this matter, the sooner the better.

Some witnesses whom Committee staff has interviewed have suggested that Jim Comey was informed about the review of U.S. attorneys while he was deputy attorney general, knew of information pertaining to some of the U.S. attorneys whose resignations were ultimately requested or was consulted about some of those U.S. attorneys.

We welcome Mr. Comey's testimony so that he can answer our questions and add to the record of this investigation.

We are not sure that Mr. Comey has all of the information that pertain to some of our questions.

For example, we are not sure whether Mr. Comey knows that David Margolis, the top career official at the Department of Justice, indicated in an interview earlier this week that the idea of reviewing U.S. attorneys was a good one; that, based on his knowledge of the relevant information, he generally endorses the grounds offered for requesting the resignations; and that he would like for the department to be able to conduct this kind of review again, and hopes that it can, but fears the current clamor may chill future efforts. Heavy on the clamor.

We also are not sure if Mr. Comey has a fair sense of the picture emerging from all the interviews, testimony and document reviewed thus far. We hope that his ability to offer testimony has not been limited or tainted by selective leaks of information from the private interviews that have occurred.

Those leaks have generated the impression in the major media that we believe runs counter to the thrust of the information we have collected and reviewed to date.

Nevertheless, we hope that this will be an informative hearing. And we do know that Mr. Comey has been identified as a witness who may have material information concerning the events that we are examining. Therefore, we welcome him today.

In private discussions, I have indicated my admiration for Mr. Comey, who has performed a wonderful service for America.

I hope that we can find out what he knows and do it very quickly, so that he can get back to his important work and this Committee can as well.

Thank you.

Mr. WATT. Would the gentleman yield, just a second, before he yields back?

Mr. CANNON. Certainly. Absolutely.

Mr. WATT. I know this is out of regular order, but I wanted to just take exception to one thing that the gentleman said.

I personally am hoping that there is nothing that we find at the end of this investigation. And your statement to the effect that we are hoping for some kind of sinister result, I don't think I want to just let it pass quietly into the night.

It would be a profound statement about our justice system if we found that political and presidential involvement in matters that should be outside politics and in the justice system were—that these matters were influencing the outcomes of prosecutions. And I think it would be devastating to all of us.

This inquiry, from my personal perspective, is not about finding wrongdoing. I hope there is no wrongdoing. I think we have an obligation to get to the bottom of this, and to reassure the public that there is no wrongdoing if in fact that is the case.

If it is not the case, then I think it is our responsibility to expose that.

And I appreciate the gentleman yielding to me, because I personally took that——

Mr. CANNON. Well, I think the gentleman needed it.

And reclaiming my time, as is almost always the case, I agree with the gentleman. And if there is any implication of any personal offense, I apologize for that. None was intended.

Nevertheless, the course of this investigation has thus far turned up nothing.

The gentleman can take, I think, great comfort from the interview that Mr. Margolis gave about the integrity of the system. And if we were fair and balanced in how we were reviewing this, I don't think that I would necessarily be in a position to have to try and bring some balance back into it by pointing out that thus far nothing has occurred that should shake the confidence of people in the system.

Mr. WATT. If the gentleman would——

Mr. CANNON. The balance of politics—I grant you a balance of politics and fairness, but we need to examine that. And that is why Mr. Comey, I think, will be an important witness.

And I realize I am out of time, but I would ask for unanimous consent for an additional minute to yield to the gentleman.

Mr. WATT. And I won't take an additional minute.

I just want to point out to the gentleman, that obviously hadn't read the front page of this morning's *Washington Post,* which suggests that the Justice Department is now doing an investigation of whether there were any illegal things taking place. And they are now believing that something illegal has taken place.

So this notion that you have that nothing sinister has taken place is just not borne out by what appears to be coming to light here.

Mr. CANNON. Well, reclaiming my time——

Ms. SÁNCHEZ. The time of the gentleman has expired.

Mr. CANNON. Madam Chair, I ask for an additional minute——

Ms. SÁNCHEZ. Without objection, so ordered.

Mr. CANNON. The fact is this has been a trial by leaks. And the press has been, I think, a willing accomplice to try and taint the Administration because that sells newspapers. I don't think that much as actually come out that is substantial in that sense.

The fact that the Justice Department is doing an internal review has been known by, I think, Members of this Committee for some period of time. The fact that it appears in *The Washington Post* is not indicative of what we ought to be doing or where we ought to be going or justification for what we have done, especially since those kinds of stories have typically been subject to leaks that I thought we agreed we would not do in the course of this investigation.

And with that, Madam Chair, I yield back.

Ms. SÁNCHEZ. I thank the gentleman for yielding back.

And I would now like to recognize Mr. Conyers, a distinguished Member of the Subcommittee and the Chairman of the Committee on the Judiciary. Mr. Conyers?

Mr. CONYERS. Thank you very much, Committee Chairman Sánchez.

I first begin by commending the Subcommittee on Commercial and Administrative Law for the excellent way that you have comported yourself and moved forward in this investigation.

I wish we could assure everybody that this will be a very brief meeting, and that this matter will be over quickly. I have no idea how long we are going to take.

I am very pleased, I can tell you, that James Comey, the former deputy attorney general of the Department of Justice, is here with us today. And so we take another important step at getting at the truth in our investigation of the recent mass firings of U.S. attorneys.

And we have learned something. We know that the firings were apparently part of a long-laid plan involving the highest levels of the Department of Justice and the White House.

We are also aware that misstatements were made concerning the reasons for the firings by high-ranking members of the Department of Justice, up to and including the Attorney General.

We know that several department officials have resigned in connection with this matter—certainly not the witness with us today—and that at least one such official has asserted her fifth amendment rights against self-incrimination.

We have also found that numerous questionable, if not improper, communications were made by Members of Congress to several of the United States attorneys concerning pending prosecutions before they were fired, and that efforts were made after the firings to discourage United States attorneys from cooperating in our inquiry.

We are aware that thousands of e-mails relating to this matter have been lost, misplaced, or destroyed in potential violation of Federal law.

We are also aware that the department has opened up two separate internal inquiries related to these matters.

But what we don't know, as we meet this morning, is who actually made the decision to place the U.S. attorneys on the firing list. The attorney general, Mr. Gonzales, has told us that it was not him. Mr. Kyle Sampson has denied making the substantive judgments. We have interviewed other senior officials in the department, and all deny making the actual decision to place the names on the list.

The role of the White House remains elusive, in large part due to their failure, as referred to by the Chairwoman, to cooperate with the Committee's inquiry.

And so, against this backdrop, we are fortunate to have today's witness, who has a unique perspective on the recent firings of the eight United States attorneys by the Bush administration because he worked closely with many of them as fellow United States attorneys and he supervised them and their offices for substantial periods of time.

Mr. Comey has a superb reputation as a career Federal prosecutor and an effective deputy attorney general and is generally regarded by all as a straight-shooter who has always embodied the highest and best traditions of the Department of Justice.

And so, we proceed on today's hearings, knowing that we owe the American people the duty to learn, to share with them the true reasons for these firings, because the Department of Justice and the prosecutorial integrity of our Nation is coming under scrutiny. We expect that we will be able to assess what is true and what isn't.

And it is in this spirit that I come to the hearing to congratulate the Subcommittee and its Chairman and also the witness that is before us today.

And I thank the gentlelady.

Ms. SÁNCHEZ. I thank the gentleman for his statement.

Without objection, other Members' opening statements will be included in the record.

Without objection, the Chair will be authorized to declare a recess of the hearing.

I am now pleased to introduce the witness for today's hearing. James Comey is a former deputy attorney general of the United States, serving in President George W. Bush's administration. As deputy attorney general, Mr. Comey was the second-highest ranking official in the United States Department of Justice and ran the day-to-day operations of the department.

He was appointed to the position in 2003, after serving as the U.S. attorney for the Southern District of New York. Prior to that, Mr. Comey served as managing assistant U.S. attorney in charge of the Richmond division of the U.S. Attorney's Office for the Eastern District of Virginia.

In August 2005, Mr. Comey left the Justice Department, and he is currently general counsel and senior vice president of Lockheed Martin.

We welcome you for your appearance today.

I want to remind Subcommittee Members that you will be permitted to ask questions, subject to the 5-minute limit. And we will hopefully have two rounds of questioning, depending on how many questions remain after the first round.

And I want to note also to the Members and to our witness, we are expecting the Hate Crimes Bill on the floor this morning. So there may be interruptions. And we want to apologize ahead of time for those interruptions.

I will begin the first round of questions myself, subject to the 5-minute rule.

I would ask our witness to please state your name for the record.

**TESTIMONY OF MR. JAMES B. COMEY, FORMER DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE**

Mr. COMEY. My name is James Comey. I go by Jim Comey. And as you said, Madam Chairman, I am currently the general counsel of Lockheed Martin and served as the deputy attorney general from 2003 to 2005.

Ms. SÁNCHEZ. What were your responsibilities as deputy attorney general concerning U.S. attorneys?

Mr. COMEY. I was the direct supervisor of all the U.S. attorneys, and so dealt with them quite frequently on a variety of matters: resolving disputes, talking with them about resources, trying to support them in any way that I could.

Ms. SÁNCHEZ. And both in your role as deputy attorney general and as a U.S. attorney serving on the attorney general's advisory committee under Attorney General Ashcroft, how familiar are you with the work and the performance of the six former U.S. attorneys who testified before this Committee last month, including David Iglesias, Carol Lam, John McKay, Paul Charlton, Dan Bogden and Bud Cummins?

Mr. COMEY. I knew each of those people from being a colleague of theirs when I was U.S. attorney of Manhattan and as their supervisor. I interacted with them and their districts in different degrees.

I would say that I knew five of the six better. Mr. Cummins I didn't have much contact with. I had quite a bit of contact with, for example, Mr. Bogden, Mr. Iglesias and Mr. Charlton, because they were implementing a violent crime initiative that I was in charge of in their districts.

Ms. SÁNCHEZ. Okay. And are you familiar with Attorney General Gonzales's former chief of staff, Kyle Sampson?

Mr. COMEY. Yes, ma'am.

Ms. SÁNCHEZ. Okay. Mr. Sampson has testified to the Senate and to the House that he was involved beginning in early 2005, when you were deputy attorney general, in an effort that involved the White House and the Department of Justice and that culminated in the termination of the eight U.S. attorneys in 2006.

In particular, he has stated that he consulted you in 2005, that he asked, "If you wanted to ask a handful of United States attorneys to resign, who would you have on your list?," and that he shared with you that this inquiry had come from the White House.

Do you recall Mr. Sampson telling you that about the White House and asking you that question?

Mr. COMEY. I do not. I remember meeting with Mr. Sampson, a date that I couldn't peg until I went through my old calendars and now I believe was February 28th of 2005.

It was a 15-minute meeting. Two topics were covered, as I recall. And one was him asking me, as best I can recall, who did I think were the weakest U.S. attorneys. I have some recollection of him giving me a preamble, something like, "If there is ever an opportunity to replace weak people or if we ever look at our U.S. attorneys, who do you think are the weak ones?"

I am quite certain he didn't mention the White House. I think that would have stuck in my mind.

