RESTORING CHECKS AND BALANCES IN THE CONFIRMATION PROCESS OF UNITED STATES ATTORNEYS

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCIAL AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

ON

H.R. 580

MARCH 6, 2007

Serial No. 110–22

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
33–809 PDF WASHINGTON : 2007

For sale by the Superintendent of Documents, U.S. Government Printing Office
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RESTORING CHECKS AND BALANCES IN THE CONFIRMATION PROCESS OF UNITED STATES ATTORNEYS

TUESDAY, MARCH 6, 2007

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

The Subcommittee met, pursuant to notice, at 2:06 p.m., in Room 2141, Rayburn House Office Building, the Honorable Linda Sánchez (Chairwoman of the Subcommittee) presiding.

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

I will now recognize myself for a short statement.

In the wake of the Watergate scandal, a constitutional crisis that demonstrated the lengths to which our system of justice can be manipulated to achieve a political agenda, our Nation made the decision that our law enforcement system should be free from the influence of politics. We decided that ideological partisanship has no place in the dispatch of justice.

Recently, we have seen troubling signs that this line is again being crossed. The question we are here to answer today is: Are important decisions about our justice system being made for political reasons?

We recognize that U.S. attorneys serve at the pleasure of the President. However, in the past few months it appears that the Bush administration has exploited the change in interim appointment limits of U.S. attorneys by purging high-performing U.S. attorneys and replacing them with political cronies and inexperienced lawyers.

This purge is one more example of the Administration's concerted effort to promote partisan politics over sound management. Time and time again, we have seen this President undermine the legal foundations of our constitutional system of Government, particularly by seeking political advantage in areas that have traditionally transcended politics.

Congress must determine if, once again, competency in upholding the law is being sacrificed for political ideology. For example, Arkansas U.S. Attorney Bud Cummins was replaced with Timothy Griffin at the insistence of former White House counsel Harriet Miers. Mr. Griffin is a long-time Republican operative who has a

thin legal record but substantial connections to the RNC and Karl Rove. I hope to learn today why the Administration replaced an experienced and highly competent U.S. attorney with a partisan loyalist.

We also need to determine if the Administration is making a systematic effort to curtail ongoing political corruption investigations. Former San Diego U.S. Attorney Carol Lam led the investigation of former California Representative Randy "Duke" Cunningham and his coconspirators, discovered pervasive and widespread political corruption and secured a guilty plea from Mr. Cunningham. Despite announcements of two related indictments just days before her departure, she was replaced with an interim appointee with almost no criminal law experience.

We must investigate whether U.S. attorneys are being retaliated against for their role in investigations of corruption. Last week we learned that shortly before the November 2006 elections, two congressional Republican Members contacted former New Mexico Attorney David Iglesias regarding a corruption probe of a local Democratic elected official. I am deeply concerned that an ethical violation has occurred here.

I am also concerned that John McKay, a former Seattle U.S. attorney, may have been fired to appease Washington-state Republicans who were angry over his failure to convene a Federal grand jury to investigation allegations of voter fraud in the 2004 governor's race. And I have similar concerns that Paul Charlton, former U.S. attorney for Arizona, and Daniel Bogden, former U.S. attorney for Nevada, faced retribution for their roles in political corruption investigations.

Specifically, it has been alleged that Paul Charlton was dismissed because he was investigating charges involving land deals and influence peddling by sitting Republican congressmen, and there is speculation that Daniel Bogden was ousted for investigating Governor Jim Gibbons' receipt of unreported gifts and payments in exchange for his help as a Member of the House Intelligence and Armed Services Committees.

We have also convened this hearing to consider H.R. 580, legislation authored by my friend and colleague from California, Representative Howard Berman. This legislation would restore the necessary legislative response to restore checks and balances in the U.S. attorney appointment process. The Berman bill would reverse a new provision in the USA PATRIOT Act, allowing the attorney general to indefinitely appoint Federal prosecutors through the end of the Bush administration without Senate confirmation.

[The bill, H.R. 580, follows:]

I

110TH CONGRESS
1ST SESSION

H. R. 580

To amend chapter 35 of title 28, United States Code, to provide for a 120-day limit to the term of a United States attorney appointed on an interim basis by the Attorney General, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 19, 2007

Mr. BERMAN (for himself, Mr. CONYERS, and Mr. SCOTT of Virginia) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend chapter 35 of title 28, United States Code, to provide for a 120-day limit to the term of a United States attorney appointed on an interim basis by the Attorney General, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INTERIM APPOINTMENT OF UNITED STATES ATTORNEYS.

Section 546 of title 28, United States Code, is amended by striking subsection (c) and inserting the following new subsections:

"(c) A person appointed as United States attorney under this section may serve until the earlier of—

"(1) the qualification of a United States attorney for such district appointed by the President under section 541 of this title; or

"(2) the expiration of 120 days after appointment by the Attorney General under this section.

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

○

Ms. SÁNCHEZ. To help shed some light on these issues, we have with us today a truly notable witness panel. We are pleased to have the six recently replaced former U.S. attorneys, William Moschella, principal associate deputy attorney general, Representative Darrell Issa, former Representative Asa Hutchinson and former Deputy Attorney General George Terwilliger. We also have two additional former U.S. attorneys, including the president of the National Association of Former United States Attorneys.

Finally, we are joined by an attorney from the Congressional Research Service who will discuss the CRS report that concludes that these mass firings in the middle of an Administration are unprecedented in recent history. Accordingly, I very much look forward to hearing the testimony.

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

Mr. CANNON. Thank you, Madam Chairman.

This hearing is frankly two hearings rolled into one. The first hearing, the one the majority doesn't want to have, is entitled H.R. 580, "Restoring Checks and Balances in the Confirmation Process of U.S. Attorneys." If the majority were serious about this hearing, we would be receiving testimony about whether it is wise to return to a policy that allows judges to make interim appointments of prosecutors that practice before them.

We could ask whether such practices raise ethical, constitutional or prudential concerns. We could discuss past instances when judges either refused to exercise their authority to appoint interim U.S. attorneys or abused the authority by appointing someone that was not qualified to serve in that position.

But the majority doesn't want to have that hearing. Instead, they want a show trial of recently-dismissed U.S. attorneys claiming disingenuously that the dismissals have something to do with the first hearing.

U.S. attorneys serve at the President's pleasure, now and always. The President can dismiss a U.S. attorney for any reason or for no reason at all. How do we know this? President Clinton dismissed 93 U.S. attorneys in his first months in office, a purge that makes the dismissal of 8 U.S. attorneys look like a rounding error. But were those dismissals inappropriate? No. Under article 2 of the Constitution, it is the President's responsibility to see that the laws are faithfully executed. U.S. attorneys are at the heart of his leadership team, making sure the laws are enforced, consistent with his policies and priorities in each judicial district in the country. The President is entitled to have who he thinks will best do that job at all times. He deserves it and the Nation deserves it.

Second, the President's explanations for the dismissals at issue today, though not required, are reasonable. The Department of Justice has explained to this Committee the reasons for these dismissals. In every case, the President had a legitimate reason to believe that an infusion of fresh leadership would serve the country.

Each of these U.S. attorneys had served the full 4-year term to which they are appointed. Some had served more. Some of them had, in one area or another, for one reason or another, parted paths with the President in implementing one or more of his en-

forcement priorities. Others had presented other issues that prompted the President to want to try someone new. And in at least one case, the President just wanted to provide another qualified individual the opportunity to serve as a U.S. attorney.

These U.S. attorneys are entitled to their opinions, and those whose practices or positions differed from national policy may have had their reasons. But they were obliged to implement the President's priorities fully and to carry out their duties as the President saw fit. They were not entitled to their jobs. It is the President's responsibility to see that the laws are enforced. If he determines that he needs new leadership to fully achieve his priorities, he has a responsibility to obtain it.

Again, U.S. attorneys serve at the President's pleasure, not at their own. These U.S. attorneys do not debate this. Mr. Cummins has stated that the President can remove a U.S. attorney for any reason or no reason or even an idiotic reason. I hope that wasn't in reference to the President, but we have had lots of Presidents who have released lots of U.S. attorneys.

Mr. Iglesias has been quoted in the press as saying that even if he was "moved out strictly for political reasons, I am okay with that." Speaking for the group as a whole, Mr. Iglesias has said that "we are not disgruntled employees." They recognize the President's prerogatives, and so should we.

Third, the record backs the President up. The Department of Justice has shown in briefings and other communications with the Congress that the President had legitimate reasons to opt for new leadership in these districts. Again, this is not to say that the sitting U.S. attorneys were all necessarily doing bad jobs, or any of them were doing bad jobs, but that the President has backed up his reasonable explanations with evidence for his belief that he could do better in achieving his priorities and that it was time for a change. Not a shred of hard evidence brought before me or this Subcommittee has done anything to disprove that.

Loose accusations of political retaliation and favoritism have been recklessly bandied about without substantiation. Not a single public corruption prosecution or investigation has been slowed or halted because of these personnel decisions. On the contrary, ongoing prosecutions and investigations in these districts have moved forward regardless of the transition of leadership. It is simply a commitment to bring more new cases in the President's priority enforcement areas that has prompted the department to seek a change. This is laudable, it is appropriate and it should be respected.

What has been the response of the majority? To ignore the President's prerogatives, to ignore his sound explanations to turn these former public servants into political footballs and to run after the phantom notion that the President must have engaged in retaliatory hardball politics. The conclusion is clear. The President was entitled to make these changes in his leadership team. Even if we were to disagree with his reasons, he was entitled to make them. And in any event, his reasons were entirely reasonable. Accusations that these dismissals were motivated by the politics of retribution are false and do a disservice to the public.

Likewise, accusations that these dismissals were made to clear the way, to avoid Senate confirmation of U.S. attorneys are far from the mark. The only political maneuvering occurring here is that the majority, which is willfully disregarding the department's reasonable explanations to stir up a groundless partisan controversy and attempt to reverse some legislation that benefits the American people.

The Republican Members of this Subcommittee encourage the majority to avoid the temptation of political headlines and instead work to address the real problems the country needs to face. We stand ready, willing and able to work to achieve bipartisan results that will benefit the American people. It is time to pick up the work and stop loosing precious time on false issues and refusals to believe the truth.

And I yield back, Madam Chairman.

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

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. Thank you, Madam Chairman.

I am happy to see all of us here today, including the very distinguished witnesses that are going to soon occupy the witness table.

I want our friend, the Ranking Member of the Subcommittee, Chris Cannon, to understand that this is not immaterial or irrelevant activities. It has been in the headlines, on TV, in the newspapers. The country is flooded with this. It has even been in the Senate Judiciary Committee.

Look, this is not——

Mr. CANNON. Would the gentleman yield?

Mr. CONYERS. This is not unimportant activity. And, yes, I will yield.

Mr. CANNON. The fact that the press needs something to make a big issue out of does not mean it should drive our deliberations and our processes because it is easy to report wild and vast allegations and yet as I think you will see in this hearing, as we saw certainly in the Senate hearing, the substance is modest but it will still make the headlines.

Mr. CONYERS. I accept and receive the gentleman's admonitions.

Now I want him to rest more comfortably in his chair, because we are here to hear the measure that is before us. H.R. 580, introduced by the gentleman from California, Mr. Berman and myself, and we have afforded you three witnesses for that purpose. I presume that you chose the witnesses or at least had something to do with it.

So don't think that we are not here for the legislative business which we have published and I hope that these hearings can address several important issues.

The first is, what is the impact of these unprecedented series of forced resignations have had on our criminal justice system. The 94 United States attorneys' offices are the heart and soul of our Federal law enforcement system and in many respects the crown jewel of the Justice Department.

The lawyers who work in these offices are the very best and brightest of our lawyers. It is absolutely critical that the U.S. attor-

neys who supervise them, whether chosen by Democrats or Republicans, it doesn't matter, be of unquestionable integrity and independence.

I have to question what sort of impact these firings have not only on the officers involved but every law enforcement official in the Nation. How does this impact the continuity of our ongoing investigations? How does it impact the enforcement of our immigration laws, our gun laws, our drug laws, not to mention our public corruption laws? Can we really afford on-the-job training of law enforcement novices when the lives and safety of American citizens are so clearly at stake?

What can we learn about the real reasons these prosecutors were fired? I am troubled when the justifications put forth for these firings change by the day in reaction to the latest revelation. What started out as performance-related firings quickly switched to failure to follow policy priorities. Yet as of today, nearly 3 months after these discharges, we have yet to learn of any documented evidence identifying any specific concerns that were raised with any of these prosecutors before they were discharged. That is no way to run an office, let alone a legal office responsible for life and death decisions.

What do these mass firings and the way that they were handled say about our present Administration? Good and honest prosecutors appear to have had their reputations unjustly besmirched and they may have been threatened for telling the truth. They have been courageous to come before us and they have said that they were being fired for poor performance when the exact opposite seems to be true.

Ladies and gentlemen, for the purposes of honoring the 5-minute rule, I will submit the rest of my statement.

And I thank the Subcommittee Chairwoman.

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

And 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.

Before we call Mr. Moschella to the table to testify, I would ask the former U.S. attorneys we have subpoenaed to come to the table briefly.

I want you to know that we are going to ask Mr. Moschella to tell us what he knows about the reasons for your terminations, including what may have been said in various conversations and what may have been written in various reports. Mr. Moschella may be hesitant to discuss some of this information based on privacy or confidentiality interests ascribed to each of you.

On Wednesday, February 28, and Monday, March 5, I was briefed by the department concerning the alleged performance-related reasons for your termination. Today we are going to ask Mr. Moschella if he would repeat those reasons for us. However, for him to do so today, you would need to agree to waive any privacy or confidentiality interests to the statements made to me on February 28 and March 5 in that briefing.

Are you willing to give such a limited waiver of your privacy and confidentiality interests?

And I also want to emphasize that this is totally voluntary. If any of you have reservations, we will respect that. We would not, of course, ask Mr. Moschella to improperly disclose grand jury or other investigative information of a sensitive nature in open session. And any of you who wish will have an opportunity to respond to Mr. Moschella.

Do we have your permission to have a limited waiver of those rights so that Mr. Moschella can repeat statements that were made in briefings to this Subcommittee Chair?

Let the Chair indicate that all of the witnesses have assented by head nodding and verbal yeses.

Thank you. We will have you up to the table to testify in just a little while.

I am now pleased to introduce the witness on our first panel for today's hearing. William Moschella is the principal associate deputy attorney general for the Department of Justice. Prior to that appointment, he served as assistant attorney general for DOJ's office of legislative affairs. He was also chief legislative counsel and parliamentarian to the House Committee on the Judiciary.

Thank you for your willingness to participate at today's hearing.

Mr. Moschella, given the gravity of the issues we are discussing today and your role in these hearings and so there is no misunderstanding, we would appreciate it if you would take an oath before you begin your testimony. Do you object to doing so?

Please stand and raise your right hand.

[Witness sworn.]

Without objection, your written statement will be placed into the record and we would ask that you limit your oral remarks to 5 minutes. You will note that we have a lighting system that starts with a green light. At 4 minutes, it turns yellow, and then red at 5 minutes.

After the witness has presented his testimony, Subcommittee Members will be permitted to ask one round of questions subject to the 5-minute limit.