And in response to the question, which was an echo of a question that the prior chief of staff, Mr. David Ayres, for John Ashcroft had asked me a year earlier, I gave him, off the top of my head, my reactions, some people that I thought were weak managers and were among our less productive, less effective U.S. attorneys.

Ms. SÁNCHEZ. Okay. Was Kevin Ryan of San Francisco one of the weak performers that you identified in that conversation?

Mr. COMEY. Yes, ma'am.

Ms. SÁNCHEZ. And other than Mr. Ryan, were there any other U.S. attorneys that were terminated in 2006 included among the weak performers that you identified in that conversation?

Mr. COMEY. I don't believe so, no.

Ms. SÁNCHEZ. Okay.

I would like to ask you some specific questions, Mr. Comey, about what Mr. Sampson has testified was the first list that he compiled of possible U.S. attorneys to be terminated, which was sent to Harriet Miers at the White House in early March of 2005, shortly after your meeting with him.

I want you to look at the document that was produced by the Department of Justice in response to our request and bears the identifying numbers of OAG-511. Do you have that document in front of you?

Mr. COMEY. Yes, I do.

Ms. SÁNCHEZ. Let me just grab it, so that I have it readily available in front of me.

You will see that some information has been redacted from the document, and that it doesn't show that copies were sent to anyone inside the Department of Justice.

Do you recall seeing this document or any other versions of it in 2005?

Mr. COMEY. No. I never saw it or any version of it.

I guess I should have said this in response to your earlier question: I was not aware that there was any kind of process going on or that my very brief conversation with Mr. Sampson was part of some process to figure out a group of U.S. attorneys to fire. So I was not aware of a list.

Ms. SÁNCHEZ. Okay. But have you seen it since then?

Mr. COMEY. Yes, ma'am. I saw it for the first time when Committee investigators interviewed me, and then I looked at it briefly again this morning.

Ms. SÁNCHEZ. Okay.

Looking at the bottom of the first page, which is OAG-5 of the document, as we understand it, U.S. attorneys whose names are in bold were identified as those that Mr. Sampson was recommending retaining as strong U.S. attorneys who have produced, managed well, and exhibited loyalty to the president and the attorney general.

U.S. attorneys whose names were stricken out or had a line drawn through them were being recommended for removal as weak U.S. attorneys who have been ineffectual managers and prosecutors, chafed against Administration initiatives, et cetera, and while—there was no recommendation with respect to other U.S. attorneys who were described as not having distinguished themselves either positively or negatively.

Is that your understanding of this chart as well?

Mr. COMEY. That is what it says. And I don't know any independently of how they put this together, but you have read it accurately.

Ms. SÁNCHEZ. Okay. Thank you.

My time has expired.

Mr. CANNON. Madam Chair, may I just suggest that every 5 minutes or so, if there are questions I really want to ask, I will—if you just run the clock, I will turn back in. But let me ask unanimous consent from everyone we have, Republicans and Democrats here, that you just be given the next 10 minutes to ask questions, if you would like.

Ms. SÁNCHEZ. Any objections from the Subcommittee? We can continue in that manner.

And just jump in any time, Mr. Cannon, that you would like to ask a question. Are you seeking time at this moment?

Mr. CANNON. No, I actually—I think that if you, yourself, do the questioning, I think that would make it a much more coherent presentation, and you guys are the ones that are looking for information.

So perhaps after—if you take 10 minutes, like I suggested in my unanimous consent, then we will take a look and see if there are things we need to ask. Otherwise, I am inclined to just have you continue to——

Ms. SÁNCHEZ. Well, I would also like to give the other Members of the Subcommittee——

Mr. CANNON. Certainly there are other people that do. That is why I limit it to 10 minutes.

Ms. SÁNCHEZ. Okay.

Mr. FEENEY. Madam Chairman?

Ms. SÁNCHEZ. Yes?

Mr. FEENEY. And it is certainly up to the discretion of the Chairman and the Ranking Member. I do have votes in the Financial Services Committee, and did have a few questions if it was possible. But I certainly, obviously understand the Chairman is conducting the meeting.

Mr. CANNON. I am only interested in having this work as quickly and as efficiently for Mr. Comey as possible. And if the Chair would like to recognize Mr. Feeney so he can ask questions and go, I am happy with that.

Ms. SÁNCHEZ. Certainly. Let me just continue with one last question, and then we will—if there is, sort of, a natural break in the questions, and then I will recognize Mr. Feeney for questions.

Did you have any idea that this chart existed and was being transmitted to the White House at this time concerning the U.S. attorneys who you supervised and were familiar with?

Mr. COMEY. No, I did not.

Ms. SÁNCHEZ. Okay. Thank you.

I will now recognize Mr. Feeney for 5 minutes of questioning.

Mr. FEENEY. Thank you. I sure appreciate the courtesy of the Chairwoman.

Mr. Comey, did anybody ever, during discussions about review of performance of attorneys or removal of attorneys, suggest to you that impacting ongoing investigations was one of the considerations in who to remove or how to review their performance?

Mr. COMEY. No, sir.

Mr. FEENEY. Did anybody suggest that in order to reward or punish somebody for their political affiliation or their political leanings that they should be dismissed? Or was that suggested as a criteria for review of their performance?

Mr. COMEY. Not in any discussion I was ever present for.

Mr. FEENEY. I have no further questions.

Ms. SÁNCHEZ. Is the gentleman yielding back his time?

Mr. FEENEY. I do. And I once again want to thank the Chairwoman and the Ranking Member.

Ms. SÁNCHEZ. At this time, because we do have our Chairman of our full Committee joining us here this morning, I would like to give him an opportunity to go next and ask 5 minutes of questions.

Mr. Conyers, you are recognized.

Mr. CONYERS. Thank you. Thank you so much.

Thanks for your appearance here, Mr. Comey. We appreciate it very much.

The testimony so far in this matter is that no one from the Department of Justice has taken responsibility for suggesting the dismissals of Ms. Lam or Mr. Iglesias, Bogden, Charlton or McKay.

You have known all of them. Do the reasons offered by the department for their terminations ring true to you?

Mr. COMEY. I am not sure, Mr. Chairman, that I know all the reasons that have been offered.

My experience with the U.S. attorneys just listed was very positive. For example, Mr. Bogden in Las Vegas did a bang-up job on the violent crime program that we asked him to help with. And I had numerous positive interactions with the others.

So the ones that I have read in the newspaper have not been consistent with my experience. But, again, I have been gone since August of 2005. But I had very positive encounters with these folks.

Mr. CONYERS. Any particular recollections of your associations with Ms. Lam?

Mr. COMEY. I dealt with Ms. Lam as a colleague as U.S. attorney in Manhattan; I dealt with Ms. Lam as the deputy attorney general. I visited her office, talked to her troops.

The only substantive interaction I recall with her was I, at one point, talked to her about gun cases and spoke to her about the importance of that priority in the department.

But my interactions with her were always positive.

Mr. CONYERS. Thank you.

Now, about Ms. Monica Goodling, have you heard concerns from anyone in the department about efforts by Ms. Goodling or anyone else to take political or ideological considerations into account in the hiring of line-level U.S. attorneys or other career applicants?

Mr. COMEY. I had heard rumors to that effect, and I have read in the newspaper most recently about an investigation on that subject. But, again, when I say I had heard rumors—after I left the Government, in the last 6 months or so.

Mr. CONYERS. Now, let me ask you just a little bit more specifically about several of the U.S. attorneys whose names were stricken and were recommended for removal on the list of March 2005, and who testified before the Committee.

If you turn to the chart OAG-N6, the second page in this document—again, a number of names have been redacted from this version of the chart. But what I would like to find out is, can you identify any names of U.S. attorneys on this page who have been stricken and recommended for removal?

Mr. COMEY. It looks like, if I understand the code correctly, that the crossing out of Bud Cummins's name and Carol Lam's name means that they are people who were recommended for removal.

Mr. CONYERS. Yes. Thank you.

Let's start with Ms. Lam. Was she included among the weak performers who you identified to Mr. Sampson?

Mr. COMEY. I don't believe so, no.

Mr. CONYERS. Thank you. Did you, in 2005 or any time, consider Ms. Lam a weak U.S. attorney who was an ineffectual manager or prosecutor?

Mr. COMEY. No, I didn't.

Mr. CONYERS. Or did you perceive her to be one who chafed against Administration initiatives?

Mr. COMEY. No, I didn't.

Mr. CONYERS. Did you communicate any negative assessment of her to Mr. Sampson, or recommend that she be removed?

Mr. COMEY. No.

Ms. SÁNCHEZ. The time of the gentleman has expired.

Mr. CONYERS. I will stop at that point. Thank you.

Ms. SÁNCHEZ. Thank you, Mr. Conyers.

Mr. Cannon, questions?

Mr. CANNON. Thank you. Actually, I do have one follow-up there.

I personally thought Ms. Lam was a very competent human being. You have mentioned that you talked to her once about guns. Can you tell us the substance of what you said to her at that time?

Mr. COMEY. Yes, certainly. Attorney General Ashcroft—this would have been, I think, in 2004—asked me to speak to each of the U.S. attorneys who were in the bottom 10, in terms of gun prosecutions—and I think it was calculated per capita, to take into account the size of districts.

And so I spoke to each of those 10 U.S. attorneys that included Ms. Lam and told her what I told all the others, and that is that

this is a priority of the Department of Justice, that if there is a contribution to be made by the U.S. Attorney's Office in reducing gun crime in the district, that is if criminals with guns are not getting the kind of time that they ought to in the State system, for example, that we as Federal prosecutors wanted to make an impact there, and it was a priority of the department. So I needed those U.S. attorneys to focus on why their gun numbers were where they were and whether there was a contribution to be made that they weren't making.

I said to each of them, "I am not asking you to make gun cases for the sake of pumping your numbers. But if there is a contribution to be made in your district, please focus on it and see if you can lend a hand in prosecuting gun crimes."

So that was the conversation I had with Ms. Lam, as well as the other nine.

Mr. CANNON. So was it by way of admonishment, to some degree?

Mr. COMEY. I guess to a certain extent. My tone wasn't admonishing, but I learned that it is a big deal any time the deputy attorney general calls and wants to talk to you about your cases.

And I wasn't threatening or beating up on them. I was simply saying, "Look, you are in the bottom 10. Maybe that is where you should be. Maybe your local prosecutors are really hammering gun possession crime; they don't need you. But figure out whether you are needed, and focus on it."

Mr. CANNON. Mr. Margolis apparently said in his interview that Ms. Lam was a bit insubordinate, and even suggested that she might agree with that characterization.

My view of her—and I only met her in the hearing here—was that she was pretty tough-minded and pretty clear. And she had some pretty good ideas about what she ought to do with guns.

I take it from your statement here that you were asking her to look at it. So this is early in the history of the gun issue with her. And you were saying, "Look at what is happening in the State, with local prosecutions, and then decide whether you need to adjust your priorities."

So you were not mandating that adjustment, I take it, right?

Mr. COMEY. Correct. I was urging a very close look, because her district, along with the nine others, were in the bottom group, to make sure there wasn't a contribution that we were missing the opportunity to make.

And I don't know what happened thereafter to the gun numbers. It never came back to my attention. So I don't know whether there was a response in some way in her district that changed the number of cases they did.

Mr. CANNON. Right.

At this point, I think that is all the questions I have.

Ms. SÁNCHEZ. Thank you.

The gentleman from Georgia, Mr. Johnson, is recognized for 5 minutes.

Mr. JOHNSON. Thank you, Madam Chairwoman.

Mr. Comey, the conversation that you had with the 10, including Ms. Lam, about the relatively low number of Federal gun prosecutions in her district, did that indicate any dissatisfaction by you with her?

Mr. COMEY. Not personally. I think the fact that I was calling was designed—I mean, I intended it to really energize the U.S. attorney to focus on the issue.

But as I have explained to people a bunch of times, when I was running the U.S. Attorney's Office in Richmond, Virginia, there was a real need for a Federal impact on gun possession crimes. Because people weren't getting the kind of time they needed to reduce violent crime in the State system.

When I moved to being U.S. attorney in Manhattan, Bob Morgenthau and his office were all over gun possession crimes, and doing it very aggressively. So my approach changed. That is why I didn't want to mandate to a U.S. attorney, "Do X number of gun cases." What I wanted them to do was to focus on it and figure out where they could make a contribution.

Mr. JOHNSON. Nothing in that conversation or about that conversation would be meant to suggest that her performance was deficient and that she should be terminated. Is that a fair characterization?

Mr. COMEY. That is a fair characterization.

Mr. JOHNSON. Of the other 10 U.S. attorneys who you called who had relatively low prosecution numbers, how many of them were terminated in 2005 or 2006?

Mr. COMEY. None of them, to my knowledge.

Mr. JOHNSON. In your opinion, would the number of such gun prosecutions be a reliable indicator of whether a U.S. attorney was performing well or should be terminated?

Mr. COMEY. No. It tells you nothing in a vacuum.

As I said, just comparing my experience in Manhattan to my experience in Richmond, my gun numbers per capita dropped off dramatically when I became U.S. attorney in Manhattan. And I thought I was doing an okay job.

Mr. JOHNSON. Overall, what was your evaluation of Ms. Lam as a U.S. attorney?

Mr. COMEY. I thought she was a fine U.S. attorney. I never had experience with insubordination with her. My encounters were perfectly pleasant. My only substantive encounter, as I said, was in connection with our gun discussion.

Mr. JOHNSON. Does your assessment of her include an understanding and an appreciation of her work on immigration?

Mr. COMEY. I don't think I ever focused on her work on immigration. At least I don't remember discussing it or understanding what her work was on immigration.

Mr. JOHNSON. Do you have any information or idea from whom, whether in the department, the White House or elsewhere, Mr. Sampson got his evaluation and recommendation to terminate Ms. Lam?

Mr. COMEY. I do not. And as I said, I was not aware there was a process going on, frankly. I thought it was a casual comment in the course of a very brief meeting.

Mr. JOHNSON. Do you have any information, one way or the other, as to whether the decision to terminate her was related in any way to her work on the public corruption cases involving Duke Cunningham or others?

Mr. COMEY. I have no information about that.

Mr. JOHNSON. Let's turn to Mr. Cummings. Was Mr. Cummings included among the weak performers who you identified to Mr. Sampson?

Mr. COMEY. No, sir.

Mr. JOHNSON. Did you, in 2005 or at any time, consider Mr. Cummings a weak U.S. attorney who was an ineffectual manager or prosecutor or who chafed against Administration initiatives?

Mr. COMEY. No, sir.

Mr. JOHNSON. Did you communicate any negative assessment of Mr. Cummings to Mr. Sampson or recommend that Mr. Cummings be removed?

Mr. COMEY. No.

Mr. JOHNSON. What was your view of Mr. Cummings?

Mr. COMEY. I didn't have much of a view of Mr. Cummings. I knew him, knew he was a very pleasant fellow. But he and his district had not crossed my radar screen, which, from the deputy's perspective, is actually a very good thing. Bad things tend to reach the deputy, and so, if you didn't reach me, you must be doing okay.

Mr. JOHNSON. And you pretty much considered him to be competent.

Mr. COMEY. Yes, that was my sense.

Mr. JOHNSON. Do you have any information or idea from whom or whether in the department, the White House, or elsewhere that Mr. Sampson—well, let me rephrase this question.

Do you know of how Mr. Sampson received his information and came to the conclusion after an evaluation to recommend termination of Mr. Cummins?

Mr. COMEY. I do not.

Mr. JOHNSON. Let me ask you to turn to page three of the chart, page OAG-N8. Can you identify the names, after you have reached that page?

Are you there?

Mr. COMEY. Yes, sir.

Mr. JOHNSON. Can you identify any names of U.S. attorneys on this page who have been stricken and recommended for removal?

Mr. COMEY. There is only one name, and it has been stricken. That is John McKay's. So according to the legend here, he has been recommended for removal on this chart.

Ms. SÁNCHEZ. The time of the gentleman has expired.

Mr. JOHNSON. Thank you.

Ms. SÁNCHEZ. Thank you.

Mr. Cannon? You still have time.

Mr. CANNON. Thank you. I appreciate that. At this point I don't have any questions. And if you want to just continue with your side, that would be fine.

Mr. Jordan, I don't think, has questions either. He indicated to me he hasn't.

Ms. SÁNCHEZ. Okay. We will continue forward. Mr. Watt, the gentleman from North Carolina, is recognized for 5 minutes.

Mr. WATT. Thank you.

And thank you for being here, Mr. Comey.

You identified Mr. McKay as one of the people who was recommended for removal, and he was, in fact, removed. Was Mr.

McKay included among the weak performers who you identified to Mr. Sampson?

Mr. COMEY. No, sir.

Mr. WATT. Did you consider him an effectual manager or prosecutor or someone who chafed at Administration initiatives?

Mr. COMEY. No, sir.

Mr. WATT. Did you communicate any negative assessment about Mr. McKay to Mr. Sampson?

Mr. COMEY. No, sir.

Mr. WATT. It was suggested that concerns had been raised about Mr. McKay while Larry Thompson was the deputy, relating to a murder of an assistant U.S. attorney named Thomas Wales in which Mr. McKay had requested some action by the department; that Mr. Sampson would have checked with you as the current deputy about that before using that as a basis for recommending Mr. McKay be placed on the termination list; and that this may have been a reason he appeared on the list in March of 2005.

Do you have a response to that suggestion?

Mr. COMEY. I don't remember discussing that tragedy with anyone other than Mr. McKay. And it was simply briefly to talk to him about how awful it was, and for him to express his—he cared very passionately about finding the person who killed his AUSA. And I don't remember any other discussion besides that.

Mr. WATT. Were you aware of any impropriety or inappropriate behavior by Mr. McKay in connection with that death?

Mr. COMEY. None.

Mr. WATT. Okay.

Some concerns were expressed about Mr. McKay after you left as deputy attorney general, and after the March 2005 list was put together, concerning the LInX information-sharing system, and some suggestions that this may have had something to do with his staying on the removal list.

How would you respond to that?

Mr. COMEY. I don't know whether that played a role on him ending up with a line through his name.

I guess I wasn't supposed to have favorites, but John McKay was one of my favorites, because he is a very charming and, as I said, passionate person. And he cared about something I cared an awful lot about, which was information-sharing.

And he and I both believed that it was absurd that our children could Google and touch billions of pieces of information, but someone chasing a serial rapist could only find out if other police departments had seen a green car by calling every police department and asking if they had seen a green car.

And we both had this vision that we ought to leave a legacy of law enforcement being able to Google and catch bad guys. And that is what LInX was, an effort to put that technology in place.

So I worked with him pretty closely. I was inspired by him, and thought he had a terrific idea and was making a real difference with this LInX program.

Mr. WATT. So the characterization that the Seattle Times reported, and which it quoted you as saying that Mr. McKay was a person of "passion and energy and could wear his heart on his

sleeve, but never had any issues with him being insubordinate," would be a correct assessment?

Mr. COMEY. Yes, sir, that is correct.

Mr. WATT. And I take it, then, that your overall view of Mr. McKay was that he was a strong performer.

Mr. COMEY. Yes, sir, very favorable.

Mr. WATT. Do you have any information or idea from the source of the department, the White House or elsewhere that Mr. Sampson may have gotten his evaluation or recommendation to terminate Mr. McKay?

Mr. COMEY. I have no idea where it came from.

Mr. WATT. Out of the three U.S. attorneys who were terminated who testified before this Committee and were recommended for termination on the 2005 list, would you disagree that performance justified termination of any of the three of those individuals?

Mr. COMEY. As of the time I left, I was not aware of a performance-related reason that the three folks we have discussed should be terminated.

Mr. WATT. And in contrast, if you turn back to page one of the chart, that is OAG-N6, is there a U.S. attorney whose name is listed in bold on that page as someone recommended to be retained as a strong U.S. attorney who had "produced, managed well, and exhibited loyalty to the president and attorney general," can you find that person?

Mr. COMEY. Yes, sir. Mr. Ryan.

Mr. WATT. And is that the same Mr. Ryan who you had identified just a few minutes earlier as one of the weak performers that you identified?

Mr. COMEY. Yes, sir, I had.

And a lot of people have been hurt in this process, and I don't mean to hurt Mr. Ryan by revealing that I made that recommendation. He is a fine guy. He just had management challenges in that office that were fairly serious. But I hope he has landed on his feet and is doing well.

Ms. SÁNCHEZ. The time of the gentleman has expired.

Mr. WATT. Thank you, ma'am.

Ms. SÁNCHEZ. Thank you.

Mr. Cannon?

Mr. CANNON. Madam Chair, I don't think our side has questions. But my two Members have other commitments. If we could just have an agreement that I will take 5 minutes—or have the opportunity to take 5 minutes after each of your witnesses, they may want to leave. And I don't have any questions at this point.

Ms. SÁNCHEZ. I am amenable to that suggestion.

Mr. CANNON. Thank you.

Ms. SÁNCHEZ. Thank you.

We will continue. Mr. Cohen is recognized, the gentleman from Tennessee, for 5 minutes.

Mr. COHEN. Thank you, Madam Chair.

Firstly, Mr. Comey, I have, kind of, perused some of this material here. And I don't know who you knew at the New York magazine, but I would pay for that article. That was great.

Mr. COMEY. I think my mother wrote it. [Laughter.]

Mr. COHEN. Well, she is a good writer. And I think she has good judgment.

You have got a good vitae. I am impressed.

I read that at one point that Mr. Rove and Ms. Miers had suggested replacing all 93 U.S. attorneys. Did you have knowledge of that plot or plan at one point?

Mr. COMEY. No, I had never heard of it before I read about it in the newspaper.

Mr. COHEN. Had that ever happened in history, that there was this, like, "wipe them all off the ship"?

Mr. COMEY. Again, my history doesn't go back that far. I have some recollection that at the beginning of the Clinton administration, the sitting U.S. attorneys were asked for their resignations.

Mr. COHEN. But they were taking out the Bush guys.

Mr. COMEY. Right. But in terms of during a term, at least not in my experience.

Mr. COHEN. Do you have any reasonable idea in the ideas of justice and promoting the American way that that would happen, why that would occur or why they would think about that?