Thank you, Mr. Moschella. Will you now proceed with your testimony?

Mr. CANNON. Madam Chairman, before Mr. Moschella proceeds, may I just clarify the scope of the commitment here?

My understanding is that Mr. Moschella, under questioning, can answer questions about the office and activity within the office as it relates to performance of the U.S. attorneys, but not about cases if any were—did you discuss any cases with the Congresswoman at all?

How careful is Mr. Moschella going to have to be in answering?

Ms. SÁNCHEZ. He may not discuss any pending cases.

Mr. CANNON. Did he discuss pending cases with you in that meeting?

Ms. SÁNCHEZ. I don't believe that he did.

Mr. CANNON. So, what he is going to be talking about under your questioning, apparently, is going to be statements he made to you in a meeting about the qualifications, the activities and the performance of these U.S. attorneys?

Ms. SÁNCHEZ. Correct. It will be statements that were made in the two briefings of Members of this Subcommittee as to the so-

called performance-related excuses or reasons that they gave for requesting the resignation of the U.S. attorneys who will be testifying here.

Mr. CANNON. Thank you.

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

Mr. MOSCHELLA. Madam Chairman, just before I begin my opening testimony, I just want to make clear, I am not sure about the previous exercise that we just went through. The Privacy Act has a specific exception in it with regard to a presentation before the Congress. And so to the extent that that was meant to be a Privacy Act labor, it is unnecessary in this context.

Ms. SÁNCHEZ. It doesn't hurt to have a backup plan, Mr. Moschella.

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

Let me begin by stating clearly that the Department of Justice appreciates the public service that was rendered by the seven United States attorneys who were asked to resign last December. Each is a talented lawyer who served as U.S. attorney for more than 4 years and we have no doubt they will achieve success in their future endeavors, just like the 40 or so U.S. attorneys who have resigned for various reasons over the last 6 years.

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

United States attorneys in the field as well as assistant attorneys general here in Washington are duty-bound not to make prosecutorial decisions but also to implement and further the Administration and department's priority and policy decisions. In carrying out these responsibilities, they serve at the pleasure of the President and report to the attorney general. If a judgment is made that they are not executing their responsibilities in a manner that furthers the management and policy goals of departmental leadership, then it is appropriate that they be asked to resign so that they can be replaced by other individuals who will.

To be clear, it was for reasons related to policy, priorities and management, what has been referred to broadly as performance-related reasons, that these United States attorneys were asked to resign.

I want to emphasize that the department, out of respect for the United States attorneys at issue, would have preferred not to talk about those reasons, but disclosures in the press and requests for information from Congress altered those best laid plans. In hindsight, perhaps this situation could have been handled better. These U.S. attorneys could have been informed at the time they were asked to resign about the reasons for the decisions.

Unfortunately, our failure to provide reasons to these individual United States attorneys has only served to fuel wild and inaccurate speculation about our motives. And that is unfortunate, because faith and competence in our justice system is more important than any one individual. That said, the department stands by the decisions. It is clear that after closed-door briefings with House and Senate Members and staff, some agree with the reasons that form the basis for our decisions and some disagree. Such is the nature of subjective judgments.

Just because you might disagree with a decision does not mean it was made for improper political reasons. There were appropriate reasons for each decision.

One troubling allegation is that certain of these United States attorneys were asked to resign because of actions they took or didn't take relating to public corruption cases. These charges are dangerous, baseless and irresponsible. This Administration has never removed a United States attorney to retaliate against them or interfere with or inappropriately influence a public corruption case. Not once.

The attorney general and the director of the FBI have made public corruption a high priority. Integrity in government and trust in our public officials and institutions is paramount. Without question, the department's record is one of great accomplishment that is unmatched in recent memory. The department has not pulled any punches or shown any political favoritism. Public corruption investigations are neither rushed nor delayed for improper purposes. Some, particularly in the other body, claim that the department's reasons for asking these United States attorneys to resign was to make way for pre-selected Republican lawyers to be appointed and circumvent Senate confirmation. The facts, however, prove otherwise.

After the seven United States attorneys were asked to resign last December, the Administration immediately began consulting with home State Senators and other home State political leaders about possible candidates for nomination. Indeed, the facts are that since March 9, 2006, the date the attorney general's new appointment authority went into effect, the Administration has nominated 16 individuals to serve as United States attorney and 12 have been confirmed.

Furthermore, 18 vacancies have arisen since March 9, 2006. Of those 18 vacancies, the Administration: one, has nominated candidates for six of them, and of those six, the Senate has confirmed three; two, has interviewed candidates for eight of them; three, is working to identify candidates for the remaining four.

Ms. SÁNCHEZ. Mr. Moschella, your time has expired. If you could just briefly conclude.

Mr. MOSCHELLA. Let me repeat what has been said many times before and what the record reflects. The Administration is committed to having a Senate-confirmed United States attorney in every single Federal district.

In conclusion, let me make three points. First, although the department stands by the decision to ask these United States attorneys to resign, it would have been much better to have addressed the relevant issues up front with each of them. Second, the depart-

ment has not asked anyone to resign to influence any public corruption case and would never do so. Third, the Administration at no time intended to circumvent the confirmation process.

I would be happy to take your questions.

[The prepared statement of Mr. Moschella follows:]

PREPARED STATEMENT OF WILL MOSCHELLA

Department of Justice

STATEMENT

OF

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

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

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

PRESENTED ON

MARCH 6, 2007

Testimony
of

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

Committee on the Judiciary
United States House of Representatives

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

March 6, 2007

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

Although – as previously noted by the Attorney General and the Deputy Attorney General in their testimony – the Department of Justice continues to believe the Attorney General's current interim appointment authority is good policy, and has concerns about H.R. 580, the "Preserving United States Attorneys Independence Act of 2007," the Department looks forward to working with the Committee in an effort to reach common ground on this important issue. It should be made clear, however, that despite the speculation, it was never the objective of the Department, when exercising this interim appointment authority, to circumvent the Senate confirmation process.

Some background. As the chief federal law-enforcement officers in their districts, our 93 U.S. Attorneys represent the Attorney General and the Department of Justice throughout the United States. U.S. Attorneys are not just prosecutors; they are government officials charged with managing and implementing the policies and priorities of the President and the Attorney General. The Attorney General has set forth key priorities for the Department of Justice, and in each of their districts, U.S. Attorneys lead the Department's efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families — including child pornography, obscenity, and human trafficking.

United States Attorneys serve at the pleasure of the President and report to the Attorney General in the discharge of their offices. Like any other high-ranking officials in the Executive Branch, they may be removed for any reason or no reason. The Department of Justice — including the office of United States Attorney — was created precisely so that the government's legal business could be effectively managed and carried out through a coherent program under the supervision of the Attorney General. Unlike judges, who are supposed to act independently of those who nominate them, U.S. Attorneys are accountable to the Attorney General. And while U.S. Attorneys are charged with making prosecutorial decisions, they are also duty bound to implement and further the Administration's and Department's priorities and policy decisions. Prosecutorial authority should be exercised by the Executive Branch in a unified manner,

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

The Attorney General and the Deputy Attorney General are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their offices effectively. In an organization as large as the Justice Department, U.S. Attorneys are removed or asked or encouraged to resign from time to time. However, in this Administration U.S. Attorneys are never — repeat, never — removed, or asked or encouraged to resign, in an effort to retaliate against them, or interfere with, or inappropriately influence a particular investigation, criminal prosecution, or civil case.

Turnover in the position of U.S. Attorney is not uncommon and should be expected, particularly after a U.S. Attorney's four-year term has expired. When a presidential election results in a change of administration, every U.S. Attorney is asked to resign so the new President can nominate a successor for confirmation by the Senate. Moreover, U.S. Attorneys do not necessarily stay in place even during an administration. For example, more than 40 percent of the U.S. Attorneys appointed at the beginning of the Bush Administration had left office by the end of 2006. Of the U.S. Attorneys whose resignations have been the subject of recent discussion, each one had served longer than four years prior to being asked to resign.

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

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

As stated above, the Administration has not sought to avoid the confirmation process in the Senate by appointing an interim U.S. Attorney and then refusing to move forward — in consultation with home-state Senators — on the selection, nomination, confirmation and appointment of a new U.S. Attorney. In every case where a vacancy occurs, the Administration is committed to having a Senate-confirmed U.S. Attorney. And the Administration's actions bear this out. In each instance, the President either has made a nomination, or the Administration is working to select candidates for nomination. The appointment of U.S. Attorneys by and with the advice and consent of the Senate is unquestionably the appointment method preferred by the Senate, and it is unquestionably the appointment method preferred by the Administration.

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

However, while that nomination process continues, the Department must have a leader in place to carry out the important work of these offices and to ensure continuity of operations. To ensure an effective and smooth transition during U.S. Attorney vacancies, the office of the U.S. Attorney must be filled on an interim basis, either under the Vacancy Reform Act ("VRA"), 5 U.S.C. § 3345(a)(1), when the First Assistant is selected to lead the office, or the Attorney General's appointment authority in 28 U.S.C. § 546 when another Department employee is chosen. Ensuring that the interim and permanent appointment process runs smoothly and effectively will be the focus of the Department's efforts to reach common ground with the Congress on this issue.

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

Ms. SÁNCHEZ. Thank you for your testimony.

I would now like to recognize myself for the first round of questioning.

Mr. Moschella, we have had now two briefings regarding the purported reasons for the requested resignations of the six U.S. attorneys that are behind you.

Could you please summarize for the Subcommittee the particular reasons with respect to each individual, Ms. Lam, Mr. McKay, Mr. Cummins, Mr. Bogden, Mr. Iglesias and Mr. Charlton, why they were asked to resign?

Mr. MOSCHELLA. I will, and I will try to do so quickly.

Ms. SÁNCHEZ. You have about 4 minutes to do so.

Mr. MOSCHELLA. I notice that two individuals are not here, and those individuals would have been in the management category——

Ms. SÁNCHEZ. We are interested solely in the individuals sitting behind you.

Mr. MOSCHELLA [continuing]. Just so the record is clear.

With regard to Carol Lam, a distinguished prosecutor and someone who did fulfill more than her 4-year term, there were two basic issues. It has been a priority of the Department of Justice and this Administration, both in violent crime and in immigration. In violent crime, Project Safe Neighborhoods, which is our landmark anti-gun program, has been talked about by the President, by the attorney general, in conferences, at U.S. attorneys meetings. And quite frankly, her gun prosecution numbers are at the bottom of the list. She only beat out Guam and the Virgin Islands in that area.

On immigration, it has been reported in the press after our briefings with the Senate Judiciary Committee that her numbers for a border district just didn't stack up. The President of the United States, this Administration, has made immigration reform a priority and those on the border, in these border districts, have a responsibility there and to the rest of the country to vigorously enforce those laws.

Ms. SÁNCHEZ. Mr. McKay?

Mr. MOSCHELLA. With regard to Mr. McKay, the department really had policy differences and were concerned with the manner in which he went about advocating particular policies and we will get into the details of information sharing, but he spent quite a considerable amount of time advocating for a particular system, basically advocating that the Justice Department give our good housekeeping seal of approval for this particular system, but we decided, because various jurisdictions around the country have different systems, that we would plug our pipe—one DOJ pipe in which we share with State and local governments—to those systems.

Ms. SÁNCHEZ. Mr. Cummins?

Mr. MOSCHELLA. I think Mr. Cummins' situation has been well-documented. His was not for performance-based reasons. I will just refer to, in the interest of time, the deputy attorney general's testimony a couple of weeks ago in the Senate.

Ms. SÁNCHEZ. We would like to get the information on the record here, if you don't mind.

Mr. MOSCHELLA. It may take a little bit longer than the minute and 35 seconds that I have, but Mr. Cummins was—the Administration asked Mr. Cummins to move on only after we knew that—you know, he had indicated he was not going to serve out the remainder of his term—a qualified individual who had served both as a prosecutor at main Justice and in his district, was coming back from Iraq after serving his country for a year in Mosul, not in the green zone, and prosecuting over 40 JAG-related cases there, was interested in a U.S. attorney position.

Mr. Griffin was considered for the other district in Arkansas earlier in his tenure, was interviewed. He had gone all the way through the process and likely would have been the candidate. He would have but for the fact that he took another position, he probably would have been the U.S. attorney in that other district. So it was clear that he was interested in a position and given the knowledge that Mr. Cummins was not likely to serve out the remainder of his term, because there had been at least one press report that I am aware of where that was indicated.

Ms. SÁNCHEZ. Okay. Mr. Bogden? I am sorry to hurry you along, but we have limited time here. If you could please get through the final three as briefly as you can. Mr. Bogden?

Mr. MOSCHELLA. Sure.

The general sense in the department about Mr. Bogden is that given the importance of the district in Las Vegas, there was no particular deficiency. There was an interest in seeing new energy and renewed vigor in that office, really taking it to the next level.

It is important to note that the reason why this process was undertaken was really to ensure that in the last 2 years of this Administration we were fielding the best team possible, and that is what the attorney general was doing when we—as we reviewed these.

Ms. SÁNCHEZ. Okay. Mr. Iglesias?

Mr. CANNON. Pardon me, Madam Chairman. We are going to have a large number of witnesses and many people here who want to participate. I don't mean to be a skunk to the party, but if we do the 5-minute rule, we are probably going to get through more quickly.

Ms. SÁNCHEZ. Okay.

Mr. WATT. Madam Chair, I would be delighted to yield the gentlelady my time for questioning and pass, because I think we need this information in the record.

Ms. SÁNCHEZ. I appreciate that, Mr. Watt. I understand that.

Mr. WATT. I yield the gentlelady my 5 minutes.

Ms. SÁNCHEZ. Okay. Thank you, Mr. Watt.

Mr. Moschella, please, as briefly as you can, Mr. Iglesias?

Mr. MOSCHELLA. Sure. And it is difficult to do it in such a short time frame. As you know, our briefing took about 40 or 50 minutes.

Ms. SÁNCHEZ. Right. I think you can distill that, though, to the heart of the matter fairly quickly.

Mr. MOSCHELLA. I will.

Ms. SÁNCHEZ. It is usually a one or two sentence reason.

Mr. MOSCHELLA. There was a general sense with regard to this district, again, Mr. Iglesias had served, as they all did, the entire 4-year term, that the district was in need of greater leadership. We

have had a discussion about the EARS Report, and the EARS Report does pick up some management issues and Mr. Iglesias had delegated to his first assistant the overall running of the office. And, quite frankly, U.S. attorneys are hired to run the office, not their first assistants.

Ms. SÁNCHEZ. Okay. And Mr. Charlton?

Mr. MOSCHELLA. I would put Mr. Charlton more in the policy category. Mr. Charlton had undertaken in his district a policy with regard to the taping of FBI interviews and set a policy in place there that had national ramifications. It did not go through the whole policy process. It has implications for prosecutions, for law enforcement agencies, the bureau's sister agencies at ATF, DEA, Marshals, ICE, CBP and the like, and that was just completely contrary to the way policy development occurs in the Department of Justice.

Furthermore, on the death penalty, we have a process in the Department of Justice. It is the one area that is non-delegable by the attorney general. And Mr. Charlton, in a particular case, was told and was authorized to seek in a particular case. He chose instead to continue to litigate after that long and exhaustive process, going from his career people to him to the criminal division, the Capital Case Unit, which comes to the recommendation of the deputy attorney general's office, and then the attorney general.