Mr. COMEY. I don't. I don't know what folks would be thinking who would suggest that. It would be very disruptive. And that may be why it was not done. I hope it was why it was not done.

Mr. COHEN. Did you ever have any dealings with Mr. Rove or Ms. Miers?

Mr. COMEY. Never with Mr. Rove. I don't think I have ever met him.

Ms. Miers, yes, when she was White House counsel and I was deputy attorney general.

Mr. COHEN. And what was her role as far as personnel and politics at the Department of Justice?

Mr. COMEY. I never had any interaction with her on either of those subjects. We would talk primarily about issues, legal issues that needed input, that related, for example, to pardons. It was a direct contact between the deputy attorney general and the White House counsel to discuss pardon recommendations, for example. But never about politics or hiring at the Department of Justice.

Mr. COHEN. One of the criterias that were laid out for looking at who would be considered worthy of keeping strong and weak was exhibited loyalty to the president. What do you think that term means, in terms of the Department of Justice?

Mr. COMEY. That is a very good question. I don't know exactly what they meant by that phrase.

The Department of Justice, in my view, is run by political appointees of the president. The U.S. attorneys are political appointees of the president.

But once they take those jobs and run this institution, it is very important, in my view, for that institution to be like any other in American life, that—because my people had to stand up before juries of all stripes, talk to sheriffs of all stripes, judges of all stripes. They had to be seen as the good guys, and not as either this Administration or that Administration. We just couldn't get our work done if we were seen that way.

So the trick in the Department of Justice was to have an organization run by political appointees who recognize that they have a

special trust to protect this institution and to make sure it remains an other in American life so it can serve all Americans. I mean, that is what the Department of Justice does.

Mr. COHEN. That is what I see it as. And I couldn't understand and don't understand exhibited loyalty to the president. I mean, that doesn't—seems like not even a factor. It is so political. And I am not sure what that means. And that raises a question.

Do you have any idea—when you left the Department of Justice, how would you rate the morale there?

Mr. COMEY. I guess I can't speak for my own staff, but I think it was fairly high.

I mean, the Department of Justice is made up of 110,000 people who you don't see if you are in Washington. That is why I traveled so much as the DAG, because my troops were all over the place: in Federal prisons guarding prisoners, executing search warrants, protecting victims. And they do it out in the field primarily in the Department of Justice.

And when you visit those people, they are a fired-up group. They love doing good for a living. It is a pretty neat thing to get paid to do good for a living. And they treasure it.

And whenever people talk about morale, the great hope for the Department of Justice, even as morale may have been hurt by this, is that those fired-up people who love what they do still love it and are not going to let anything get in the way of that.

Mr. COHEN. Do you have any idea what the morale is at the Department of Justice now from contacts with others based on information and belief?

Mr. COMEY. I think folks are having a tough time now. This is a tough period of time for the department.

Mr. COHEN. You loved the Department of Justice, and it is obvious from your testimony if anything was done to—it has been weakened, has it not, because of this situation, this controversy?

Mr. COMEY. I sure hope not. Because when I think of the department, again, I think of the whole, all 110,000 people.

Certainly, it has caused a morale hit here at main Justice, the mothership. But I hope it doesn't affect that which is essential about this institution, and that is the ability to do good every day and to protect people and to help people.

And I just count on the fact that I know how good the people are out there doing the work, that FBI agents executed a search warrant, I am sure, someplace in the country this morning and risked their lives. And they are doing it because they love to do it, and——

Mr. COHEN. If somebody that was the head of this department took actions that may weaken the department, would they be put on the weak list, that might be those that, you know, should go? [Laughter.]

Ms. SÁNCHEZ. The time of the gentleman has expired, but we will allow the witness to answer.

Mr. COMEY. I would hope the time expiring would help me as well. [Laughter.]

Mr. COHEN. I would like to ask for 30 extra seconds. [Laughter.]

Mr. COMEY. You know, in many ways I miss the department terribly, but in other ways I enjoy being a private citizen.

I don't think that is for me to say. I didn't put together any lists. I don't understand this code, frankly. And so, if I could, I would like to take a pass on that one.

Mr. COHEN. You will take it. Thank you, sir.

Ms. SÁNCHEZ. Okay. Mr. Cannon is recognized.

Mr. CANNON. Thank you.

It is obvious that you love the department. And may I just, without asking a question, just make the point that what the department does is vitally important to America, and we agree on that.

It is a wonderful institution. It is an institution that has developed wonderful processes, that are complicated, over a long period of time.

And that I am hopeful that we can get through this investigation as quickly as possible so that the danger you have referred to that may be happening to the morale and institution of what you called the mothership is very important to America and that we need to solve this problem, get through it, and then let the Administration deal with how they adjust after we get through.

And with that, Madam Chair, I would yield back.

Ms. SÁNCHEZ. Thank you.

We do have substantially more questions to get through, so we will begin a second round of questioning. And I will recognize myself to begin that second round.

I want to go back—I believe Mr. Watt had started to ask you a series of questions about Mr. McKay.

Are you aware of the fact that in connection with the 2004 election, just a few months before the March list was prepared, that there were concerns raised by Republicans and others in Washington about Mr. McKay not pursuing an alleged voter-fraud case in an election in the State?

Mr. COMEY. I had never heard that, and know of it only what I have seen in the newspaper.

Ms. SÁNCHEZ. Do you have any information, one way or the other, as to whether complaints about Mr. McKay's actions or lack of actions on these vote-fraud allegations went to the White House or anybody else at the Department of Justice?

Mr. COMEY. I don't know.

Ms. SÁNCHEZ. Okay. Thank you.

I would like to now ask you some questions about Mr. Charlton and Mr. Bogden. Those two were both terminated, and testified before this Committee, but were first identified for possible termination in early 2006, shortly after you left the department. And I realize that.

Did you ever indicate to Mr. Sampson anything negative about Mr. Charlton——

Mr. COMEY. No.

Ms. SÁNCHEZ [continuing]. Or his performance?

Mr. COMEY. No.

Ms. SÁNCHEZ. What was your view of Mr. Charlton as a U.S. attorney?

Mr. COMEY. I thought he was a very strong U.S. attorney, one of the best. And I had dealt with him as a colleague when I was U.S. attorney. And I had dealt with him in particular on the vio-

lent crime impact initiative that we had in his district and Iglesias's and Bogden's.

Ms. SÁNCHEZ. Well, there has been some suggestion that one of the reasons why he was placed on the termination list or was maintained on the termination list was because of his decision to ask the attorney general to reconsider a decision to seek the death penalty in a death penalty case.

What is your reaction to that claim?

Mr. COMEY. I don't have any personal knowledge of that. There wasn't much—in fact, I don't think there was anything more important that I did as deputy attorney general than make recommendations on death penalty cases, whether to seek the ultimate sanction for somebody. I always welcomed U.S. attorneys talking to me about it, giving me input.

I remember—and I can't remember all the details—Mr. Charlton once calling me to talk to me about a case to give me input that wasn't in the papers that I had seen. And he turned me around on a particular case and how to approach a case, as I recall, when Attorney General Ashcroft was there.

Paul Charlton was a very experienced, still is, very smart, very honest and able person. And I respected him a great deal and would always listen to what he had to say.

Ms. SÁNCHEZ. So that was a case that you recall, not the details of where presumably you guys wanted to seek the death penalty, he had talked to you about that case and managed to actually convince you that perhaps that wasn't the sanction that was warranted in that case?

Mr. COMEY. I think it was a case where we had sought the death penalty, and the defendant wanted to plead guilty to life without parole. I think in the first instance we had rejected that.

And, as I recall, Mr. Charlton called me and talked to me and said, "I have got to get you to take another look at that; let me explain why," and made a very convincing case. And my recollection is that he turned me around on it.

And I concluded that his concern was particularly for the victim's family, and that he was concerned they would be traumatized again. And they were passionate that they wanted to resolve this on a life plea.

So he turned me around on it. And my recollection is I changed my recommendation. And I think I convinced John Ashcroft to turn around on it.

Ms. SÁNCHEZ. So based on the fact that he had successfully brought new information to your attention which made you change your mind on a case, would that be a legitimate basis in the future for them saying, "He deserves to be fired because he tried to talk to us about another isolated case in which we were seeking the death penalty and perhaps he felt that wasn't warranted"?

Mr. COMEY. All I can do is speak about myself. I would never not only not discourage that kind of thing, I would encourage it. Because I needed to hear from the people in the field who knew these cases, because I am trying to make these decisions off a notebook in Washington, D.C., and I can't feel the pain of the victim's families. And he can. And you always want that input.

Ms. SÁNCHEZ. I appreciate that.

Are you aware of Mr. Charlton's work with respect to charges concerning alleged improper actions by Representative Renzi, based on media reports or other sources?

Mr. COMEY. I have read some about it in the newspaper. I knew nothing about it when I was in the Government.

Ms. SÁNCHEZ. Do you have any information, one way or the other, about whether that work played any role in the decision to remove him as a U.S. attorney?

Mr. COMEY. I don't know.

Ms. SÁNCHEZ. Let me ask you about another U.S. attorney who was placed on the termination list in early 2006, Dan Bogden. Did you ever indicate to Mr. Sampson anything negative about Mr. Bogden or his performance as a U.S. attorney?

Mr. COMEY. No.

Ms. SÁNCHEZ. Do you believe that he lacked energy in his handling of his office, as has been claimed by some?

Mr. COMEY. No.

Ms. SÁNCHEZ. My time has expired. I would like to recognize Mr. Johnson for 5 minutes.

Mr. JOHNSON. Thank you, Madam Chair.

With respect to Mr. Bogden, what was your view of Mr. Bogden as a U.S. attorney?

Mr. COMEY. I thought he was a very good U.S. attorney. He is as straight as a Nevada highway, and a fired-up guy.

And we had this violent crime impact team program that we asked ATF to lead, and we chose places to do it that were experiencing a spike in violent crime. But not every place that was experiencing a spike in violent crime; we wanted to put it where we had a fired-up U.S. attorney who could watch over it and make it work and had great relations with State and local law enforcement.

That is why we chose Mr. Bogden's district in Las Vegas, because they were experiencing a spike in violent crime. But that is the kind of U.S. attorney he was. He was loved in that community.

And I went once to announce the program with him and 6 months later to give a report card to the people of Las Vegas, and he had made tremendous strides on violent crime. I thought he was very good.

Mr. JOHNSON. Do you know anything about his performance that would have justified his removal?

Mr. COMEY. No, I don't.

Mr. JOHNSON. Do you have any idea as to where or from what source Mr. Sampson got his information upon which he evaluated and then recommended termination of Mr. Bogden?

Mr. COMEY. I do not.

Mr. JOHNSON. With respect to Mr. Iglesias, who testified before this Committee, going back to the 2005 chart, you will note that his name was bolded as a strong U.S. attorney who should be retained. Is that correct?

Mr. COMEY. Yes, I see it in bold on page "multiple zero"-seven.

Mr. JOHNSON. Do you agree with that assessment?

Mr. COMEY. Well, I am not sure what the criteria are, so I am not sure I could agree or disagree about loyalty to the president and attorney general.