Ms. SÁNCHEZ. Thank you, Mr. Moschella.

I am going to reserve the balance of Mr. Watt's time and turn to my Ranking Member, Mr. Cannon, for questions.

Mr. CANNON. I don't think that you can reserve time. I think that Mr. Watt has to use it. You can return it to Mr. Watt and he can ask questions or yield back.

Mr. WATT. I would be happy to take it back and at an appropriate time re-yield it to you if that——

Mr. CANNON. I don't think that you can hold time. We may go a second round, which is perfectly appropriate.

I don't mean to be a stickler here, but we have lots of folks that have lots of questions and lots of witnesses.

Mr. WATT. When my turn comes, I can take it. I don't know that there is anything in the rules that prohibits me from taking the rest of my time.

Mr. CANNON. I think that the normal procedure would have been for me to take time. If you wanted to give——

Mr. WATT. If you had objected to my yielding it to the Chair at that moment, she might have had to take it in my time slot, but you didn't object.

Mr. CANNON. No, that is correct. I did not object because of our personal relationship, but once your time is granted, I think you lose that time for the round.

Mr. WATT. I don't think so.

Mr. CANNON. So if you want to take time—I think that is the rule. But this is—I don't mean to be a stickler here. If you want to take the time, fine. But I would like to——

Mr. WATT. Well, why are we talking about this if you don't mean to be a stickler?

Ms. SÁNCHEZ. We will take that issue—excuse me. We will take that issue under advisement.

In the meantime, Mr. Cannon, you will be recognized for your 5 minutes to ask questions.

Mr. CANNON. Thank you very much.

Thank you, Mr. Moschella, for being here.

I am one of your great admirers. I appreciated working with you here on the Committee where you served as parliamentarian and legal counsel to the Committee for several years. In fact, how long did you serve on this Committee?

Mr. MOSCHELLA. Since 1998 to 2003.

Mr. CANNON. Thank you.

Great service. We appreciate it on the Committee. And we appreciate your being back here. And I want to thank you for your very thoughtful statement in a difficult environment and give you a chance, first of all, to add anything that you would like in particular.

I know that you were a little bit rushed, but you did mention Lam's prosecution or low-end number of prosecutions on the firearms issues. Can you elaborate on that a little bit, please?

Mr. MOSCHELLA. Well, when the President ran for election, one of the cornerstone priorities that he had was preventing violent crime. We do so through our Project Safe Neighborhoods Program. Congress has appropriated millions and millions of dollars for this program over the last several years.

Our firearms prosecutions have gone up I believe over 70 percent over the time of this Administration and we expect the U.S. attorneys to follow in those priorities. The U.S. attorneys hear about those priorities at conferences, PSN conferences, at U.S. attorneys conferences, through memos and other forums. Indeed, at one of the PSN conferences, President Bush gave a videotaped presentation about the importance of prosecuting violent criminals.

Mr. CANNON. And how did Ms. Lam's district rank in terms of number of prosecutions during the relevant period?

Mr. MOSCHELLA. I don't have the numbers committed to memory, but she was 91st out of 93 districts.

Mr. CANNON. And the other districts were—do you recall what 92 and 93 were?

Mr. MOSCHELLA. Guam and the Virgin Islands.

Mr. CANNON. Places that don't have the kind of significant crime that we have in Southern California.

Mr. MOSCHELLA. And certainly don't have the significant resources of the Southern District of California.

Let me say, I think every U.S. attorney will say, "I have resource problems." And it is true. Congress in the past several years has not funded the President's request and we actually got a pretty good appropriation out of the joint resolution. So there are strains, and we have set specific priorities.

That said, these are high Administration priorities and we expect that those priorities be fulfilled.

Mr. CANNON. What happened to prosecutions of people smuggling people or drugs across the border in Ms. Lam's district?

Mr. MOSCHELLA. Well, at about the 2004, 2005 time frame, just at the time, coincidentally, that the Administration is really gearing up to make its case on the Hill for comprehensive immigration reform, the numbers in that district dropped precipitously, and it

was because of a policy instituted to focus on, and I know Ms. Lam will say, on higher priority prosecutions.

The truth is, on the border we need to prosecute these cases before they become interior problems. And I understand prioritizing, but we have made this a priority for the border, and to have both components of comprehensive immigration reform work, the guest worker program and enforcement, you need them both, and the Congress has put a lot of resources toward this effort. We have put more resources on the border. We can always use more, but the other border districts did substantially more.

Mr. CANNON. Since time is limited, let me just clarify. You are speaking in terms of Ms. Lam's priorities and what she thought was higher priority, and then you went on to talk about what we needed. When you talk about what we needed, you are talking about what the President has directed, what the attorney general has directed and what the Department of Justice was telling Ms. Lam to do. Is that not correct?

Mr. MOSCHELLA. That is right. And quite frankly, Members of Congress, some from the House, some from—at least one in the Senate, Senator Feinstein, wrote specifically about this issue, the concern that the San Diego area, which is an extremely important sector and port of entry, that it not become kind of a magnet for these coyotes and other smugglers.

Mr. CANNON. And did it become a magnet?

I see my time has expired.

Mr. CANNON. And I will just let the witness answer the question.

Ms. SÁNCHEZ. Will you please restate the question, Mr. Canno?

Mr. MOSCHELLA. Did it become a magnet?

Mr. CANNON. In other words, was there change in the patterns at the border?

Mr. MOSCHELLA. Well, I know that the border patrol and others in that area were very concerned about the numbers of apprehensions made and the number of prosecutions that were declined. So I don't have a specific figure for you. But when you lower the prosecutions, the deterrence level certainly will go down.

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

The Chair now recognizes the gentleman from Michigan, Mr. Conyers, for 5 minutes.

Mr. CONYERS. Thank you.

This is a little bit astounding. Here we have the greatest corruption prosecution in the end of the 20th century and 21st century by Ms. Lam, and you say she rates so poorly that we are going to have to improve her office by replacing her.

This past Sunday, Mr. Moschella, on interviews with the Justice Department officials, the New York Times reported that discussions began in October about removing U.S. attorneys and that after a list was identified, it was presented to Attorney General Gonzales and Deputy Attorney General McNulty. Is that correct?

Mr. MOSCHELLA. That is generally correct. There was a process, starting in October——

Mr. CONYERS. I don't need the details, but I think that your answer is basically yes.

Who inside the department was involved in the discussions to identify the U.S. attorneys to be removed?

Mr. MOSCHELLA. Well, the discussion occurred in really a collaborative way between the attorney general's office——

Mr. CONYERS. Yourself?

Mr. MOSCHELLA. No. I joined the deputy's office in October, on October 3, just about when this process began.

Mr. CONYERS. Kyle Sampson, chief of staff to the attorney general?

Mr. MOSCHELLA. The chief of staff was involved.

Mr. CONYERS. Yes. Mike Elston, chief of staff to Mr. McNulty?

Mr. MOSCHELLA. That is correct.

Mr. CONYERS. Monica Goodling, in the office of the attorney general?

Mr. MOSCHELLA. Yes, sir.

Mr. CONYERS. And who else?

Mr. MOSCHELLA. I would say that was probably the core group, and then at certain stages other folks——

Mr. CONYERS. What about Michael Battle?

Mr. MOSCHELLA. As I was saying, some may have been consulted to obtain either information or——

Mr. CONYERS. Yes. What about Michael Battle?

Mr. MOSCHELLA. Yes, he was consulted.

Mr. CONYERS. Okay. And he has since resigned as head of the executive office of the U.S. attorneys?

Mr. MOSCHELLA. I think he has another couple weeks on the job. But to the extent that the question somehow implies that he is being forced out, nothing could be further from the truth.

Mr. CONYERS. Well, I haven't implied anything.

Mr. MOSCHELLA. Not you. But it is implied. We have received many——

Mr. CONYERS. Look, we are not reviewing the media right now. I just am trying within this limited time to get some responses from you.

You were involved subsequently, though, in these discussions. Am I right?

Mr. MOSCHELLA. That is right. I was involved in the discussions.

Mr. CONYERS. Did you consult former DOJ officials, like James Comey?

Mr. MOSCHELLA. I don't believe Mr. Comey was consulted.

Mr. CONYERS. Well, was anyone at the White House consulted or did they offer any input in compiling the list of U.S. attorneys to be terminated, to the best of your knowledge?

Mr. MOSCHELLA. The list was complied at the Department of Justice.

Mr. CONYERS. Was the White House consulted?

Mr. MOSCHELLA. Well, eventually, because these are political appointees——

Mr. CONYERS. Sure.

Mr. MOSCHELLA [continuing]. Which is unremarkable, send a list to the White House, let them know——

Mr. CONYERS. I understand.

Mr. MOSCHELLA [continuing]. Our proposal and whether they agreed with it.

Mr. CONYERS. The answer is yes. Your answer is yes?

Mr. MOSCHELLA. Yes.

Mr. CONYERS. All right. I believe that is ordinary process.

Now, who did it go to in the White House?

Mr. MOSCHELLA. Our contact is the counsel's office.

Mr. CONYERS. Who is that?

Mr. MOSCHELLA. Specifically who in the counsel's office?

Mr. CONYERS. Well, is it true that it was the White House that asked that you find a position for Mr. Rove's former deputy, Mr. Timothy Griffin?

Mr. MOSCHELLA. If you mean you as in me, personally——

Mr. CONYERS. You, as in Mr. Moschella.

Mr. MOSCHELLA. No.

Mr. CONYERS. But what about the department?

Mr. MOSCHELLA. There was a point in time when, before Mr. Griffin had come back from Iraq, and knowing that he would be returning from his service in Iraq, that the counsel to the President communicated and asked is there——

Mr. CONYERS. So your answer is yes——

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

Were you finished with the answer to that question, Mr. Moschella?

Mr. MOSCHELLA. I don't know if we got it all. There was a communication about whether or not there was a place for Mr. Griffin and, obviously, he had already been considered for the other district in Arkansas, so there is an interest in allowing him to continue to serve his country in that capacity.

Mr. CONYERS. Thank you, Mr. Moschella.

Ms. SÁNCHEZ. Thank you, Mr. Conyers.

The Chair now recognizes the gentleman from Ohio, Mr. Jordan, for 5 minutes.

Mr. JORDAN. Thank you, Madam Chair.

Thank you, Mr. Moschella, for joining us today.

Before or after the department determined to dismiss this group of attorneys, did the department ever interfere with one of their districts' public corruptions cases?

Mr. MOSCHELLA. Absolutely not.

Mr. JORDAN. Never asked to speed any up? Never asked to dismiss a case?

Mr. MOSCHELLA. No.

Mr. JORDAN. Before or after the department determined to dismiss this group of attorneys, did the department support the attorneys' investigations and prosecutions of public corruption cases, whether against Republicans or Democrats or whomever?

Mr. MOSCHELLA. Absolutely. I mean, the attorney general, as I said, the attorney general and the director of the FBI have made this area a priority. Who else other than the FBI and the Justice Department can root out the kind of corruption that we want to see rooted out? And I think that the record—and Mr. Conyers mentioned Ms. Lam. I didn't say that Ms. Lam's performance in the things that she was doing was poor. The Cunningham case is something, as I said, we applaud, we herald, and if public officials are engaged in that kind of activity, they need to be brought to justice.

All I pointed out with regard to that district is that in the other priority areas, they were not being as vigorously pursued as we would have liked.

Mr. JORDAN. You had mentioned in your earlier testimony and you just referenced it right there, about Ms. Lam, that she was 91st out of 93 or 92nd out of 94 districts. For the other five attorneys, can you give me a summary of where they may have ranked in specific areas of prosecution cases relative to that, you know, to the 94 districts across the country?

Mr. MOSCHELLA. Well, in the other districts, we didn't have this same sort of difference on prosecution. We certainly had these other policy differences. For example, as I mentioned for Mr. Charlton, on death penalty or FBI taping and the like.

We certainly were aware, those who are considering these things, we certainly were aware that in Mr. McKay's district, that the sentencing—within—he had one of the—maybe one other district was lower, but one of the lowest within guidelines sentencing ranges, and we had—Deputy Attorney General Comey had sent out a memo I believe in 2004 to all U.S. attorneys indicating that we, the Justice Department, need to do our part to ensure that we get the maximum number of within guideline sentences.

So that was a consideration, certainly, in that district.

Mr. JORDAN. You also mentioned in your testimony relative to Mr. McKay, since you just brought him up there, that there were policy differences. Can you elaborate a little bit more on those policy differences?

Mr. MOSCHELLA. He was a vigorous and strong proponent of a particular information sharing system called LInX. He did a lot to promote it around the country and within the department, but we had a difference, and the manner in which we——

Mr. JORDAN. And it was fair to say that you communicated the difference that the leadership in the Department of Justice had with him, and yet he continued to promote that?

Mr. MOSCHELLA. Yes. He was always in contact, particularly on this issue, because the deputy attorney general's office is really driving information sharing policy. So he clearly knew the position of the department in this regard.

Mr. JORDAN. Appreciate it.

Madam Chair, I yield back the balance of my time.

Ms. SÁNCHEZ. Thank you.

The gentlewoman from California, Ms. Lofgren, is recognized for 5 minutes.

Pardon me, I skipped over a colleague.

The gentleman from Georgia, Mr. Johnson. My apologies. You are recognized for 5 minutes.

Mr. JOHNSON. Thank you.

Mr. Moschella, is it true—or I should say, isn't it a fact that several of the individuals in the group that drew up the termination list have close associations with the White House, in particular Kyle Sampson, who worked at the White House until coming to DOJ in 2003 and one of Monica Goodling's jobs at Department of Justice is to be a liaison to the White House. Is that correct?

Mr. MOSCHELLA. That is correct. But that is her job. I would hope that the White House liaison within the department had a close working relationship with the White House. It is kind of in the job description.

Mr. JOHNSON. Of course.

Mr. MOSCHELLA. And Kyle Sampson is the chief of staff to the attorney general. I assume that the chief of staff to the attorney general has some relationship.

Mr. JOHNSON. Is it possible, Mr. Moschella, that there are conversations that they or others had with you or had—that they had or other had—that you don't know about? Isn't that correct? There are possibilities that they had conversations that you don't know about? Isn't that correct?

Mr. MOSCHELLA. Well, Congressman, in preparation for this hearing, I did what I think is the appropriate amount of due diligence to collect the facts and so while anything is possible, I believe I know——

Mr. JOHNSON. It is possible, and you answered the question.

Were there meetings of the group within the Justice Department that compiled the termination list?

Mr. MOSCHELLA. Meetings? There were meetings.

Mr. JOHNSON. And were there memoranda or record of these meetings or e-mails or other communications on the subject that were generated?

Mr. MOSCHELLA. I don't know of any memoranda that was created. At some point, names were put on a list, but I don't know about the specific records.

Mr. JOHNSON. Who would have control of that list? Who would maintain control of that list?

Mr. MOSCHELLA. Well, if folks have a list in their——

Mr. JOHNSON. Specifically who?

Mr. MOSCHELLA. I don't know what information is in anyone's files. The information could be in any number of places.