But I thought he was a very effective U.S. attorney. He was, sort of, the Bogden of New Mexico: very straight, very able.

Mr. JOHNSON. So you would agree that he was a strong U.S. attorney who should have been retained?

Mr. COMEY. Yes.

Mr. JOHNSON. And can you give us any other information about his performance? Apparently you saw him as being—I mean, you just said that. Anything else you would like to say about his performance?

Mr. COMEY. No. I had contact with it again through the Violent Crime Impact Team program, where he did it in Albuquerque and did it very, very effectively. Albuquerque experienced dramatic drop in homicides in particular and shootings, as I recall, in their most problem-plagued neighborhoods as a result of that program.

I thought he was very effective. I, obviously, as with the others, I knew him as a colleague first and then as his boss, and had a very positive view of him.

Mr. JOHNSON. When Mr. Iglesias, as you may know, was added to the list to be terminated in November of 2006, the only performance-related criticism that we have heard of him was that he delegated too much to his first assistant and that he was an absentee landlord, if you will, too hands-off.

What is your reaction to that criticism?

Mr. COMEY. It had never reached my ears when I was deputy.

I have read in the paper that he was supposedly away to do service in the Navy, because he was a reservist. I knew that and knew the famous story about him being the model for Tom Cruise, and used to tease him about not being as cute as Tom Cruise. [Laughter.]

But all I know is what I have read in the paper.

And if a U.S. attorney was away to serve his country as a Navy reservist, it is not something that I as DAG would have held against him, certainly.

Mr. JOHNSON. Well, depending on the strength, I guess, of his first assistant, would you consider delegation of some management tasks to that first assistant, assuming that that first assistant was competent, would that not be a strength, as opposed to a weakness?

Mr. COMEY. Certainly, so long as it is reasonable.

And I had a very effective first assistant when I was U.S. attorney in Manhattan. He followed me as U.S. attorney, David Kelley. And I used to give him all the hard stuff to do. [Laughter.]

Mr. JOHNSON. I am sure that many of the staffers around here could relate to that. [Laughter.]

So would it be fair to conclude that Mr. Iglesias was considered to be very engaged in his job as U.S. attorney?

Mr. COMEY. I certainly thought so. It was my impression from dealing with him when I was there.

Mr. JOHNSON. Now, I want to read to you a brief excerpt from the last year's evaluation report on Mr. Iglesias.

It states, "The United States attorney was experienced in legal, management and community relations work and was respected by the judiciary, agencies and staff. The first assistant United States attorney appropriately oversaw the day-to-day work of the senior

management team, effectively addressed all management issues, and directed the resources to accomplish the department's and the United States attorney's priorities."

Now, does that suggest to you that Mr. Iglesias improperly or inappropriately delegated tasks?

Mr. COMEY. No. That sounds like an A-grade review.

Ms. SÁNCHEZ. The time of the gentleman has expired.

Mr. JOHNSON. Thank you.

Ms. SÁNCHEZ. Mr. Cannon is recognized for 5 minutes.

Mr. CANNON. Thank you, Madam Chair.

We talked about a couple of U.S. attorneys with some particularity, from your perspective. And I just want to point out that that—your working with an understanding of them happened at a relatively significantly earlier stage, and you have, what, a year and a half or so where you were not overseeing them, is that not the case?

And, first, I liked Bogden. I thought he was a very competent guy. I don't know what was going on there.

But my experience with Mr. Iglesias was actually, sort of, startling. We talked about—I think we had Mr. McKay and Ms. Lam who had both reported contacts from Members of Congress to the department. And when I asked Mr. Iglesias about his reporting of contacts that he had claimed in the press, he said, yes, he had reported those contacts to the department. And I asked him when. And he said by talking to the press about them, by telling the press. I was absolutely astounded at that approach. He could have said "no" as easily.

And then he went on to talk about or try to make a distinction between announcing indictments after he was asked to resign and announcing that there was going to be action when everybody knew that there was an investigation going on, and making some hollow distinction that those were not indictments that he was announcing.

I think that what I have just said is a fair characterization of the record that he made here before us. Is that consistent with the Mr. Iglesias that you knew and thought was a qualified U.S. attorney?

Mr. COMEY. I don't know what exactly he means by, as you said, "I disclosed it to the department by telling the media that."

Mr. CANNON. I didn't know either, but, apparently, he had not called his supervisor at the Department of Justice and said, "I have had a call or a contact and it consisted of the following," which is, I think, what the department manual requires.

Mr. COMEY. That is what a U.S. attorney is supposed to do. It sounds to me like he screwed up in that instance, and should have made the call and reported the contact.

It doesn't necessarily change my view of him that he was a competent U.S. attorney. And in my experience, like I said, he was a very fired-up guy and a competent guy.

Mr. CANNON. I don't mean to niggle here, but the fact that he was a competent guy in your perspective, and that would not be diminished by his failure to call, if he did what I suggested to you, which is say that he actually had complied with the requirement by telling the press, would that cause you to question his judgment?

Mr. COMEY. It just strikes me as curious.

Mr. CANNON. Yes, it was odd.

Mr. COMEY. It doesn't make a whole lot of sense to me.

Mr. CANNON. I guess what I—I don't mean to put you on the spot. You are here rethinking a lot of stuff, and I think you have answered these questions very, very well that have been put to you.

But the point is, people change. And there was a time lag here.

Mr. COMEY. Absolutely.

Mr. CANNON. And as I think your testimony—and the record should reflect that you are nodding at this point—is based upon your knowledge at the time that you were here and not a rethinking of the judgment made by people subsequent in the department.

Mr. COMEY. That is absolutely the case, and I should make that clear. I don't know what happened after August of 2005. I wasn't consulted to get updates on how people were doing, so I really can't speak to it.

And I don't intend my testimony to be a criticism of my successor. I don't know what the encounters were between the DAG who followed me and the U.S. attorneys. I have read some stuff in the paper, but I don't have any personal knowledge of that.

Mr. CANNON. Thank you. I really appreciate that.

And just before I yield back, let me point out that what is happening I think so far in this questioning is a rethinking, a grasping at straws, rather than looking at a process that actually, over thousands and thousands of documents and now over more than a half a dozen interviews, has shown itself to be actually a fairly thoughtful, competent process.

Mr. CANNON. And perhaps Mr. Watt's hopes will be achieved here soon, and then we can get beyond this and let the department do its work.

Thank you, Madam Chair——

Ms. SÁNCHEZ. Does the gentleman yield on that point?

Mr. CANNON. Yes, I yield——

Ms. SÁNCHEZ. All right.

I just want to respond to something you said before we lunch. There are still more questions outstanding. We would like to do a third round of questioning.

But when you say there is a grasping at straws, this is an investigation where we are trying to find out the circumstances under which these U.S. attorneys were fired. Nobody at the DOJ seems to know who created the list or who put the names on the list.

And that is the purpose of this hearing today, is to try to elicit some of the information regarding the performance—because performance was at one point given as the justification for the firing of some of these U.S. attorneys.

Mr. Comey has——

Mr. CANNON. Reclaiming my time, which is about to expire, let me just point out that performance—we have been through the issue of the use of the term "performance." And Mr. McNulty was very careful about saying that performance meant meeting the criteria of the Administration.

And unfortunately that was taken—and there are a number of communications to indicate that people took particular offense at

that idea of having their performance, their capability questioned. It seems to me——

Ms. SÁNCHEZ. The time of the gentleman has expired.

Mr. CANNON. I ask unanimous consent for an additional 30 seconds.

Ms. SÁNCHEZ. So ordered.

Mr. CANNON. If the gentlelady's argument is that we are trying to find out where this list came from, Mr. Comey actually may be relevant in a very narrow sense to that question, because he was there early in the discussions.

I think what we have heard so far is that he wasn't really involved in that, but that I think if we ask the gentleman we would find that he believes there was a process that was a significant process that generated a review. And that may be helpful. I don't know that much else would be.

Ms. SÁNCHEZ. The time of the gentleman has expired. And I will take the first few seconds of my third round of—oh, I am terribly sorry. I apologize. It is Mr. Watt's turn to speak.

Mr. Watt is recognized for 5 minutes.

Mr. WATT. If the Chairlady would prefer me defer to her, I am happy to do that. But I was about to go exactly where Mr. Cannon has invited me to go——

Ms. SÁNCHEZ. Lead the way, Mr. Watt. Lead the way.

Mr. WATT [continuing]. Which was to ask Mr. Comey whether, during the time that you were the deputy, did it ever occur that U.S. attorneys were terminated or asked to resign? And, if so, without identifying the individuals involved, could you describe what the process was that you followed?

Mr. COMEY. Certainly.

I remember two occasions on which we asked U.S. attorneys to resign. Both had engaged in what I considered serious misconduct. And one was when John Ashcroft was attorney general. The other was when Alberto Gonzales was the attorney general.

In each instance, my recollection is that I spoke to the attorney general about the misconduct, laid it out. We discussed it and how serious it was and got his approval to have my senior staff member, David Margolis, who has been mentioned, place a call to this individual and suggest that he resign.

And in both cases, that is what we did. I talked to my staff about it quite a bit, talked to the attorney general, then had Mr. Margolis place a call and tell the U.S. attorney that it was time to leave and explain why; that, given what had been found and the conduct that had been discovered, that it was not appropriate for them to remain in office.

And one U.S. attorney resigned in response to that call. The other insisted on being fired by the president. And so we had the president actually fire him by letter.

Mr. WATT. And in the course of that process, who would have the contact with the U.S. attorney? Would it be you at the deputy level? Would there be any discussions with the U.S. attorney who was being considered for termination about the allegations?

Mr. COMEY. It was, in both instances, Mr. Margolis, who was associate deputy attorney general, and this was within his portfolio. He handled—used to call him the Turk. He handled discipline mat-

ters and problematic appointees and investigations. And so, he spoke in each instance to the U.S. attorney, explained why we were asking for the resignation, went through it in some detail.

Mr. WATT. So if in fact in October of 2006—or, it was reported that Senator Domenici, who, interestingly enough, had recommended Mr. Iglesias for his job, then decided that Mr. Iglesias was not "up to the job," is what I understand he said—would there have been a discussion in this process that you had historically followed with Mr. Iglesias about that before a termination occurred? Or would you just up and fire Mr. Iglesias 1 day without that kind of discussion taking place?

Mr. COMEY. I guess all I can speak to is what my experience was. And that is, in both of the cases where I was involved with doing that, terminating a U.S. attorney, there were extensive discussions with the U.S. attorney so they understood why we wanted them out.

And the two I was involved with were—I am not going to go into it here—but were not close calls. I mean, these were, as soon as you read about it, you said, "This guy has got to go."

But we explained it, through Mr. Margolis, to both people in the two cases I was involved with.

Mr. WATT. I will be happy to yield the balance of my time to the Chair. And she is next anyway, I believe, so she can just tack it on to her 5 minutes.

Ms. SÁNCHEZ. I appreciate your yielding time, Mr. Watt.

If a U.S. attorney was, in fact, fired for not following Administration priorities on some subject, but neither the U.S. attorney nor the first assistant or successor were told the reasons for the firing, would you expect that the firing would create a change in the priorities of that office, if neither one were informed of the reasons for the firing?

Mr. COMEY. If they didn't know about the concerns about the priorities?

Ms. SÁNCHEZ. Yes, if somebody was just summarily dismissed, and there was no discussion that took place with the U.S. attorney nor their first assistant, who presumably would be the person in charge in the interim, if the reasons for their dismissal were never discussed, would you expect that there would be any change in priority in that office or ability to do better in the areas that were deficient of the person who was on the way out the door?

Mr. COMEY. I suppose it would be hard for them to respond if they didn't know what the message was that was being sent. So I guess the answer is, if I were the U.S. attorney being let go, I wouldn't know what priorities to pass along to my first assistant.

Ms. SÁNCHEZ. Just recently, the Seattle Times reported that you had informal discussions with Attorneys General Ashcroft and Gonzales about underperforming U.S. attorneys. Is that correct?

Mr. COMEY. No. I am going to offend my friends in the press. It was a bit of a garble by that reporter.

I spoke to each of those attorneys general, their chiefs of staff, briefly about it. Mr. Ayres asked me in 2004, said, "Who do you think are the weakest U.S. attorneys?" I answered off the top of my head. And then Mr. Sampson in February of 2005 asked me basi-

cally the same question, almost in the same words, and I answered again off the top of my head.

I never spoke to either Mr. Ashcroft or Mr. Gonzales about that subject.

Ms. SÁNCHEZ. So you spoke with their chiefs of staff. Did you identify to those chiefs of staff any of the U.S. attorneys who were fired in 2006 as underperforming, other than Mr. Ryan?

Mr. COMEY. No, I don't believe so.

Ms. SÁNCHEZ. Now, we all know, because it has been stated multiple times in many of the hearings that we have had, that the U.S. attorneys serve at the pleasure of the president and can be dismissed by him as he sees fit. Is that correct?

Mr. COMEY. That is my understanding, yes, ma'am.

Ms. SÁNCHEZ. Great. But in your view, would it be proper to seek the removal of a U.S. attorney in order to retaliate or to influence the bringing or the failure to bring cases to benefit a particular political party? Would that be proper?

Mr. COMEY. In my view, it would not be. It ought not to be something that we do. And I don't have any reason to believe that was done here. I don't know the facts. But I would be concerned about that if that happened.

Ms. SÁNCHEZ. Right. We understand. Because you have stated, I think, previously that you didn't have any information, one way or the other, to whether or not that played a role in the decision to terminate the six U.S. attorneys who testified before the Subcommittee earlier this year.

Mr. COMEY. Correct.

Ms. SÁNCHEZ. Okay. But in your view and to the best of your knowledge, were there valid, performance-based reasons to terminate any of these six U.S. attorneys?

Mr. COMEY. Not in my experience with them.

Ms. SÁNCHEZ. So during your time——

Mr. COMEY. During my tenure, no.

Ms. SÁNCHEZ. Thank you.

Mr. Comey, returning to that 2005 list that we have been discussing this morning, although it is not reflected on the redacted version of the chart that you have in front of you, it has been reported that Patrick Fitzgerald of Illinois was listed on that chart in the middle category as someone who had not distinguished himself positively or negatively.

What is your reaction to that rating?

Mr. COMEY. I have never thought much of him. [Laughter.]

No, I am just kidding. He is a very close friend of mine——

Ms. SÁNCHEZ. I think he will be shocked to hear that.

Mr. COMEY. He is a very close friend of mine. I think he is one of the finest Federal prosecutors that there is and maybe has ever been.

Ms. SÁNCHEZ. So you would disagree with the assessment on that list that he hasn't distinguished himself either positively or negatively?

Mr. COMEY. Although I have enjoyed teasing him about it, it would not be where I would put him on the list.

Ms. SÁNCHEZ. Okay, thank you.

It has also been reported that Steve Biskupic—I hope I pronounced that correctly—of Wisconsin was on an early list of U.S. attorneys for termination. Did you identify him to Mr. Sampson as a weak performer?

Mr. COMEY. No. I think very highly of him.

Ms. SÁNCHEZ. Okay.

And in your view, what has been the message sent to and the effect on the morale of other U.S. attorneys, assistant U.S. attorneys, in the Department of Justice as a result of the firing of the six U.S. attorneys who have testified before this Committee?

Mr. COMEY. It is a big group, so it is hard to characterize in one sweeping statement. But, as I said, this is a hard time for folks at the department for a whole lot of reasons. And I think it is a time of great uncertainty and pain for people who love the Department of Justice.

Ms. SÁNCHEZ. Okay.

My final question. I want to actually just read you a part of an e-mail that has been provided to the Committee and that was apparently sent to you by Bud Cummins on March 8th relating to the firings.

According to the text that we have been provided, you stated the following to Mr. Cummins: "You are a good man and have handled this maelstrom with great dignity. Watching it causes me great pain for the USAs whom I respect and the department which I love. Regardless, I will not sit by and watch good people smeared. What is that quotation about, 'All that is necessary for evil to triumph is for good men to remain silent'?"

[The e-mail follows:]

**Comey, James B**

**From:** Comey, James B
**Sent:** Sunday, April 22, 2007 9:41 PM
**To:** 'Bud Cummins'
**Subject:** RE: thanks

"Sadder" is the best description. Be well.

-----Original Message-----
From: Bud Cummins [mailto:bud.cummins@[redacted]]
Sent: Sunday, April 22, 2007 10:49 AM
To: Comey, James B
Subject: RE: thanks

Jim,
There have been thirty or forty times in the course of this saga, where I knew it couldn't get any 'weirder,' 'worser,' or 'sadder'. I have been consistently wrong. Can you believe it?
Bud

-----Original Message-----
From: Comey, James B [mailto:[redacted]]
Sent: Thursday, March 08, 2007 10:04 AM
To: bud.cummins@[redacted]
Subject: Re: thanks

You're a good man and have handled this maelstrom with great dignity. Watching it causes me great pain, for the USAs, whom I respect, and the Department, which I love. Regardless, I will not sit by and watch good people smeared. What's that quotation about all that's necessary for evil to triumph is for good men to remain silent?

Thanks again for your leadership.

Jim

-----Original Message-----
From: Bud Cummins <bud.cummins@[redacted]>
To: Comey, James B
Sent: Thu Mar 08 10:56:50 2007
Subject: thanks

Jim,

Thanks for standing by the colleagues. The reasons they (DOJ mgmt) are offering for their dismissals are ludicrous. This is a mere question of whether it is right to slander someone's professional expertise (slander per se in Arkansas) to avoid admitting decisions made with authority but for petty, silly, partisan, and selfish reasons. I have been an active

republican for 30 some years and I am extremely proud of my service to DOJ, but I cannot stand by and watch this and I am glad to see that you are not having any of it either. They squared up my situation adequately but they are still wronging the others. I think very soon some prominent Republicans or former GOP AG's are going to need to step up and condemn this.

I was honored to serve with you and then under your supervision. You did it right.

Best regards,

Bud Cummins

[redacted]

Ms. SÁNCHEZ. Did you, in fact, tell Mr. Cummins that?

Mr. COMEY. I did.

Ms. SÁNCHEZ. Thank you, Mr. Comey.

I have no further questions.

Mr. Cannon?

Mr. CANNON. Mr. Comey, I appreciate your humor there. [Laughter.]

You have mentioned Mr. Margolis as a very competent person.

Mr. CANNON. I am going to read some of the things that he has said recently, and I will think you will get another chuckle out of this as well.

I don't know if you are familiar with this at all, but Mr. Barrera to Mr. Margolis: "Do you have an understanding as to what Mr. Comey's opinion of the performance of Mr. Iglesias was as a U.S. attorney?

"Mr. Margolis: Only by reading a quote from him"—that is from you—"in the newspaper. Mr. Barrera: Do you have an opinion on whether or not Mr. Comey as deputy attorney general—" Mr. Margolis interrupts and says, "I sense a softball coming. Just throw it out there." [Laughter.]

"Mr. Barrera: Do you have an opinion on Mr. Comey's evaluation of Mr. Iglesias as U.S. attorney? Mr. Margolis: Jim is very fair"—referring to you, Mr. Comey—"very decent. I have to admit he is softer than I am on personnel judgments, but he certainly had a better basis to judge this guy than I did."

"Mr. Barrera: Did you ever have any conversations with anyone in which you recall, prior to December 6, 2006, that Mr. Iglesias had any performance or conduct issues? Mr. Margolis: I don't believe so, no."

"Mr. Barrera: Did you at any time prior to December 7, 2006, understand that any elected officials, including Senator Domenici or Heather Wilson, had expressed concerns of any sort about Mr. Iglesias?"

"Mr. Margolis: No, I learned that subsequently. I would be remiss if I didn't point out that I am furious at Mr. Iglesias for not reporting this. And I don't think I would be sitting here answering questions if he had reported that. Because the way we react at the department when something like that comes up is we run the other way to make sure nobody thinks we are fixing the case. So that is unforgivable. And his explanation was unforgivable. His explanation was, 'Oh, this guy was my mentor.' That is what we hold out as an independent U.S. attorney to the public. To say, 'Oh, well, I am not going to follow the rules if I like this guy,' or something like that, I am furious about that. Now that doesn't mean I am not furious at the other party to the conversation, either. But I don't expect as much of him. And I will just say that I know the other two parties very well, and I don't believe that they would ever have done a phone call the way Mr. Iglesias characterized it."

So I think Mr. Margolis represents himself remarkably well as an advocate for the Department of Justice. I believe that you are laughing and I am laughing because here is a guy who actually loves an institution, doesn't like to see it hurt as it is being hurt, is angry about the improper actions of at least one individual there.

I don't really expect a comment from you on this, although I think that it was worth a chuckle. And I think it helps put in perspective where we are going on this.

And, in the end, what we are talking about is the major justice system in America; not the judiciary, which is important and independent, but the major process whereby we identify crime and prosecute significant crime in America.

That is the important thing, and that is what justified, I think, the humor but also the anger. I used the term "furious" twice because it goes to the core of what we are doing as a society here. This is an issue I hope we can resolve quickly.

And with that, Madam Chair, I yield back the time with the great hope that we can get to the core issues and all of us yield back our time and move on.

Ms. SÁNCHEZ. I appreciate the gentleman yielding back the balance of his time.

Before we adjourn, because we have just been called to vote, I know Mr. Johnson has a series of questions very quickly he would like to run through.

But before that, I am going to ask unanimous consent to enter into the record the e-mail from Kyle Sampson to Harriet Miers that we discussed in questioning this morning, the list in question of the U.S. attorneys who were evaluated, and also the e-mails from Mr. Comey to Mr. Cummins and the e-mail from Mr. Comey to Mr. Charlton.

And without objection, so ordered.

[The e-mail follows:]

Sampson, Kyle
Wednesday, March 02, 2005 9:49 PM
'Harriet_Miers@who.eop.gov'
RE: U.S. Attorneys

...nments: IUSA APPOINTMENT EVALUATION SUMMARY.wpd

IUSA
ITMENT EVALUATIC

Attached is a revised chart (based on some some additional information I got tonight). The changes are:

strike
strike
bold

-----Original Message-----
From: Harriet_Miers@who.eop.gov [mailto:Harriet_Miers@who.eop.gov]
Sent: Wednesday, March 02, 2005 6:03 PM
To: Sampson, Kyle
Subject: RE: U.S. Attorneys

Thanks, Kyle. Interesting meeting today. Senator Hatch had a call into me re 9th cir when I returned.