Mr. JOHNSON. All right.

At some point, recommendations were made to Deputy Attorney General McNulty and Attorney General Gonzales about which U.S. attorneys to terminate. Did they agree with those that your group recommended or were there any changes to the list that they made?

Mr. MOSCHELLA. I wouldn't put it exactly the way you did, sir. This was not kind of a working group that made a recommendation to the DAG and the AG. It was more a collaborative process between——

Mr. JOHNSON. So they were involved, along with your group, in making this list?

Mr. MOSCHELLA. And there was a consultation process, and as they were looking at——

Mr. JOHNSON. They came to a consensus kind of agreement, is that what it was?

Mr. MOSCHELLA. That is right. It came to a consensus.

Mr. JOHNSON. All right, well, let me ask you this question then. Is there anything that evidences the agreement? Any written memoranda, any documentation that evidences that consensus agreement? Or is it just in someone's head?

Mr. MOSCHELLA. I don't have a specific document in mind, but——

Mr. JOHNSON. Well, are there some documents that you can identify for us that evidence the consensus agreement?

Mr. MOSCHELLA. No, but I assume that there is—that the names were on a piece of paper at some point. And the names are the seven that——

Mr. JOHNSON. Did you make a list of the names?

Mr. MOSCHELLA. I did not.

Mr. JOHNSON. Did you see anyone else make a list?

Mr. MOSCHELLA. I did not see anyone make a list.

Mr. JOHNSON. How many times did this group meet along with McNulty and Gonzales about this list?

Mr. MOSCHELLA. I don't know a specific number of times that the group met.

Mr. JOHNSON. Do you recall the dates that you all met?

Mr. MOSCHELLA. No. And as I said, I may have been involved in some of the meetings. I did not have a basis upon which to add substantively to the record of the U.S. attorney. So I may not have been in any meetings.

Prior to serving as the Pay DAG, I was the assistant attorney general for legislative affairs for three and a half years and so——

Mr. JOHNSON. Mr. Moschella, I am getting ready to run out of time and I want to ask you this question.

The Committee is very interested in further inquiry into this matter. Can I have your assurance that you will make available to the Committee the individuals I have asked you about and all memoranda, e-mails and other documents on this subject as was asked by myself and previous questioners? Can I get your commitment on that?

Mr. MOSCHELLA. Congressman, we have done everything we can to cooperate, including providing documents to the Committee, having the briefings. We will continue to work with you.

Mr. JOHNSON. Thank you, sir.

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

The Chair now recognizes that gentleman from Florida, Mr. Keller, for 5 minutes.

Mr. KELLER. Thank you, Madam Chairman.

Mr. Moschella, do U.S. attorneys serve at the pleasure of the President?

Mr. MOSCHELLA. Yes, sir.

Mr. KELLER. Because I only have 5 minutes, I am going to limit my questions to Ms. Lam's situation. That has been brought up quite a bit.

Did the Department of Justice headquarters ever discourage Ms. Lam from bringing the case against Duke Cunningham?

Mr. MOSCHELLA. No. In fact, I know that there was discussion about which district to send it to, and her district was favored over another district.

Mr. KELLER. Did the Department of Justice actually assist Ms. Lam in trying to help her obtain documents from Congress relating to the Duke Cunningham case?

Mr. MOSCHELLA. Yes, assistance has been provided in that regard.

Mr. KELLER. Let me be crystal clear. Did Ms. Lam's role in prosecuting Duke Cunningham have anything whatsoever with her being asked to resign?

Mr. MOSCHELLA. No, sir.

Mr. KELLER. Now, it is my understanding from your earlier testimony, the concerns that the attorney general had with her related to the prosecution of gun crimes and immigration enforcement. Is that correct?

Mr. MOSCHELLA. Yes, sir.

Mr. KELLER. Okay. And those concerns, in fact, actually predated the Duke Cunningham scandal coming to light. Isn't that correct?

Mr. MOSCHELLA. Yes. Well, I don't know exactly when Duke Cunningham——

Mr. KELLER. I will refresh your recollection. This is the story that broke the Duke Cunningham story wide open, published by San Diego Union Tribune June 12, 2005: "Lawmakers' Home Questioned." This was the beginning of the end, appropriately, for Mr. Cunningham.

I have letters here, letter after letter, over a year before that. February 2, 2004, Congressman Darrell Issa writing to Ms. Lam, complaining that she is not prosecuting alien smugglers. March 15, 2004, Ms. Lam responds to Congressman Issa. May 24, 2004, Will Moschella, on behalf of DOJ, responding to Mr. Issa, raising concerns about an illegal alien smuggler, Antonio Imparo Lopez not being prosecuted.

Does that refresh your recollection?

Mr. MOSCHELLA. It does.

Mr. KELLER. So, in fact, the concerns that were being raised, which ultimately led to her dismissal, were raised before we even knew about the Duke Cunningham scandal. Is that right?

Mr. MOSCHELLA. Well, I don't want to get——

Mr. KELLER. Before the public knew about it.

Mr. MOSCHELLA. Yes, those concerns existed. As I testified in the 2004-2005 time frame, when she specifically changed policy in the department, there was a precipitous drop in the number of immigration cases.

Mr. KELLER. Let me cut you off, because I have got to go with some more questions.

Did the Department of Justice ever share its concerns before asking her to resign, about the problem with gun violence prosecution and immigration enforcement prosecution?

Mr. MOSCHELLA. On the gun side, yes. I believe she had a conversation about it with Deputy Attorney General Comey. On the immigration side, I don't know specifically what was communicated. I know there was back and forth with regard to what was going on in her district.

But, that said, again, United States attorneys know what the priorities are and should be executing on those priorities.

Mr. KELLER. Let me again refresh your recollection. On April 6, 2006, Attorney General Gonzales testified before the full House Judiciary Committee, and I relayed to him some concerns I heard from border patrol agents, having spent a week with the border patrol in San Diego, about their complaints about there not being any prosecution of people who are smuggling aliens unless they commit a violent act against someone or bring 12 people with them.

And this specifically was my question to Attorney General Gonzales: "What if anything will you do to see that the U.S. attor-

ney in San Diego prosecutes those alien smugglers, at least those who have been repeatedly arrested by border patrol agents?"

Answer, by Gonzales: "I am aware of what you are talking about with respect to the San Diego situation, and we are looking into it. We are asking all U.S. attorneys, particularly those on our southern borders, to do more, quite frankly. We need to be doing more, and we are looking at the situation in San Diego, and we are directing that our U.S. attorneys do more, because you are right, if people are coming across the border repeatedly, particularly those who are coyotes and they are smugglers, whether criminals or felons, they ought to be prosecuted."

Now, that little dialogue between myself and the attorney general took place on national TV, on CSPAN.

Mr. MOSCHELLA. I was sitting behind him.

Mr. KELLER. You were sitting behind him. After that, did the attorney general or anyone from DOJ share with Ms. Lam the concerns that he had raised at the hearing relating to the prosecution of alien smugglers?

Mr. MOSCHELLA. I can't tell you if a transcript or something like that was sent to her. I don't know.

Mr. KELLER. You don't know? Okay.

Thank you. I will yield back the balance of my time.

Ms. SÁNCHEZ. Thank you.

The gentlewoman from California is recognized, Ms. Lofgren, for 5 minutes.

Ms. LOFGREN. Thank you, Madam Chairwoman.

The Department of Justice has praised the Cunningham corruption probe as really a lynchpin in the growing pursuit of public corruption cases and I believe at the time that former U.S. Attorney Carol Lam left the office, that probe had led to at least two more indictments and I think was still ongoing, based on press accounts.

I am concerned about the state of those investigations. The top FBI official in San Diego, according to the San Diego Union Tribune, was quoted as saying that Ms. Lam's dismissal would undermine multiple continuing investigations. And I realize that mid-last month several Members of Congress wrote to the department, suggesting that Ms. Lam be retained as outside counsel so that those corruption investigations would not be disrupted and would be completed.

Is the department intending to take that course of action?

Mr. MOSCHELLA. No. We see no reason to have outside counsel on this case. And let me say, I would be surprised if it were Ms. Lam's opinion that the prosecutors on the case were not able to fulfill the——

Ms. LOFGREN. Reclaiming my time, I am just quoting the top FBI official who expressed the concern that these investigations would be disrupted.

Mr. MOSCHELLA. I can say—let me say that that individual also used a very inflammatory word in one of the press articles and said that the decision was politics, and there is absolutely, positively no basis for it. No one is——

Ms. LOFGREN. I don't know the individual. I do know the FBI, and they tend not to be very political people. They are tough cops.

Mr. MOSCHELLA. My brother is an FBI agent. I respect their——

Ms. LOFGREN. And they are not tough cops?

Mr. MOSCHELLA. And they are. But let me tell you, that comment was absolutely irresponsible.

Ms. LOFGREN. Well, you can imagine, if you will, Mr. Moschella, that the impact of these firings has led to concern about the role of politics across the country.

Let me ask you this, and we will hear from the fired U.S. attorneys shortly on the alleged reasons for their termination, but would you agree with me and the CRS that although U.S. attorneys have in fact sometimes been dismissed in the past, the discharge of this many U.S. attorneys, I think it is eight so far, in this short a period of time is unprecedented?

Mr. MOSCHELLA. I don't know if it is unprecedented. But as I said before, what was going on at the department was a process to look at what we can do in the last 2 years of the Administration to push the policies and priorities of the department. Nothing more, nothing less.

In January, the attorney general directed that he get briefed on his policy and priority areas. He had set specific goals, specific metrics that we measure ourselves by, and we intend to fulfill our own goals in this regard.

Ms. LOFGREN. Let me ask you this. Is it true that at least with respect to the six U.S. attorneys that are here with us today, all received favorable performance reviews or EARS evaluations?

Mr. MOSCHELLA. No. And let me just say that has been talked about. EARS reports are not reviews of the U.S. attorneys themselves. The U.S. attorneys have two supervisors, the attorney general and the deputy attorney general. Neither——

Ms. LOFGREN. Have these reports been provided to the Committee?

Mr. MOSCHELLA. I believe they have.

Ms. LOFGREN. All right. Then I will review them in some detail.

We learned just today that Mr. Battle has apparently submitted his resignation sometime ago. Have you provided a copy of his resignation letter to the Committee or record of his resignation decision to his Committee?

Mr. MOSCHELLA. No.

Ms. LOFGREN. Could you do so?

Mr. MOSCHELLA. I will get back to the Committee, but let me just say, I saw Mike Battle yesterday and had a good laugh over this. Mike Battle had indicated to folks in the department that he was looking last year and folks have known about this for quite sometime.

Ms. LOFGREN. Well, if we could just get the documents, that would be very good.

Now, we are interested in the nature and extent of communications between the department and Members of Congress concerning any of the terminated U.S. attorneys. Can you provide us with communications from Members of Congress, on both sides of the aisle, in advance of the terminations of the U.S. attorneys?

Mr. MOSCHELLA. We will go back and see what—the only letters, really, that I know of, are the ones by Senator Feinstein and the ones referenced by Mr. Keller.

Ms. LOFGREN. Verbal communication would also be included, if you could.

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

The Chair now recognizes the gentleman from Florida, Mr. Feeney, for 5 minutes.

Mr. FEENEY. Thank you, Madam Chairman.

Mr. Moschella, thanks for being back with us.

There is one statement in your testimony that probably isn't technically correct. You say, like other high-ranking officials in the executive branch, you are referring to U.S. State attorneys, "They may be removed for any reason or no reason at all." That probably isn't exactly accurate, that you couldn't fire somebody because, for example, of their race or ethnicity. You couldn't fire somebody to obstruct justice.

Would it be correct that you can't fire even high-level officials for any reason whatsoever?

Mr. MOSCHELLA. As we said, everyone—there was a reason, whether folks agree or disagree with these, there was a reason.

Mr. FEENEY. I was just pointing out that, theoretically, there are certain——

Mr. MOSCHELLA. I have not done the article 2 analysis about whether or not there is any limitation on the President. I don't believe so, but there are all reasons in this case. It wouldn't be the right thing to do in the examples that you said.

Mr. FEENEY. I think what you really intended or ought to have said there is that these are not lifetime appointments, they serve at the pleasure of the President. And within reason, he has the ability to, just as he does to hire them, to fire them for anything that would be a legal reason.

Mr. MOSCHELLA. They are like the folks sitting behind you today. They are at-will employees. I sat there for almost 13 years.

Mr. FEENEY. Aside from the performance issues on some specific benchmarks that you mentioned in the Southern California case, you also point out that these are not just prosecutors, that they have managerial and policy responsibilities.

And so that, for example, you point out that the attorney general, at U.S. attorney conferences and through memos, even the President of the United States through a video, announces his priority policies and what can you do to State attorneys who are simply ignoring the attorney general and the President of the United States when it comes to management responsibilities and policy priorities? Other than firing, do you have any other discipline mechanisms?

Mr. MOSCHELLA. No, there isn't a way that you can garnish their—I don't believe you can garnish their wages, or something like that. I mean, they are the presidential-appointed, Senate-confirmed leader of that office, and I don't know how else we would communicate to them those priorities, other than the manner in which you state, the memos, conferences and the like.

Mr. FEENEY. I remember a great deal of criticism of the former secretary of defense and criticism of the President for not asking him to step down earlier. There was even criticism after he did step down. Recently, we have had people with the U.S. Army resign because of a situation at Walter Reed.

It seems as if the Administration is damned if they do and damned if they don't when it comes to replacing people that are not putting priorities on their policies. I can tell you, I for one have been strongly critical, not just of independent state of attorneys for lack of enforcement, for illegal immigration issues and violent crime, but of the Administration itself, and I am delighted to hear that no matter how successful in one area a State attorney is, that if they are not prosecuting illegal immigration offenses, and especially firearm offenses with respect to violence, that I personally am delighted that there is a signal sent to all State attorneys that these are priorities of the Administration and, personally, I want to congratulate you.

By the way, one thing that we haven't put formally in the record, Congressman Keller talked about his correspondence and Congressman Issa's, but it wasn't just Republicans complaining about lack of enforcement in Southern California. Senator Feinstein's letter on June 15, 2006 made very clear that the U.S. attorney's office for the Southern District of California may have some of the most restrictive prosecutorial guidelines nationwide for immigration cases, such that many border patrol agents end up not referring their cases.

I also want to stress the importance of vigorously prosecuting these types of cases. And she goes on to say that she is concerned that lax prosecution can endanger the lives of border patrol agents.

So Republicans and Democrats in Congress are urging the Administration to do a better job in Southern California. And as you said, you can't garnish wages. You really only have one remedy available to you, and I personally applaud you for using it. I hope everybody else along the border gets the message. By the way, I hope they will quit——

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

Mr. FEENEY [continuing]. Prosecuting border patrol agents, if I can add my two cents on that, too.

Ms. SÁNCHEZ. The gentleman from Massachusetts, Mr. Delahunt, is recognized for 5 minutes.

Mr. DELAHUNT. Thank you, Madam Chair.

Mr. Moschella, I am going to ask you to keep your responses as concise as possible because there is a series of questions I would like to pose to you.

I found it interesting that you used the word authorized the U.S. attorney to seek the death penalty. Does that mean in terms of your policy that if main Justice makes a decision to authorize the U.S. attorney to seek the death penalty, that that U.S. attorney must comply with that authorization? Is there any discretion at all?