--Original Message-----
From: Kyle.Sampson@usdoj.gov [mailto:Kyle.Sampson@usdoj.gov]
Sent: Wednesday, March 02, 2005 5:46 PM
To: Miers, Harriet
Subject: U.S. Attorneys

To be clear, putting aside the question of expiring terms, the analysis on the chart I gave you is as follows:

bold = ~~Recommend retaining; strong U.S. Attorneys who have produced~~, managed well, and exhibited loyalty to the President and Attorney General.
strikeout = Recommend removing; weak U.S. Attorneys who have been ineffectual managers and prosecutors, chafed against Administration initiatives, etc.
nothing = No recommendation; have not distinguished themselves either positively or negatively.

UNITED STATES ATTORNEYS – APPOINTMENT SUMMARY
(2/24/05)

| DISTRICT | NAME | DATE OF OATH |
|---|---|---|
| ALABAMA/MIDDLE | | 11/15/01 |
| ALABAMA/NORTHERN | | 11/19/01 |
| ALABAMA/SOUTHERN | | 2/7/02 |
| ALASKA | | 10/16/01 |
| ARIZONA | PAUL K. CHARLTON | 11/14/01 |
| ARKANSAS/EASTERN | ~~H.E. "BUD" CUMMINS, III~~ | 1/9/02 |
| ARKANSAS/WESTERN | | 12/6/04 |
| CALIFORNIA/CENTRAL | | 5/17/02 |
| CALIFORNIA/EASTERN | | 4/17/03 |
| CALIFORNIA/NORTHERN | KEVIN V. RYAN | 8/2/02 |
| CALIFORNIA/SOUTHERN | ~~CAROL C. LAM~~ | 11/18/02 |
| CONNECTICUT | | 12/02/02 |
| DELAWARE | | 10/09/01 |
| FLORIDA/MIDDLE | | 3/18/02 |
| FLORIDA/NORTHERN | | 8/2/02 |
| FLORIDA/SOUTHERN | | 8/5/02 |
| GEORGIA/MIDDLE | | 11/16/01 |
| GEORGIA/NORTHERN | | 12/1/04 |
| GEORGIA/SOUTHERN | | 12/1/04 |
| GUAM/N. MARIANA ISLANDS | | 5/22/03 |
| HAWAII | | 12/7/01 |
| IDAHO | | 11/19/01 |
| ILLINOIS/ CENTRAL | | 5/13/02 |
| ILLINOIS/ NORTHERN | | 10/31/01 |

| | | |
|---|---|---|
| ILLINOIS SOUTHERN | | 3/12/04 |
| INDIANA/ NORTHERN | | 10/12/01 |
| INDIANA/SOUTHERN | | 10/17/01 |
| IOWA/NORTHERN | | 10/17/01 |
| IOWA/SOUTHERN | | 6/13/04 |
| KANSAS | | 3/15/02 |
| KENTUCKY/EASTERN | | 9/24/01 |
| KENTUCKY/WESTERN | | 12/16/03 |
| LOUISIANA/MIDDLE | | 12/7/01 |
| LOUISIANA/WESTERN | | 10/30/01 |
| MASSACHUSETTS | | 9/21/01 |
| MICHIGAN/WESTERN | ~~MARGARET M. CHIARA~~ | 11/02/01 |
| MINNESOTA | | 9/24/01 |
| MISSISSIPPI/NORTHERN | | 10/30/01 |
| MISSISSIPPI/SOUTHERN | | 11/14/01 |
| MISSOURI/WESTERN | | 10/19/01 |
| MONTANA | | 11/19/01 |
| NEBRASKA | | 9/25/01 |
| NEVADA | DANIEL G. BOGDEN | 11/02/01 |
| NEW HAMPSHIRE | | 2/15/02 |
| NEW JERSEY | | 1/17/02 |
| NEW MEXICO | DAVID C. IGLESIAS | 10/18/01 |
| NEW YORK/EASTERN | | 9/03/02 |
| NEW YORK/NORTHERN | | 11/20/02 |
| NEW YORK/WESTERN | | 2/12/02 |
| NORTH CAROLINA/EASTERN | | 4/29/02 |
| NORTH CAROLINA/MIDDLE | | 11/16/01 |

| | | |
|---|---|---|
| NORTH DAKOTA | | 11/15/01 |
| OHIO/NORTHERN | | 03/28/03 |
| OHIO/SOUTHERN | | 10/19/01 |
| OKLAHOMA/EASTERN | | 12/10/01 |
| OKLAHOMA/NORTHERN | | 12/7/01 |
| OKLAHOMA/WESTERN | | 11/05/01 |
| OREGON | | 10/08/03 |
| PENNSYLVANIA/EASTERN | | 10/12/01 |
| PENNSYLVANIA/MIDDLE | | 4/22/02 |
| PENNSYLVANIA/WESTERN | | 10/15/01 |
| PUERTO RICO | | 03/11/03 |
| RHODE ISLAND | | 8/2/04 |
| TENNESSEE/EASTERN | | 10/17/01 |
| TENNESSEE/MIDDLE | | 2/19/02 |
| TENNESSEE/WESTERN | | 10/22/01 |
| TEXAS/EASTERN | | 4/17/02 |
| TEXAS/NORTHERN | | 12/1/04 |
| TEXAS/SOUTHERN | | 4/18/02 |
| TEXAS/WESTERN | | 12/7/01 |
| UTAH | | 9/18/03[1] |
| VIRGINIA/EASTERN | | 9/24/01 |
| VIRGINIA/WESTERN | | 10/17/01 |
| WASHINGTON/EASTERN | | 12/17/01 |
| WASHINGTON/WESTERN | ~~JOHN McKAY, JR.~~ | 10/30/01 |
| WEST VIRGINIA/NORTHERN | | 10/30/01 |
| WEST VIRGINIA/SOUTHERN | | 11/19/01 |
| WISCONSIN/EASTERN | | 5/13/02 |

[1] First appointed in 1996 by President Clinton.

| WYOMING | |
|---|---|
| [redacted] | |
| DISTRICT | NAME |
| [redacted] | |
| DISTRICT | NAME |
| [redacted] | |
| DISTRICT | NAME |
| MICHIGAN/EASTERN | STEPHEN J. MURPHY, III |
| VIRGIN ISLANDS | ANTHONY J. JENKINS (VRA) |
| NORTH CAROLINA/WESTERN | GRETCHEN C.F. SHAPPERT (Ct Apptd) |
| [redacted] | |
| DISTRICT | NAME |
| [redacted] | |
| DISTRICT | NAME |
| [redacted] | |
| DISTRICT | NAME |

| [redacted] | |
|---|---|
| DISTRICT | NAME |

| DISTRICT | CURRENT USA |
|---|---|
| COLORADO | |
| DISTRICT OF COLUMBIA | |
| MAINE | |
| MARYLAND | |
| NEW YORK/SOUTHERN | |

| | |
|---|---|
| SOUTH CAROLINA | |
| SOUTH DAKOTA | |
| VERMONT | |
| WISCONSIN/WESTERN | |

## ATTORNEY GENERAL APPOINTMENTS - 2

| DISTRICT | NAME | APPT DATE | EXP DATE |
|---|---|---|---|
| Maryland | Allen F. Loucks | 1/3/05 | 5/2/05 |
| Vermont | David V. Kirby | 1/24/05 | 5/23/05 |

## VACANCIES REFORM ACT APPOINTMENTS - 5

| DISTRICT | NAME | DATE OF APPT | EXP DATE |
|---|---|---|---|
| Colorado | William J. Leone | 1/1/05 | 7/29/05 |
| South Carolina | Jonathan S. Gasser | 1/21/05 | 8/18/05 |
| South Dakota | Michelle G. Tapken | 1/31/05 | 8/29/05 |
| Virgin Islands | Anthony J. Jenkins | 8/21/04 | 3/19/05 |
| Wisconsin/Western | Stephen P. Sinnott | 1/31/05 | 8/29/05 |

## COURT APPOINTMENTS - 7

| DISTRICT | NAME | DATE OF OATH |
|---|---|---|
| DC | Kenneth L. Wainstein | 9/26/04 |
| Louisiana/E | James B. Letten | 8/19/01 |
| Maine | Paula D. Silsby | 9/3/01 |
| Michigan/E | Craig S. Morford | 12/21/04 |
| Missouri/E | James G. Martin | 10/03/04 |
| New York/S | David N. Kelley | 04/12/04 |
| North Carolina/W | Gretchen C.F. Shappert | 9/29/04 |

## PENDING RESIGNATIONS - 0

| DISTRICT | NAME | RESIGNATION DATE |
|---|---|---|

## RESIGNATIONS FORTHCOMING - 0

Ms. SÁNCHEZ. I will now recognize Mr. Johnson for final questions that he may have.

Mr. JOHNSON. Thank you, Madam Chair.

Mr. Comey, the Department of Justice has recently confirmed that the Office of Inspector General and the Office of Professional Responsibility are investigating whether partisan political tests were applied to the hiring of assistant United State attorneys in offices that were headed by interim or acting United States attorneys.

If, in fact, there was partisan political tests that were applied in the hiring of those U.S. attorneys, what impact do you believe that would have on career professionals in the department, on the fair and impartial administration of our Federal criminal justice system? And what impact would it have on the public's confidence in Federal criminal prosecutions, particularly in the area of political corruption?

Mr. COMEY. That is, in my view, the most serious thing that I have heard come up in this entire controversy. If that was going on, that strikes at the core of what the Department of Justice is. You just cannot do that.

You can't hire assistant U.S. attorneys based on political affiliation, again, because it deprives the department of its lifeblood, which is the ability to stand up and have juries of all stripes believe what you say, and have sheriffs and judges and jailers and the people we deal with trust the Department of Justice.

It just—that concerns me a great deal. I hope that didn't happen. I hope the investigation turns out that it didn't happen. But that is a very serious thing.

U.S. attorneys are political appointees, as the Chairman said. They can be terminated for any reason. And I understood that I was a political appointee. But these AUSAs, they are the ones on whom the whole system rests. And we just cannot have that kind of political test.

Mr. JOHNSON. Well, let me ask you, if it is established that assistant United States attorneys over the last few years have been hired on a partisan political basis, what remedies do you think should be implemented to eliminate or minimize the adverse impact of those improperly based hirings?

Mr. COMEY. I don't have a suggestion at this point. I don't. It is very troubling. I don't know how you would put that genie back in the bottle, if people started to believe we were hiring our AUSAs for political reasons. I don't know that there is any window you can go to get the department's reputation back if that kind of stuff is going on.

Mr. JOHNSON. Has any U.S. attorney expressed concerns to you about this problem since you left the department or even before you left the department?

Mr. COMEY. A couple have said to me—when I said I had heard about it, rumors, a couple of them had said they had heard second- and third-hand that this was going on, and shared my concern. But I don't have—and no one I spoke to had first-hand knowledge of it.