Mr. MOSCHELLA. Yes. It is to seek.

Mr. DELAHUNT. Then it is a decision made in Washington. It is not made in the local jurisdiction?

Mr. MOSCHELLA. That is right. This is a non——

Mr. DELAHUNT. Thank you.

You know, you referred in very cursory terms to a more expanded version of why many of these individuals had been terminated. Were they given that information prior to the termination?

Mr. MOSCHELLA. No, sir.

Mr. DELAHUNT. Wouldn't it have been a better practice to extend that courtesy to them?

Mr. MOSCHELLA. As I said, in hindsight, it absolutely would have. I think that——

Mr. DELAHUNT. Thank you.

Mr. MOSCHELLA. Yes, sir.

Mr. DELAHUNT. You know, you mentioned that in response to a question by Congresswoman Lofgren, that I don't think that you really meant it, that it was unprecedented or that there had been precedents in terms of the eight dismissals within a matter of months.

Mr. MOSCHELLA. My only point is I have not gone back in past Administrations and done a——

Mr. DELAHUNT. To be perfectly candid, Mr. Moschella, and I do have respect for you, you know that, this has been a matter that has been raised prior, too, and you haven't gone back and done that kind of research?

Mr. MOSCHELLA. I have not.

Mr. DELAHUNT. There was a Senate hearing this morning. It is my understanding that during the course of that hearing, one of the individuals that is present here today, Mr. Cummins, testified before the Senate that he received a telephone call from Michael Alspin on or about February 20. Are you aware of that testimony?

Mr. MOSCHELLA. I am generally aware of it. I don't know that I caught it all. I caught some of it.

Mr. DELAHUNT. Okay. Well, according to my information, the former U.S. attorney testified that Mr. Alspin explained that the public perceived the Department of Justice as being reluctant to disseminate specific information regarding the U.S. attorneys' dismissals. But that if the dismissed U.S. attorneys continue to speak to the media, the Department of Justice would have to release information that would exacerbate the U.S. attorneys' situation.

Mr. Cummins further mentioned that Mr. Alspin suggested that it would be a bad idea for the dismissed U.S. attorneys to voluntarily testify in Congress. Are you familiar with that testimony by Mr. Cummins?

Mr. MOSCHELLA. I am not sure that that is what he said. In fact, after questioning by Senator Specter, he said that whatever transpired, he said I wouldn't make a good witness at a trial in this matter. He didn't have a clear recollection of specific words, and that it was his opinion that whatever it was, was friendly advice. And that is a quote. He said it was friendly advice.

Mr. DELAHUNT. Okay. Thank you, Mr. Moschella.

Would you have——

Mr. MOSCHELLA. Can I just say——

Mr. DELAHUNT. I don't have a lot of time.

Mr. MOSCHELLA. I will be very brief.

Mr. DELAHUNT. My time is very short.

Let me just pose one additional question, then. Would the Department of Justice make Mr. Alspin available to this Committee for purposes of inquiry into this matter?

Mr. MOSCHELLA. That is not a decision for me, but I will certainly take it back and get back to you as soon as we can.

Mr. DELAHUNT. Who is the decision for?

Mr. MOSCHELLA. I will consult with the new acting head of the Office of Legislative Affairs.

Mr. DELAHUNT. Well, I think that you have an increase in your pay grade. Would your recommendation be favorable that this Committee would have an opportunity to inquire of Mr. Alspin?

Mr. MOSCHELLA. I think Mr. Alspin would probably be happy to talk to you about that.

Mr. DELAHUNT. I thank you, and I yield back.

Ms. SÁNCHEZ. Thank you. Would——

Mr. MOSCHELLA. Madam Chairman, may I just—because I didn't get an opportunity to just make one point in that questioning by Mr. Delahunt.

I just want to say, as I said, we should have, in retrospect, told these U.S. attorneys the reasons. And the record is that we did not go out publicly and talk about these things. The record is that the press reported on it. There were inquiries by the Congress. We briefed the Senate. The deputy attorney general briefed the Senate in closed door sessions——

Ms. SÁNCHEZ. Mr. Moschella, will that be your policy in the future, moving forward, that you will explain to U.S. attorneys who you are asking to resign the reasons for their termination, prospectively?

Mr. MOSCHELLA. It seems to me the prudent course.

Ms. SÁNCHEZ. Thank you.

We have been advised by the House parliamentarian that once Mr. Watt's time began it could not be interrupted, and therefore that Mr. Watt's time for this round of questions has expired.

Is there any objection to Mr. Watt receiving 3 minutes of time now for questioning?

Mr. CANNON. Madam Chair, reserving the right to object, I would be pleased if Mr. Watt had 5 minutes to question.

Ms. SÁNCHEZ. Is there any objection to Mr. Watt being recognized for 5 minutes for this round of questioning?

Hearing none, Mr. Watt is recognized for 5 minutes.

Mr. WATT. I thank both the Chairman and the Ranking Member.

Mr. Moschella, this morning's New York Times published an article saying that former Federal prosecutor of Maryland, Thomas DiBiagio, was forced out in early 2005 because of political pressure stemming from public corruption investigations involving associates of the State governor, Mr. Ehrlich, our former colleague.

First, are you aware of efforts made by any prominent Maryland Republicans to pressure Mr. DiBiagio to back away from the inquiries about the Ehrlich administration?

Mr. MOSCHELLA. I am not.

Mr. WATT. Are you aware of any complaints made to the FBI by Mr. DiBiagio about this incident?

Mr. MOSCHELLA. I am not.

Mr. WATT. Now, when you say you are not aware of it, does that mean it is not the case, or you just don't have any personal knowledge of it?

Mr. MOSCHELLA. I am saying that I don't have personal knowledge. But——

Mr. WATT. Have you done anything to review these allegations?

Mr. MOSCHELLA. I have, in the last several hours since the story broke this morning.

Mr. WATT. And you haven't found any impropriety there, is that what you are saying?

Mr. MOSCHELLA. That is correct. And, in fact——

Mr. WATT. I am just trying to get to the bottom of this.

Mr. MOSCHELLA. But let me——

Mr. WATT. Did Mr. DiBiagio's investigation into whether associates of Governor Ehrlich had improperly funneled money from gambling interests to promote legalized slot machines in Maryland play any role in his dismissal?

Mr. MOSCHELLA. Absolutely not.

Mr. WATT. And you are saying that as a matter of fact, not just based on your personal knowledge? Were you involved in his dismissal?

Mr. MOSCHELLA. No. As I said, I was not in the deputy's office until October of last year. But I—what I want to——

Mr. WATT. Are you saying that is a statement of facts on behalf of the department, or are you saying it based on your knowledge?

Mr. MOSCHELLA. No, I am, because I—and this is what I wanted to explain—I spoke to 42-year career veteran David Margolis who is the person in charge of ethics matters in the department under this Administration and the Clinton administration. And he walked me through what occurred then.

Mr. WATT. Okay. Well, that is why I am just trying to make sure that there was no impropriety. Is it your testimony, then, that Mr. Ehrlich and no one else in his administration contacted the Department of Justice about Mr. DiBiagio's performance as U.S. attorney?

Mr. MOSCHELLA. In fact, I believe it is Mr. Margolis' recollection that they supported him in the U.S. attorney position.

Mr. WATT. Okay. And tell us, then—if you know, Mr. Moschella—what the circumstances under which Mr. DiBiagio was asked to leave.

Mr. MOSCHELLA. Thank you, Congressman.

As I said, I discussed this matter with David Margolis, who has the responsibility in the department for these matters. It came to his attention that there were inappropriate e-mails and a staff meeting initiated by Mr. DiBiagio in which he specifically called for public corruption cases within a specific time frame, indicating that he wanted to bring some prior to the election.

This was so egregious that the deputy attorney general at the time, Jim Comey, had to write him a letter saying, "You will not bring any public corruption cases without running it by me first."

Mr. WATT. So wait a minute, now. This seems entirely inconsistent with your prior testimony that this was totally unrelated to any public corruption investigation. Am I missing something here? Didn't you just testify that there was no connection?

Mr. MOSCHELLA. His being asked to remove had nothing to do with any public corruption case. What I am saying is he sent several e-mails——

Mr. WATT. But wasn't this before the election of Governor Ehrlich, and he was trying to get a prosecution done or charges brought before that election? And you are saying that an instruc-

tion from the Department of Justice to him not to pursue an investigation and charges before the election is not related?

Mr. MOSCHELLA. We didn't tell him not to pursue any specific case. In fact, I am happy to provide the Committee with the agenda for the staff meeting that he called.

And I just want to make this clear, after this just kind of outrageous kind of conduct occurred, David Margolis commissioned a specific review of him in which the evaluators found that the office was in disarray, poorly managed, had extremely poor morale.

This is something that is kind of well known in——

Mr. WATT. All coincidentally right after he said——

Ms. SÁNCHEZ. The time of the gentleman——

Mr. WATT [continuing]. "I want to pursue a prosecution before an election involving the governor of Maryland." That is all coincidental, I take it.

Mr. MOSCHELLA. I don't know.

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

Mr. CONYERS. I would request unanimous consent that Mr. Watt be extended an additional 2 minutes so that he can explore with Mr. Moschella the circumstances in this particular situation.

Ms. SÁNCHEZ. The request is for unanimous consent for Mr. Watt to continue with this line of questioning for 2 minutes. Is there any objection?

Hearing none, Mr. Watt you may continue.

Mr. WATT. I guess the question I am raising is, you have testified on the one hand that there is no connection, and then you have come right back around and testified that there is a connection because there was a specific letter that went out from the Justice Department saying you shall not put a time line on this, and then you say there is no connection?

Mr. MOSCHELLA. No, no, no.

Mr. WATT. It seems to me that the investigation should have been launched of the person who wrote that letter.

Mr. MOSCHELLA. No, no. There is no "this," as in a specific case. So, in other words, he was requesting from his staff, and I think that if you look at, the Baltimore Sun early examined this issue, the concern—and I can tell you that——

Mr. WATT. Was the e-mail related to this particular corruption investigation or it was a general e-mail?

Mr. MOSCHELLA. It was general.

Mr. WATT. Okay. And your response was a general response, related to no particular corruption investigation. Is that what you are saying?

Mr. MOSCHELLA. That is right.

Mr. WATT. Okay.

I yield back the balance of my time.

Ms. SÁNCHEZ. Thank you, Mr. Watt.

The gentleman from Arizona, Mr. Franks, is recognized for 5 minutes.

Mr. FRANKS. Madam Chairman, I have no questions for this witness. Thank you.

Ms. SÁNCHEZ. Mr. Moschella, thank you very much for your testimony.

If you could please stick close in case there are further questions.

We will now move to our second panel. Will the second panel of witnesses please be seated.

Mr. COHEN. Thank you, Madam Chair. I had a bill I had to handle, first one, passed.

But is there a chance Mr. Moschella could come back for just a minute?

Ms. SÁNCHEZ. Is there any objection to recalling Mr. Moschella so that Mr. Cohen may question him?

Hearing no objection, Mr. Moschella?

And, Mr. Cohen, the gentleman from Tennessee, is recognized for 5 minutes.

Mr. COHEN. Thank you, Madam Chairman, and I appreciate the Committee.

If these questions have been asked of you, sir, I apologize. But you have discussed Mr. Cummins, and at some point you had said that he had made it known that he wanted not to fill out his term. Did he make that known to you?

Mr. MOSCHELLA. No, sir.

Mr. COHEN. Did he make it known to anybody at the Department of Justice?

Mr. MOSCHELLA. What I have been told is that both because of some press reporting and some comments made to colleagues, that it was generally known that he would be looking to move on at some point, not serving out the full, you know, the second term, the full second term.

Mr. COHEN. What other situations does the Administration depend on press reports to take policy actions? Does the Administration regularly act on press reports or do they basically act on facts that they ascertain themselves?

Mr. MOSCHELLA. I didn't say that it was done solely on that. There was information that he had indicated, as I am told, by two colleagues, for example at the U.S. attorneys conference, that it wouldn't be—because of whatever particulars to his situation, he wouldn't be there for the entire second term.

Mr. COHEN. Did anybody pick up the phone and ask him if he wanted to resign?

Mr. MOSCHELLA. I don't believe so. I haven't been told that that happened.

Mr. COHEN. You said that you hired Mr. Griffin, that he had obviously served this country nobly in Mosul, and that he wanted to serve this country in another capacity, and that is the reason you hired him. Is that correct?

Mr. MOSCHELLA. Mr. Griffin had gone through the process for the other district in Arkansas and was one of four individuals considered, and as I think I have already testified, was most likely to be the person selected for that position. He had prosecutorial experience here in Washington and in Arkansas. He worked on the Project Safe Neighborhood Project for Mr. Cummins, but then he took another position, so he was not selected for the other district, and then after that served in Iraq.

Mr. COHEN. And you said after he came back from Iraq you wanted to give him this opportunity. Is that not correct, sir? I believe I heard that before I left.

Mr. MOSCHELLA. No, that is right.

Mr. COHEN. What are the other Affirmative Action Iraqi veteran programs that you have in the Department of Justice? Was this the entire Affirmative Action Iraqi veteran Department of Justice program, or do you have other programs for people returning from Iraq?

Mr. MOSCHELLA. Well, of course we have the veteran's preference laws which we institute through our personnel system, but this is not a normal personnel matter. This is a presidential-appointed, Senate-confirmed position.

Mr. COHEN. And if he had not been in Iraq, would you have still hired him?

Mr. MOSCHELLA. Pardon me?

Mr. COHEN. If he had not gone to Iraq, would you have still wanted him to be the U.S. attorney?

Mr. MOSCHELLA. As I said, before he went to Iraq, he was considered for another position and would likely have been selected but for the fact that he took another position.

Mr. COHEN. You are familiar with Deputy Attorney General Palm McNulty?

Mr. MOSCHELLA. I am.

Mr. COHEN. And isn't it true that at a Senate hearing that Mr. McNulty admitted that Mr. Griffin was not the best possible person for the job?

Mr. MOSCHELLA. I don't recall that to be his testimony?

Mr. COHEN. What do you recall as his testimony? Did he suggest anything about Mr. Cummins not being a good attorney general?

Mr. MOSCHELLA. No. He didn't suggest that Mr. Cummins would not——

Mr. COHEN. What did he say about Mr. Griffin?

Mr. MOSCHELLA. That Mr. Griffin was well qualified. Mr. Griffin had as much—I think Mr. Cummins would tell you he had as much prosecutorial experience, if not more, than when Mr. Cummins started in his position as U.S. attorney.

Mr. COHEN. And where was that prosecutorial experience?

Mr. MOSCHELLA. It was both here in Washington, in the criminal division, in the U.S. attorney's office, in Mr. Cummins' office, as an assistant United States attorney and then as a JAG lawyer.

Mr. COHEN. What role did Mr. Rove play in recommending him to the Department of Justice?

Mr. MOSCHELLA. I don't know that he played any role?

Mr. COHEN. Do you know if there is any correspondence or any e-mails from the White House or any person, Ms. Miers, Mr. Rove or anybody else, to the Department of Justice concerning either replacing Mr. Cummins or replacing him with Mr. Griffin?

Mr. MOSCHELLA. No. As I think the deputy attorney general briefed Members of the Senate, that there was a communication at some point from the counsel to the President to the department in anticipation of Mr. Griffin coming back from Iraq and seeing if there was a position within the department and that he had already been considered for a United States attorney position.

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

Mr. COHEN. May I ask one last question?

Ms. SÁNCHEZ. Does the gentleman ask unanimous consent for one last question?

Mr. COHEN. Unanimous consent, yes. Yes, ma'am.

Ms. SÁNCHEZ. Any objection?

Hearing none——

Mr. COHEN. I believe you talked about Mr. Alspin's memo and you said you didn't think it was an enhanced—that possibly it was an enhancement, as Mr. Cummins said. Is that correct? That it possibly could be an enhancement?

Mr. MOSCHELLA. What memo? I am confused.

Mr. COHEN. An escalation. I think that was the term Mr. Cummins used, that there could be an escalation of charges. You said that wasn't true.

Mr. MOSCHELLA. That is certainly not Mr. Alspin's recollection of the conversation. And before you got here, I testified in recalling Mr. Cummins' response to Senator Specter that he took it as friendly advice, and then others testified that they took it as more threatening. What I would say to the panel is that the person who was on the other end of the line took it as friendly advice and those who were not a party to the conversation may have taken it as more threatening.

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

Mr. COHEN. Thank you, Madam Chair.

Ms. SÁNCHEZ. Thank you.

Again, Mr. Moschella, we thank you for your testimony. If you could please stay close.

At this time, I would like to ask the second panel of witnesses to please be seated.

I am pleased to introduce our second panel of witnesses.

Our first witness, Ms. Carol Lam, served as a U.S. attorney for the Southern District of California from 2002 until February of 2007. She joined the United States Attorneys Office for the Southern District of California as an assistant U.S. attorney in 1986 where she was chief of the major fraud section. In 2000, she was appointed to be a judge of the San Diego Superior Court.

Our second witness, David Iglesias, was U.S. attorney for the District of New Mexico from October 2001 until the end of February 2007. Mr. Iglesias was a U.S. Navy JAG officer from 1985 to 1988. After leaving active duty in 1988, Mr. Iglesias continued his career in public service by serving as State assistant attorney general special prosecution. He is also a reserve captain in the Navy where he serves as staff judge advocate for Readiness Command Southwest.

Our third witness, Daniel G. Bogden, served as U.S. attorney for the District of Nevada from October 2001 to February 2007. Prior to that, he was chief of the Reno Division of the United States Attorneys Office, where he had worked since 1990. He also served on numerous task forces and Committees, including the Attorney General's Advisory Committees on Violent and Organized Crimes and Native American Issues and the executive board of the Southern Nevada High Intensity Drug Trafficking Area.

Our fourth witness, Paul Charlton, was U.S. attorney for the district of Arizona from 2001 to February of 2007. As U.S. attorney, Mr. Charlton served as chairman for the Border Subcommittee and chaired the Arizona Antiterrorism Advisory Committee. Prior to his

presidential appointment, he worked since 1991 as an assistant U.S. attorney in the District of Arizona.

Our fifth witness, H.E. "Bud" Cummins, was U.S. attorney for the Eastern District of Arkansas from 2001 until December of 2006. Prior to that, he was chief legal counsel for Governor Huckabee. He clerked for U.S. Magistrate John F. Forster, Jr. in the Eastern District of Arkansas and later clerked for the then chief judge of that district, Stephen Reasoner. He is currently working as a consultant for a bio-fuels company.

Our final witness on the panel, John McKay, served as a U.S. attorney for the Western District of Washington from October 2001 until January 2007. Prior to that, he was aide to Congressman Joel Pritchard. He served as special assistant to the director of the FBI while he was a White House fellow in 1989–1990 and as president of the Legal Services Corporation from 1997 to 2001. He also received in 2001 the Washington State Bar Association's Award of Merit, its highest honor.

I would like to extend to each of the witnesses my warm regards and appreciation for your cooperation with our subpoenas and for your presence here today.

Given the gravity of the issues that we are discussing today and your role in these hearings, and so there is no misunderstanding, we would like to ask each of you, as we did with Mr. Moschella, to take an oath before you begin your testimony. Does anybody object to doing so?

Thank you.

[Witnesses sworn.]

Ms. Lam, will you please proceed with your testimony?

TESTIMONY OF CAROL LAM, FORMER UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Ms. LAM. Thank you.

Good afternoon, Madam Chair and Members of the Subcommittee. My name is Carol Lam, and until recently I was the United States Attorney for the Southern District of California.

In the interest of conserving time, I will be making introductory remarks on behalf of all the former United States attorneys before you on the panel today, with whom I have had the great privilege of serving as a colleague.

From the following districts: Bud Cummins, Eastern District of Arkansas; Paul Charlton, District of Arizona; Daniel Bogden, District of Nevada; David Iglesias, District of New Mexico; and John McKay, Western District of Washington.

We thank the Committee and your Subcommittee for your courtesy in the manner in which we were subpoenaed to appear before you today and we will do our best to answer fully and completely any questions posed to us by Members.

Each of us is very appreciative of the President and our home State Senators and Representatives who entrusted us 5 years ago with appointments as United States attorneys. The men and women in the United States Attorneys Office, based in 94 Federal judicial districts throughout the country, have the great distinction of representing the United States in criminal and civil cases in Federal court.

They are public servants who carry voluminous caseloads and work tirelessly to protect the country from threats, both foreign and domestic. It was our privilege to lead them and to serve with our fellow United States attorneys around the country.

As United States attorneys, our job was to provide leadership in each of our districts to coordinate Federal law enforcement and to support the work of assistant United States attorneys as they prosecuted a wide variety of criminals, including drug traffickers, violent offenders and white-collar defendants.

As the first United States attorneys appointed after the terrible events of September 11, 2001, we took seriously the commitment of the President and the attorney general to lead our districts in the fight against terrorism. We not only prosecuted terrorism related cases but also led our law enforcement partners at the Federal, State and local levels in preventing and disrupting potential terrorist attacks.

Like many of our United States attorney colleagues across this country, we focused our efforts on international and interstate crime, including the investigation and prosecution of drug traffickers, human traffickers, violent criminals and organized crime figures. We also prosecuted, among others, fraudulent corporations and their executives, criminal aliens, alien smugglers, tax cheats, computer hackers and child pornographers.

Every United States attorney knows that he or she is a political appointee, but also recognizes that the importance of supporting and defending the Constitution in a fair and impartial manner is important and devoid of politics. Prosecutorial discretion is an important part of a United States attorney's responsibilities. The prosecution of individual cases must be based on justice, fairness and compassion, not political ideology or partisan politics. We believe that the public we served and protected deserves nothing less.

Toward that end, we also believe that within the many prosecutorial priorities established by the Department of Justice, we have the obligation to pursue those priorities by deploying our office resources in the manner that best and most efficiently addresses the needs of our districts. As presidential appointees in particular geographic districts, it was our responsibility to inform the Department of Justice about the unique characteristics of our districts. All of us were long-time if not lifelong residents of the districts in which we served.

Some of us had had many years of experience as assistant U.S. attorneys and each of us knew the histories of our courts, our agencies and our offices. We viewed it as a part of our duties to engage in discussion about these priorities with our colleagues and superiors at the Justice Department. When we had new ideas or differing opinions, we assumed that such thoughts would always be welcomed by the Department and could be freely and openly debated within the halls of that great institution.

Recently, each of us was asked by Department of Justice officials to resign our posts. Each of us was fully aware that we served at the pleasure of the President and that we could be removed for any or no reason. In most of our cases, we were given little or no information about the reason for the request for our resignations.

This hearing is not a forum to engage in speculation and we decline to speculate about those reasons. We have every confidence that the excellent career attorneys in our offices will continue to serve as aggressive, independent advocates of the best interests of the people of the United States, and we continue to be grateful for having had the opportunity to serve and to have represented the United States during challenging and difficult times for our country.

While the members of this panel all agree with the views that I have just expressed, we will be responding individually to the Committee's questions and those answers will be based on our own individual situations and circumstances. The members of the panel regret the circumstances that have brought us here to testify today. We hope those circumstances do not in any way call into question the good work of the United States attorney's offices we led and the independence of the career prosecutors who staff them.

And while it is never easy to leave a position one cares deeply about, we leave with no regrets because we served well and upheld the best traditions of the Department of Justice.

Thank you, and we welcome the questions of the Chair and Members of the Committee.

Ms. SÁNCHEZ. Thank you, Ms. Lam.

I know that no other U.S. attorney has prepared written testimony. However, if witnesses would like to take a few minutes to respond to Mr. Moschella's testimony, you may do so now.

If nobody wishes to have that opportunity, we can just move straight into questioning. Is there any interest in responding to Mr. Moschella's testimony?

Mr. Iglesias?

Mr. IGLESIAS. May I have a minute to review my notes?

Ms. SÁNCHEZ. Absolutely.

Mr. Bogden?

TESTIMONY OF DANIEL BOGDEN, FORMER UNITED STATES ATTORNEY FOR THE DISTRICT OF NEVADA

Mr. BOGDEN. I thank the Committee, and I am also thankful for this subpoena, because after going through a very traumatic and emotional time for me since December 7 when I got the call concerning what was happening with my position, I finally today got an explanation as to why I was asked to step down.

After 16½ years in the Department of Justice, knowing full well that my career with the Department of Justice now is essentially over, I relish the 5½ years I had as United States attorney, but it is not a whole lot of solace when I realize that the reason why I was asked to step down is so new blood could be put in my position.

My only question and concern of the department is what happened to the old blood? Our district has achieved, I think I have been an outstanding leader for the district, and I think we have accomplished the things that we needed to accomplish. We followed through on what the attorney general wanted us to do as far as our priorities and our mission, and I have been very proud of the way that my staff and my office was able to achieve under some very, very difficult conditions.

I know that as a presidential appointee, I serve at the pleasure of the President, and I have been asked to step down and I can accept that and I will have no regrets in that regard.

Ms. SÁNCHEZ. Thank you.

Mr. Iglesias?

TESTIMONY OF DAVID IGLESIAS, FORMER UNITED STATES ATTORNEY FOR THE DISTRICT OF NEW MEXICO

Mr. IGLESIAS. Yes. Madam Chair, I would like to just briefly—I promise this will not take anywhere near 5 minutes.

Leadership. 2001, my office prosecuted 5,508 criminal defendants. 2006, 6,212 for an increase of 13 percent. Immigration cases went from 2,146 in 2001 to 2006 3,825, for a 78 percent increase. Increase in FTEs was only 7 percent. Cases handled per assistant U.S. attorney went from 76 to 100 during that 5-year period.

62 percent of what my office does is immigration related, 24 percent drugs, 4 percent firearms. We have a 95 percent conviction rate.

These numbers show improvement. Improvement does not happen in a vacuum. I respectfully challenge Mr. Moschella's characterization of my 5 years as somehow lacking in leadership.

That is all I have.

Ms. SÁNCHEZ. Thank you, Mr. Iglesias.

Mr. Charlton?

TESTIMONY OF PAUL CHARLTON, FORMER UNITED STATES ATTORNEY FOR THE DISTRICT OF ARIZONA

Mr. CHARLTON. Thank you, Madam Chair, Mr. Conyers, Ranking Member.

I would like to address very briefly the idea that Mr. Moschella spoke about relating to the FBI's taping policy, because there is in my mind no small amount of irony in the Department of Justice having chosen that as the reason for my having been asked to resign.

I would underscore that I understand full well that I serve at the pleasure of the President and am grateful for having had that opportunity. But as that is one of the reasons they discussed, I wish to make these points.

First, the United States attorney, unlike many United States attorneys in the country, in Arizona, is responsible for prosecuting violent crime offenses that take place in Indian country, on the Indian reservations, Arizona's 21 Indian reservations, in fact the largest Indian reservation in the Nation, the Navaho Indian Reservation, is in Arizona. That means we are essentially the district attorneys for those tribes. We prosecute murders, kidnappings, rapes, child molestation cases.

In child molestation cases in particular, because I am a career prosecutor before I had to leave in January. In child molestation cases in particular, the best evidence that you often receive are the words that come from the molesters' mouths, because there is often times very little if any physical evidence of the molestation.

Now, with that as a general umbrella, it is important to know that the FBI has a policy that discourages the taping or recording of confessions. In the District of Arizona, we have lost, we will lose

and continue to lose cases, have pled down, will plead down and will continue to plead down child molestation cases so long as that policy is in place.

It is the responsibility of the chief law enforcement officer in every district to ask law enforcement agencies to provide the best evidence so that you can go forward with a reasonable likelihood of success of a conviction. I exercised that discretion when in February of 2006 I asked all Federal law enforcement agencies to, where appropriate, obtain taped statements of any confessions that were made by suspects so that in particular in Indian country we could better do our job in prosecuting those cases.

After having issued that letter and asking Federal law enforcement to implement that program, in March of 2006 I received a call from the deputy attorney general's office telling me that the deputy attorney general and the director of the FBI were displeased with that letter and that they wanted me to revoke that policy.

I indicated that I felt so strongly about this matter, I referred them to the fact that we were losing cases or pleading down cases because of the inability to obtain taped confession. I told them that I would resign before I would withdraw this pleading—before I would withdraw this program.

The deputy attorney general's office asked me not to resign over this issue, but instead to submit a request for a pilot program citing examples of cases that had been pled down or lost because of the FBI's failure to tape confessions, and in March of 2006, I did so. I was promised by the deputy attorney general's office that there would be an expeditious review of this matter and that it would be reviewed favorably.

I left the job with the United States attorney on January 30, 2007. I have not received anything from the Department of Justice with regards to my request regarding that pilot program.

That is all I have, Madam Chairman.

Ms. SÁNCHEZ. Thank you, Mr. Charlton.

Mr. Cummins?

TESTIMONY OF H.E. (BUD) CUMMINS, FORMER UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF ARKANSAS

Mr. CUMMINS. Thank you, Madam Chairman.

I would just echo what has been said. It was an honor for me to serve as a United States attorney. I am very appreciative of the President for giving me—for entrusting me with that responsibility. I served purely at the pleasure of the President and they were entitled to take that job back any time they wanted, and I frankly was not entitled to carp about it, and I didn't and neither did any of my colleagues up here.

I would just try to remind everyone, I have a sense that there are people sitting in certain circles, which happen to be the team I think I am on, that are saying "don't these guys know that they serve at the pleasure of the President? Why are they complaining?" And the fact is, we didn't complain. I don't believe any of us complained.

This became a dispute between Congress and the Administration, and the first time I thought we were entitled to speak was

when, frankly, it became horribly mismanaged in the way that they defended their actions to Congress, because the statements that were made were just not consistent with the facts in my case at first, and after they—and I will say the deputy attorney general straightened the facts out in my case. And I could have walked away and maybe still be in the inner circle of my team.

But only at that point did I start becoming aware of the circumstances surrounding these other individuals, and because I was pretty intimately familiar with what had gone on and the history of the thing, I frankly was very uncomfortable that they were being mistreated and that the statements that were being made were being offered up to explain other motivations.