Mr. JOHNSON. Would you care to identify those who you had those discussions with?

Mr. COMEY. I would love not to, because they were private conversations. I am not going to refuse the Committee's request if it becomes important, but these are people who were talking to me about their concerns about the department.

Mr. JOHNSON. All right. Well, I am sure that that can be handled in a more sensitive way.

But I have one last question: What kind of leadership and actions will have to take place at the department to ensure that future prosecutions are not tainted by improperly based hirings?

Mr. COMEY. I don't know the answer to that. A whole lot of time and a whole lot of good work will be necessary to heal that kind of wound. We have already seen some of it.

I have said nice things about Steve Biskupic, the U.S. attorney in Milwaukee, who is an absolutely straight guy, but because of this controversy, people have questioned whether he prosecuted people who were Democrats for partisan reasons. And without even knowing the cases, I would absolutely know that wasn't the case. But people started to doubt it, because of this controversy.

So I don't know what, other than time and people just in individual encounters doing it well and doing it well over and over again, will heal a wound like that. I hope there is not a wound like that. But if there is, it will be hard to fix.

Mr. JOHNSON. Thank you.

Ms. SÁNCHEZ. Does the gentleman yield back?

Mr. JOHNSON. Yes, I yield back.

Ms. SÁNCHEZ. I would like to recognize Mr. Cannon, very briefly, because we have just under 10 minutes to get across for our vote.

Mr. Cannon?

Mr. CANNON. Thank you, Madam Chair.

I would just like to thank you for coming, Mr. Comey. I think you have put perfect balance on the importance of the Department of Justice, the effect of this inquiry on the morale of the Department of Justice, and the need to understand the issues—which, by the way, the gentleman has laid out very well. I appreciate those comments. That is where we ought to be going and deciding if those issues have been violated.

And point out that, well, I don't think we have made any progress at all on identifying the White House's role in all this. I appreciate the directness and candor of your testimony, but it did not lead to where I think the majority was going on that.

And what we have here is a consensus process of dealing with political appointees that happened over a significant period of time at a very senior level at the Department of Justice, and perhaps at the White House. And I suspect that, in the end, if there is a fair reporting of that, that is what the meaning of this hearing was.

I would also hope that the press would pick up on not only your loyalty to the Department of Justice and your view of that as a very important institution in America, but also on the importance of what the department does and why it is important that we get beyond this inquiry.

If there is wrongdoing, let's find it, let's find it quickly, and let's identify it. And the minority has been very supportive in the process of doing that.

But if that is not the case, let's let people understand that we have great prosecutors in America who are not bent, who are not going to give Republicans or Democrats who are corrupt a break, and who will go forward and assure that our public institutions are institutions of integrity.

I want to thank you for coming, Mr. Comey. I appreciate it very much.

And yield back, Madam Chair.

Ms. SÁNCHEZ. Thank you, Mr. Comey. I want to thank you for your testimony today. I think it has been very educational, understanding your evaluation of the U.S. attorneys and how that conflicts with the evidence on the list of those who were to be dismissed or to be retained.

And I want to thank you for your service to this country at the Department of Justice. It is clear to me that you have earned the very stellar reputation that you have as being fair and just, and speaking up when you see things that need to be corrected.

We are going to head across the street for votes.

But, without objection, Members will have 5 legislative days to submit any additional written questions, which we will forward to the witness and ask that you answer as promptly as you can to be made a part of the record.

Without objection, the record will remain open for 5 legislative days for the submission of any additional materials.

Again, I want to thank everyone for participating, for their time and their patience.

And this hearing of the Subcommittee on Commercial and Administrative Law is adjourned.

[Whereupon, at 11:10 a.m., the Subcommittee was adjourned.]

# APPENDIX

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## Material Submitted for the Hearing Record

RESPONSE TO POST-HEARING QUESTIONS FROM JAMES B. COMEY,
FORMER DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

**QUESTIONS FROM SUBCOMMITTEE CHAIR LINDA SANCHEZ**
**Former Deputy Attorney General James B. Comey**

1. On May 15, 2007, you provided testimony to the Senate Judiciary Committee about the events on the evening of March 10, 2004 when then-White House Counsel Alberto Gonzales and then-Chief of Staff Andrew Card made a nighttime visit to the hospital room of then-Attorney General John Ashcroft. Is there anything you would like to add to that testimony?

**No.**

2. Was classified information discussed in the hospital room that night?

**I did not discuss classified information. I do not recall whether Mr. Gonzales mentioned any aspects of the matter that would be considered classified, including the name of the program – which was itself classified, as I recall – when addressing Mr. Ashcroft.**

During the entire period you were inside Mr. Ashcroft's hospital room, who else was present in the room at any time?

**Mrs. Ashcroft, Jack Goldsmith, Patrick Philbin, Andrew Card, Alberto Gonzales, Robert Mueller.**

To your knowledge, who else had access to the room while you were in the room?

**No other person entered, as best I recall. I do not know who had the authority to enter.**

Was this hospital room a sufficiently secure location to discuss classified information?

**I do not have any reason to believe the room had been cleared as an appropriate place to discuss Top Secret or SCI information.**

Did all individuals present in the hospital room or with access to the hospital room have the appropriate security clearance to learn of the matter discussed in the room?

**I do not know, but assume Mrs. Ashcroft did not have appropriate clearances.**

3. Did the White House know that on March 10, 2004 you were the Acting Attorney General?

**Yes.**

How were they notified or did they learn of this?

**David Ayres, the Attorney General's Chief of Staff, handled the notifications. There was also media coverage to that effect.**

Did you have any discussions with Mr. Ashcroft or other Department of Justice officials about why the White House wanted to ask Mr. Ashcroft instead of you to sign off on the classified program?

**Yes.**

If so, what was the substance of those discussions?

**I do not think it would be appropriate for me to reveal the substance of discussions with Mr. Ashcroft or other senior Justice officials.**

Did you have any such discussions with Mr. Card or Mr. Gonzales when you spoke with them later that evening at the White House?

**Yes.**

If so, what was the substance of those discussions?

**I do not think it would be appropriate for me to reveal the substance of those discussions.**

4. When you went to the White House to speak with Mr. Card on the evening of March 10, 2004, why did you select Ted Olsen, the former Solicitor General, as your witness?

**He was a person in whose judgment, integrity, and ability I had confidence.**

5. You testified that FBI Director Robert Mueller instructed the FBI agents present at the hospital not allow you to be removed from the room under any circumstances. Why did you or he believe that this would happen?

**I did not know whether it would happen, but wanted to be sure it did not.**

Had something similar happened previously?

**No.**

If so, please explain.

6. Did anyone else besides those named in your Senate testimony threaten to resign in response to the March 2004 events?

**There were others who communicated to me that they planned to resign, but I do not know if anyone threatened resignation to anyone else.**

Was Jack Goldsmith, former Assistant Attorney General and head of the Office of Legal Counsel, one of the individuals who threatened to resign?

**It was my understanding that he planned to resign, but I do not know if he threatened resignation to anyone.**

Why did Mr. Goldsmith later resign in the summer of 2004?

**He resigned for personal reasons unconnected to this particular matter.**

7. You testified that after the encounter in the hospital, you, Ted Olson, and other senior officials of the Department of Justice immediately went to the Department to discuss how to proceed. Who was involved in those discussions?

**To the best of my recollection, at various times that night, the discussions involved Mr. Olson, Robert McCallum, Jack Goldsmith, Patrick Philbin, Chuck Rosenberg, David Ayres, David Israelite, and James Baker. There may have been other staff members present at various times, but I do not recall any at this time.**

What was discussed at that meeting?

**I do not think it would be appropriate for me to reveal the substance of those discussions.**

8. When you and Director Mueller had separate meetings with the President on March 12, 2004, did you have reason to believe that the President knew that there would be a large number of high level resignations at the Department of Justice?

**I do not think it would be appropriate for me to reveal the substance of discussions with the President. As far as any information the President learned from his staff, I do not know.**

Do you believe the President told Director Mueller to do what the Department believed was necessary to put the classified program on a legal footing in order to prevent the mass resignations?

**I don't know.**

What was the basis for that belief?

9. Separate and apart from the concerns expressed on March 10-12, 2004 about the legality of this confidential program, have Department of Justice officials expressed concerns about the legality of this confidential program?

**I do not think it appropriate for me to reveal legal advice the Department may have given.**

If so, please provide the name of the official who expressed those concerns, when the concerns were expressed, and whether Attorney General Alberto Gonzalez was aware of those concerns. Also specifically indicate whether Department officials expressed concerns about the program even after the Department made the changes President Bush allowed following the hospital confrontation.

10. You testified that Mr. Card was angered over the interchange at the hospital? Did you ever face retribution from Mr. Card or any other White House official as a result of the events of March 10-12, 2004?

**Not to my knowledge.**

11. In a May 20 *U.S. News and World Report* article entitled "Getting in Deeper…Another week reveals more lapses in judgment by the Bush team," it was reported that Kyle Sampson, former chief of Staff to the Attorney General, told you that Attorney General Gonzalez wanted to merge the Deputy Attorney General's office into the Attorney General's office. Is this report correct? If so, please describe those discussions.

**The report is not entirely correct. Mr. Sampson explained to me a vision for the operation of the Attorney General's office and the Office of the Deputy Attorney General that would involve operating those respective staffs as essentially one staff, although I do not think the idea involved an actual merger of the staffs. My understanding was that this vision would entail the Deputy Attorney General and staff acting in much closer coordination with the Attorney General and his staff.**

What impact would this proposal have had on the Department of Justice and on the U.S. Attorneys offices, in particular?

**It is hard for me to say because I was not interested in such a change. I believed it was important for the Office of the Deputy Attorney General to act as a separate office.**

How would this proposal have increased the Attorney General's power?

**I don't know that it would have had any impact on the Attorney General's authorities.**

Would it have eliminated an institutional check and balance on the aggregation of too much power in the Attorney General?

**I think such an arrangement risks elimination of the separate vetting and advice function of the DAG and his or her staff. There is great value in having that office – called ODAG -- available to make decisions that need not reach the Attorney General or to review and advise on matters headed to the Attorney General for decision. The risk inherent in combining the staffs is that the separate review and advice function is lost, which would not be in the interest of the Attorney General or the Department.**

12. At the time you testified before the Subcommittee, it had not been disclosed that Todd Graves, the former U.S. Attorney for the Western District of Missouri, was the ninth U.S. Attorney forced to resign since 2006. To your knowledge, describe the performance of Mr. Graves.

**I had a positive impression of Mr. Graves and believed he was performing well as U.S. Attorney.**

Were you aware of any "performance-based" reasons for the Department of Justice to seek his resignation?

**No.**

If so, please explain those reasons. In your meeting with Mr. Sampson on February 28, 2005 where Mr. Sampson sought the names of U.S. Attorneys that might be asked to resign, did you recommend that Mr. Graves be added to the list?

**No.**

If Mr. Graves was discussed with Mr. Sampson during that meeting or in additional communications, please explain the substance of those communications.

**I never had such a discussion concerning Mr. Graves.**

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