And I didn't think that was fair to them, because I know these people as former colleagues to be very good at what they do. That is not to say they had a stranglehold on their job or that they thought they would be there forever or that they were going to, you know, whine if somebody decided to make a change. But they are entitled to not have somebody offer up pretextual reasons, if that was what occurred.

I don't know the truth about why these decisions were made in their cases. But, frankly, the only reason I continue to be involved in this or outspoken at all is, you know, a great concern on my part, and I think many of you share it, that people are suggesting that these people were doing something wrong that they were never told about and that is why their jobs were taken away, and they probably don't deserve to be treated like that.

Ms. SÁNCHEZ. Thank you, Mr. Cummins. I appreciate your testimony.

Mr. McKay?

TESTIMONY OF JOHN McKAY, FORMER UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF WASHINGTON

Mr. MCKAY. Thank you, Madam Chair.

I did not seek this forum when I was asked to resign. I did resign. I resigned quietly. I didn't speak out publicly until the department came forward in sworn testimony and declared that my service and by inference the work of the men and women whom I led in Seattle and in Tacoma suffered from performance-related problems. I felt it was my duty then to step forward and to contest that and I appear here of course under subpoena, along with the rest of the individuals before you.

It was my privilege to serve as United States attorney. And I know that others can serve in that role and that they will serve at the pleasure of the President. I am very pleased to hear the department change its views regarding my service and the work of the men and women in my office and to indicate that it is no longer a performance issue but a difference in policy. That is a change from prior position of the Department of Justice.

What Mr. Moschella just testified to regarding information sharing, I would simply say this: all of my work on the program called LInX was fully authorized by the deputy attorney general of the United States in a memorandum dated April 2004. At that time, the deputy attorney general declared the Seattle Washington State LInX program to be the pilot project of the Department of Justice.

That memorandum remained in force and effect past the time that I was ordered to resign. I was appointed to chair a group of 15 United States attorneys. By then, chairman of the AGAC, the Attorney General's Advisory Committee, Paul McNulty, he chose me to lead the information-sharing work of the United States attorneys.

Deputy Attorney General McNulty, while serving as United States attorney in Virginia, himself led a LInX information-sharing system of which there were five growing to seven and which will I believe continue to grow.

The EARS evaluation, Madam Chairman, that was referenced by Mr. Moschella, in fact all of them relate, I believe, to the leadership of the individual United States attorneys and to their fulfillment or nonfulfillment of Department of Justice priorities.

I know that in my case, it indicated that my leadership was outstanding in every way that I am aware of in that report.

Finally, as to LInX, the department did leave out the fact that in January of this year, I was awarded the Department of the Navy's highest civilian award, the Distinguished Public Service Award for Innovation in Law Enforcement Leadership. That award was given to me because of the LInX program.

Thank you very much.

[The joint prepared statement of former United States Attorneys follows:]

JOINT PREPARED STATEMENT OF FORMER UNITED STATES ATTORNEYS

Good afternoon Madame Chair, and members of the subcommittee. My name is Carol Lam. Until recently, I was the United States Attorney for the Southern District of California. In the interest of conserving time, I will be making introductory remarks on behalf of all the former United States Attorneys before you on the panel today, with whom I had the great privilege of serving as a colleague, from the following districts: Bud Cummins, Eastern District of Arkansas; Paul Charlton, District of Arizona; Daniel Bogden, District of Nevada; David Iglesias, District of New Mexico; and John McKay,Western District of Washington. We thank the Committee and the Subcommittee for your courtesy in the manner in which we were subpoenaed to appear before you today, and will do our best to answer fully and completely any questions posed to us by Members.

Each of us is very appreciative of the President and our home state Senators and Representatives who entrusted us five years ago with appointments as United States Attorneys. The men and women in the United States Attorney's Offices in 94 federal judicial districts throughout the country have the great distinction of representing the United States in criminal and civil cases in federal court. They are public servants who carry voluminous case loads and work tirelessly to protect the country from threats both foreign and domestic. It was our privilege to lead them and to serve with our fellow United States Attorneys around the country.

As United States Attorneys, our job was to provide leadership in each of our districts, to coordinate federal law enforcement, and to support the work of Assistant United States Attorneys as they prosecuted a wide variety of criminals, including drug traffickers, violent offenders and white collar defendants. We did that with great success. As the first United States Attorneys appointed after the terrible events of September 11, 2001, we took seriously the commitment of the President and the Attorney General to lead our districts in the fight against terrorism. We not only prosecuted terrorism-related cases, but also led our law enforcement partners at the federal, state and local levels in preventing and disrupting potential terrorist attacks. We did that with great success.

Like many of our United States Attorney colleagues across this country, we focused our efforts on international and interstate crime, including the investigation and prosecution of drug traffickers, human traffickers, violent criminals and organized crime figures. We also prosecuted, among others, fraudulent corporations and their executives, criminal aliens, alien smugglers, tax cheats, computer hackers, and child pornographers.

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Toward that end, we also believed that within the many prosecutorial priorities established by the Department of Justice, we had the obligation to pursue those priorities by deploying our office resources in the manner that best and most efficiently addressed the needs of our districts. As Presidential appointees in particular geographic districts, it was our responsibility to inform the Department of Justice about the unique characteristics of our districts. All of us were longtime, if not lifelong, residents of the districts in which we served. Some of us had many years of experience as Assistant U.S. Attorneys, and each of us knew the histories of our courts, our agencies, and our offices. We viewed it as a part of our duties to engage in discussion about these priorities with our colleagues and superiors at the Justice Department. When we had new ideas or differing opinions, we assumed that such thoughts would always be welcomed by the Department and could be freely and openly debated within the halls of that great institution.

Recently, each of us was asked by Department of Justice officials to resign our posts. Each of us was fully aware that we served at the pleasure of the President, and that we could be removed for any or no reason. In most of our cases, we were given little or no information about the reason for the request for our resignations. This hearing is not a forum to engage in speculation, and we decline to speculate about the reasons. We have every confidence that the excellent career attorneys in our offices will continue to serve as aggressive, independent advocates of the best interests of the people of the United States. We continue to be grateful for having had the opportunity to serve and to have represented the United States during challenging and difficult times for our country.

While the members of this panel all agree with the views I have just expressed, we will be responding individually to the Committee's questions, and those answers will be based on our own individual situations and circumstances.

The members of the panel regret the circumstances that have brought us here to testify today. We hope those circumstances do not in any way call into question the good work of the United States Attorneys Offices we led and the independence of the career prosecutors who staff them. And while it is never easy to leave a position one cares deeply about, we leave with no regrets, because we served well and upheld the best traditions of the Department of Justice.

We welcome the questions of the Chair and Members of the Committee. Thank you.

Daniel Bogden, *Las Vegas, Nevada*
David Iglesias, *Albuquerque, New Mexico*
Paul Charlton, *Phoenix, Arizona*
Carol Lam, *San Diego, California*
Bud Cummins, *Little Rock, Arizona*
John McKay, *Seattle, Washington*

Ms. SÁNCHEZ. Thank you, Mr. McKay.

I have been advised that we have votes coming up on the House floor shortly. There will be two votes. We will begin the questioning—I will begin by recognizing myself first. But when in fact they do call votes, we will have to stop and take a short recess until Members reconvene and as quickly as we can get Members to return, we will continue.

I would like to begin by recognizing myself for questioning.

Mr. Iglesias, can you tell me briefly how you came to leave your position as a U.S. attorney?

Mr. IGLESIAS. How much time do I have to answer that question?

Ms. SÁNCHEZ. We have got about 5 minutes, sir. You are going to have to be very brief.

Mr. IGLESIAS. Succinctly, until today I didn't know what the official reason was.

On the 7th of December last year, I was doing some Navy duty for a couple of days in Newport, Rhode Island. I was flying back. I took a call from Mike Battle, the director of the executive office. I hadn't talked to Mike for a while and wondered why he was calling. I figured it would be a very good call or a very bad call. And my instincts were correct.

He told me that the Administration wanted to go a different way and I was expected to tender my resignation by the end of January, and I said, "Mike," because I considered Mike to be a friend, I still do. He is a decent guy. I said, "What is going on here? I have received absolutely no warning there was a problem. Is there a problem? What is going on?"

He goes, "Look, Dave, I don't think I want to know. All I know is this came from on high."

So I was stunned and I told him that I would probably have to ask for some more time. In fact, I asked Deputy Attorney General McNulty for a 1-month extension until I could find another job and he granted that request.

Ms. SÁNCHEZ. I am just going to interrupt you and jump in quickly, because I would like to move along in the testimony.

You have been quoted in the newspapers as expressing concern that your termination was political and that you were appalled by two phone calls you received from Members of Congress a few months before your dismissal. Can you briefly summarize for us those concerns?

Mr. IGLESIAS. Yes, ma'am.

On or about the 16th of October, while I was in Washington, D.C., on DOJ business, I received a call from Congresswoman Heather Wilson from New Mexico. I called her right back and she said she had heard lots about sealed indictments and she says, "What can you tell me about these sealed indictments?"

Well, asking a Federal prosecutor about sealed indictments is like asking a research physicist about nuclear drop codes or launch codes. It is verboten. So I did not answer her question. I was evasive, nonresponsive, and I told her we sometimes did it for juvenile cases or national security cases and I could tell that she was disappointed by my answer. And she says, "Well, I guess I will have to take your word for it."

Approximately 2 weeks later I received a call at home from Senator Pete Domenici. I had never received a call from Senator Domenici at home while I was a United States attorney. Initially it was his chief of staff, Steve Bell, who said, "Hey, Dave, the senator wants to talk to you. You know, we are receiving some complaints about you."

And I said, "Oh, okay." And he goes, "Will you talk to the Senator?" I said, "Absolutely."

He handed the phone over to the senator and Senator Domenici wanted to talk to me about these corruption matters, corruption cases. These were widely reported in the local media. And he wanted to know if they would be filed before November. And I gave an answer to the effect I didn't think so. And he said, "Well, I am very sorry to hear that," and the line went dead. The telephone line went dead.

So I thought to myself, did he just hang up on me? He didn't call back, I didn't call back, but I had a sick feeling in the pit of my stomach that something very bad had just happened. And within 6 weeks, I got the phone call from Mike Battle indicating that it was time for me to move on.

Ms. SÁNCHEZ. Why do you believe that the November deadline was important? What was your sense after receiving those two phone calls? What caused that sick feeling in the pit of your stomach?

Mr. IGLESIAS. My sense was that they expected me to take action on these widely reported corruption matters and I needed to do it immediately.

The public corruption—you have to understand that my office has successfully completed the most—the biggest corruption case in New Mexico history. We successfully convicted two State treasurers and a couple of other guys for public corruption. That retrial had ended in September, and the State was full of rumors that there were more pending matters and it became the focus of the attack ads from both Patricia Madrid, who was challenging Congresswoman Heather Wilson.

I knew anything I said publicly could be used in an attack ad. I distinctly remembered John Ashcroft sitting me in his office in 2001 and saying, "When you come to the Justice Department, politics stay at the front door. You do not engage in politics, David."

I said, "Yes, sir."

So after I got those two phone calls, one asking about sealed indictments, the other asking if I was going to file anything before November, and the unprecedented nature of getting those phone calls, I had the distinct impression that I was to take action before November.

Ms. SÁNCHEZ. Thank you.

Mr. Iglesias, just this past weekend, Senator Domenici sent out a press conference claiming that he had complained about the U.S. attorney's office performance, particularly on immigration issues. What is your response to that, briefly?

Mr. IGLESIAS. That is news to me. I had never heard from the Justice Department of any complaints by any Member of Congress.

Ms. SÁNCHEZ. Thank you.

I now would like to recognize the gentleman from Utah, Mr. Cannon, for 5 minutes.

Mr. CANNON. Thank you, Madam Chair.

Ms. Lam, I would like to let you know I watched your testimony in the Senate. I think you are very bright and very tough. I asked a number of questions to Mr. Moschella about your work, largely just to point out the differences between you. I don't think there is any question but that there are differences. How those sort of sort themselves out on a national level is something else.

But I just wanted to let you know that those are not questions to hurt your character or your reputation, which I think you have much enhanced in this process, although I did find it interesting that you pointed out in your testimony here that you decline to speculate as to the reason you—and the other U.S. attorneys declined to speculate as to the reasons for dismissal. And yet it seems to me that we have just heard Mr. Iglesias speculate, pardon me,

ad nauseam, about what he guesses are the reasons for his dismissal.

Let me read to all of you a statement from the U.S. attorney's manual. All of this comes out of section 1 8.010. "All congressional staff or Member contacts with the USAO's, including letters, phone calls or visits of any other means, must be reported promptly to the United States attorney.

Ms. Lam, did you report the letters that you received from Representative Issa and Senator Feinstein?

Ms. LAM. Well, in fact I think those letters actually were not directed to me in particular, but actually to the attorney general. And Senator Feinstein, I may have received a copy of one. But there may have been one letter early on that came to me and I did convey that to the department.

Mr. CANNON. And Mr. McKay, did you report on your conversations with Mr. Hastings's staff?

Mr. MCKAY. Yes, I will. I received a telephone call from.

Mr. CANNON. No, no, no. Did you report that conversation with Congressman Hastings's staff? Did you report that to the U.S. attorney general's office?

Mr. MCKAY. To the main Justice? No, I did not.

Mr. CANNON. Why not? Not important?

Mr. MCKAY. No, it was important, but I called in my first assistant and criminal chief and reviewed the telephone call from Congressman Hastings's chief of staff to me following the 2004 governor's election. And we all three concluded that I had stopped the caller from crossing the line into lobbying or attempting to influence me.

Mr. CANNON. So in other words, you mean you kept him from going across the boundary which would have made it important enough to report?

Mr. MCKAY. That was our conclusion, yes.

Mr. CANNON. Mr. Iglesias, did you report the contacts from Ms. Wilson or Mr. Domenici?

Mr. IGLESIAS. No, sir.

Mr. CANNON. Why not? Were they also unimportant, like Mr. McKay has just pointed out?

Mr. IGLESIAS. They were very important. They were very important to my career. Mr. Domenici was a mentor and a friend. Heather Wilson was a friend. I campaigned with her in 1998. I felt terribly conflicted about having to report it. I eventually did.

Mr. CANNON. When?

Mr. IGLESIAS. In late February I reported it. Not to the Justice Department, but I made—I started talking to the media about being contacted by two Members of Congress.

Mr. CANNON. Oh, wait a minute. No, no. You started talking to the media and you call that reporting?

Mr. IGLESIAS. No, sir. That is what you just said.

Mr. CANNON. What did you say? You said that you reported it later. When did you report it?

Mr. IGLESIAS. I did not report it to the Justice Department.

Mr. CANNON. But you said earlier that you reported it——

Mr. IGLESIAS. To the media.

Mr. CANNON. You mean you reported it to the media, meaning you used that as your mechanism for communicating with the Department of Justice?

Mr. IGLESIAS. That is correct.

Mr. CANNON. Is that appropriate?

Mr. IGLESIAS. I think that is your job, sir.

Mr. CANNON. No, no, no. You were a U.S. attorney. Was that an appropriate action?

Mr. IGLESIAS. Not anymore.

Mr. CANNON. You are not a U.S. attorney anymore.

Mr. IGLESIAS. I am a private citizen, sir.

Mr. CANNON. Were you a U.S. attorney when you announced that? When you went to the press?

Mr. IGLESIAS. No, sir. I said two Members of Congress. I did not identify them until, in public, today.

Mr. CANNON. Were you a U.S. attorney when you said you had been contacted?

Mr. IGLESIAS. Yes, sir. I was.

Mr. CANNON. Did you in that press conference talk about upcoming or public corruption actions that would be coming soon?

Mr. IGLESIAS. My last press conference was my last day on the job as a United States attorney and there were questions about pending corruption matters. I indicated that I expected there to be a public comment sometime soon.

Mr. CANNON. Indicating that the public corruption case would be handed down?

Mr. IGLESIAS. I can't speculate as to what the local media thought about the comments.

Mr. CANNON. Well, it got reported. The local media said, "As the investigation of the kickback scheme reportedly involving construction of Albuquerque's Metro Court and several other buildings, a corruption case rumored to dwarf the Vigil and Montoya cases, Iglesias said he expected indictments to come up "very soon."

"But as he prepared for a news conference today in which he is expected to focus on a defense of his tenure, Iglesias said those indictments would not come under his watch."

Did you make those two comments?

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

Mr. CANNON. Madam Chair, I know we are going to votes, but are we going to have another set of questions, or at least maybe a couple of sets?

Ms. SÁNCHEZ. We may have a second round of questions.

Mr. CANNON. I think the rule allows me 5 minutes for each witness, so I will just waive that.

Ms. SÁNCHEZ. Why don't you go ahead and answer the last question and after that answer, we will take a short recess in order for Members to walk across the Capitol to vote.

Mr. CANNON. And that question was, did you say those things that I have quoted to you to the press.

Mr. IGLESIAS. I don't recall using the word indictment. I did say that there would be some public announcements as to the questions involving the alleged corruption matters.

And by the way it is Vigil, not Vigil. It is Vigil.

Ms. SÁNCHEZ. Okay. Thank you.

The Committee will stand in recess while Members go to the Capitol to vote. As soon as we can get Members to return here after the last vote, we will reconvene the hearing.

[Recess.]

Ms. SÁNCHEZ. The Subcommittee will be called to order.

Before we left for votes, we had begun the first round of questioning. I believe Mr. Cannon from Utah had finished his questioning.

And I will now recognize the gentleman from Michigan, Mr. Conyers, for 5 minutes.

Mr. CONYERS. Thank you, Madam Subcommittee Chair.

I would like to turn to Mr. McKay for just a moment.

Mr. John McKay, I have been impressed listening to you today and this morning, as a steadfast and professional lawyer. Do you know of anything in your performance as U.S. attorney or were you advised of anything in your performance that would justify a performance-related termination?

Mr. MCKAY. No, Mr. Chairman.

Mr. CONYERS. And, of course, it goes without saying that, if nobody was told why they were being discharged to begin with, that leaves you totally up in the air. This is a colossal admission of maladministration on the part of the Department of Justice and just happening not to tell anybody why they were being terminated, because you serve at the President's pleasure. That is quite inadequate to me.

In fact, the New York Times reported on March 1st of this year that you received, Mr. McKay, a positive performance evaluation just 1 year ago, in which you were found to be an effective, well-regarded, and capable leader. Is that essentially what that article said?

Mr. MCKAY. I believe that is correct, Mr. Chairman. I did receive, I think, the final evaluation, which are called EARS evaluations for our office, was finished on September 22nd of 2006.

Mr. CONYERS. Now, referring to Mr. Moschella's stated reason for your dismissal, I understand that you were praised by the FBI special agent-in-charge, Laura Laughlin, for your work in promoting information-sharing, and called it one of your greatest contributions to law enforcement.

Do you remember that? And is it correct?

Mr. MCKAY. I do, and it is correct.

Mr. CONYERS. In addition, sir, I understand that the chief judge in your district, the Honorable Chief Judge Robert Lasnik, stated, "This is unanimous among the judges: John McKay was a superb U.S. attorney. And for the Justice Department to suggest otherwise is just not fair. By every measure, the performance of his office improved during his tenure."

Had you been aware of those comments made about you?

Mr. MCKAY. I read them in the paper, Mr. Chairman, and I was grateful on behalf of the hard-working men and women of my office who really earned those accolades.

Mr. CONYERS. Now, particularly in light of the absence of any other reasonable explanation for your termination, I was disturbed by a report from the *Seattle Times,* dated February 16, 2000, which I will ask unanimous consent to enter into the record at this time.

Ms. SÁNCHEZ. Without objection, so ordered.

Mr. CONYERS. The report states, in part, "One of the most persistent rumors in Seattle legal circles is that the Justice Department forced McKay, a Republican, to resign to appease Washington State Republicans angry over the 2004 governor's race. Some believe McKay's dismissal was retribution for his failure to convene a Federal grand jury to investigate allegations of vote fraud in the race."

Now, is it correct that it was your determination, in your office, not to convene such a grand jury?

Mr. MCKAY. Yes, that is correct.

Mr. CONYERS. And what do you make of the *Seattle Times* story itself, in general?

Mr. MCKAY. Well, I would say, Mr. Chairman, that it is very true that the controversy surrounding the 2004 governor's election was one that had a lot of public debate. I was aware that I was receiving criticism for not proceeding with a criminal investigation. And, frankly, it didn't matter to me what people thought. Like my colleagues, we work on evidence, and there was no evidence of voter fraud or election fraud. And, therefore, we took nothing to the grand jury.

Mr. CONYERS. Thank you. This article went on to report that there were some in Washington State who were upset about that, including a lobbyist for the Building Industry Association of Washington, who said that he had urged President Bush to fire you as a result.

I understand that, earlier today, you testified in the Senate about a call that you received from someone on behalf of a Congressman concerning the 2004 governor's race. Who was that call from?

Mr. MCKAY. That call was from the then-chief of staff of U.S. Representative Doc Hastings, Ed Cassidy.

Mr. CONYERS. Please explain when that call was made to you and what transpired during the call, please.

Mr. MCKAY. Mr. Chairman, I received a telephone call in the weeks following the 2004 governor's election. It would have been in late 2004, early 2005. He telephoned me and asked for information about any action that my office was taking on the election, again, a very controversial matter.

I related to him the information that was publicly available at the time, which was that the Seattle division of the Federal Bureau of Investigation was taking any information that any citizen had about election fraud or election crime and, in fact, that my office, in consultation with the voting rights section, had done the same, so that anyone with information should report it to the bureau.

That was all I told him, and he then began to advance the conversation, and I cut him off.

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

Mr. CONYERS. Thank you for your testimony.

Ms. SÁNCHEZ. Thank you, Mr. Conyers.

The Chair now recognizes the gentleman from Ohio, Mr. Jordan, for 5 minutes.

Mr. JORDAN. Thank you. Thank you, Madam Chair.

I want to direct my comments to Mr. McKay, who was just speaking. In the testimony that Ms. Lam read for all of you, she indicated that, you know, everyone understands you serve at the discretion of the President, his pleasure, that you can be removed for any reason.

Of course, it would have been nice if you would have been given a reason. I think Mr. Moschella's point was well-taken. When you think about how this was done, it could have certainly been handled better, and I do sympathize with you in that regard.

Nevertheless, there were reasons given by the department and, in your case, specifically, too, I think they talked about sentencing guidelines and policy differences.

I am just going to, in respect of the time we have, focus on the policy differences, because tell me if I am right. And maybe this is me reading too much into it, but it seems to me this scenario was something like this. You had an idea that you thought made sense. The folks at the main office didn't maybe—weren't as enthused about it, maybe the way to say it. And you advocated strongly for it, maybe even after they said that, you know, this was not a direction we were going to go.

I can respect that; I think my time in the general assembly in Ohio, the governor of my same party and I differed on policy decisions all the time. I can remember specifically having him yell at me on the phone and hang up. Of course, the main difference is, the governor can't get—he can't get rid of me. Thank goodness. He would have if he could have, but he couldn't.

So I understand the situation. I appreciate people who advocate strongly for what they believe in. But is that a fair assessment of what took place in the policy differences reason that was given by the department for your being not—or for you being let go?

Mr. MCKAY. Well, let me say, I never asked for an explanation——

Mr. JORDAN. I understand.

Mr. MCKAY [continuing]. Of anyone from the Department of Justice. I came forward only when it was stated that there were performance issues in my office, which is now apparently not the position of the Department of Justice.

On the issue of information-sharing, I was the chairman of the information-sharing committee of the United States attorneys. It was my job to speak out on information-sharing. And I did that.

And, no, I was never advised that the Department of Justice wanted to go in a different direction until they told me that I was going in a different direction.

Mr. JORDAN. Not at all?

Mr. MCKAY. Not at all.

Mr. JORDAN. Specifically with this, what is it called, this particular system, called the—did you call it the LInX system? I don't remember.

Mr. MCKAY. Yes, Law Enforcement Information Exchange, which was a Department of Justice-sanctioned pilot program in Washington State, of which I was the leader.

Mr. JORDAN. Is that system still in place? Is it being used by the Department of Justice in certain jurisdictions around the country?

Mr. MCKAY. It is being used at 160 police agencies in the State of Washington.

Mr. JORDAN. Relative to the U.S. attorney's district, is it being used——

Mr. MCKAY. Yes, sir.

Mr. JORDAN. In how many of the 93 districts is it being used?

Mr. MCKAY. I believe in five locations the pilot programs are still running, and it is being expanded to, I believe, seven, one in the Washington capital region, and one in the Los Angeles area.

Mr. JORDAN. Well, then explain to me then why the department felt you were too—I mean, I guess I am not seeing the connection there.

Mr. MCKAY. Well, I wouldn't try to speculate on the connection, and I think you should ask the Department of Justice, because they never explained it to me, Congressman, and I am just being forthright about that.

Mr. JORDAN. Talk to me, then, about the second one, the sentencing guidelines. You were not meeting those criteria that the department had specified that you needed to—you know, goals that you needed to get to.

Mr. MCKAY. Thank you. You know, it is very interesting now, today, for the first time, hearing that their differences with me were policy reasons, but I would say, even as to policy reasons, one would expect that they would have raised that policy issue with me or my office. And this is the first time I have heard from anyone at the Department of Justice about issues regarding about sentencings and sentencing ranges.

I would point out, Congressman, that what they are referring to is sentences imposed by United States district judges, which fall inside or outside of the sentencing ranges. That has nothing to do with the policy positions of my office. Those are sentences imposed by judges in the Western District of Washington.

They had no differences with me, to my knowledge, on cases brought, the types of indictments brought by my office. In fact, I think the conclusion of their own evaluation team was exactly the opposite.

Mr. JORDAN. And how many of those decisions that you referenced did you appeal?

Mr. MCKAY. Congressman, we are only allowed to appeal with the approval of the Justice Department, and I couldn't tell you the number that were appealed, but all appeals are approved by the solicitor general at Main Justice, not by our offices.

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

The Chair now recognizes the gentleman from Georgia, Mr. Johnson, for 5 minutes.

Mr. JOHNSON. Thank you, Madam Chair.

Ms. Lam, when Mr. Moschella testified, he stated that there were three ways that equated to performance issues with U.S. attorneys that underlied their resignation request, and those were policy priorities and management. And he said, for you, that you failed in terms of your priorities.

Specifically, he said, on immigration prosecutions, you come from a border district, and your numbers, in his words, don't stack up. And your office came in 91 out of 93 districts, but isn't it a fact

that, during the last 2 months that data was available, which would be June and July of 2006, that the Southern California judicial district ranks second in the number of immigration prosecutions? Isn't that a fact?

Ms. LAM. I think that may be true, and that may be referring particularly to alien smuggling offenses. And we have to distinguish between criminal aliens and alien smuggling.

Mr. JOHNSON. And isn't it a fact that, in 2005, 97.7 percent of the immigration cases referred to the Southern California U.S. attorney's office were prosecuted?

Ms. LAM. I couldn't tell you the figure. I am sorry.

Mr. JOHNSON. Well, those are the figures that I have here, and I don't think that there is any problem with the veracity of those figures.

And he also cited that your priorities as to violent crime—he mentioned the anti-gun program and said that your prosecutions were at the bottom of the list. But isn't it a fact that, in 2004, the last year that available data is available to us, that your office ranked ninth out of 94 judicial districts in the country in the percentage of ATF cases referred that were prosecuted?

Ms. LAM. Again, I am not familiar with those particular statistics. I am sorry, Congressman, but I will say this: My concern was making sure that gun prosecutions in the Southern District of California were being handled responsibly.

Project Safe Neighborhood is an important initiative. It was being handled responsibly, because it is a Federal and State initiative. And the gun prosecutions in our district were being handled extremely responsibly by the D.A.'s office. There was only one D.A.'s office in San Diego County, and they were handling those gun prosecutions very, very well. There were no complaints from State and local officials.

Mr. JOHNSON. Okay, thank you. And now your office has been involved and gained notoriety, did it not, in the prosecution of former Congressman Randy "Duke" Cunningham?

Ms. LAM. Yes, sir.

Mr. JOHNSON. And he entered a plea of guilty and received a sentence equating to about 8 years——

Ms. LAM. That is correct.

Mr. JOHNSON [continuing]. If I recall correctly, and then there was an ongoing investigation related to that corruption probe, is that correct?

Ms. LAM. That is correct.

Mr. JOHNSON. Do you surmise that your forced resignation would have anything to do with that investigation?

Ms. LAM. Well, as I indicated in my opening statement, I am not here to surmise, Congressman.

Mr. JOHNSON. Well, thank you. I appreciate your professionalism, and I guess it is up for someone up here on this panel to make the summarizations of what may have occurred.

But the same thing seems to have happened, Mr. Charlton, in your situation, where they said Mr.—the gentleman who testified, Mr. Moschella, said that you fell down, in terms of policy.

And he mentioned specifically the taping of the FBI interviews, and he said that that seemed to go against DOJ policy. And I guess

he didn't understand exactly why you felt like you needed taped interviews of confessions and admissions from suspects in child molestation, as well as other cases, so that you could help create a better track record, as far as your successful prosecutions go.

But yet, at the same time, it appears that you were involved in a public corruption investigation, as well, having to do with an investigation of Congressman Rick Renzi of Arizona. Is that correct?

Mr. CHARLTON. Congressman Johnson, were I still the United States attorney, my response would be, it is our policy to neither confirm nor deny where there is an ongoing investigation of any individual. And I think, with all due respect and intended respect, it is probably the most appropriate thing for me to do, is to respond in the same way to that question, sir.

Mr. JOHNSON. Well, let me just——

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

Mr. JOHNSON. Thank you.

Ms. SÁNCHEZ. Thank you.

The Chair now recognizes Mr. Keller, the gentleman from Florida, for 5 minutes.

Mr. KELLER. Thank you, Madam Chairwoman.

And, Ms. Lam, let me ask you a few questions. You are a Bush appointee?

Ms. LAM. Yes, sir.

Mr. KELLER. And did you serve out your full 4-year term of your appointment as U.S. attorney?

Ms. LAM. Yes, sir, the first 4-year term, yes.

Mr. KELLER. And you serve at the pleasure of the President, and you can be removed for any reason or no reason at all, is that correct?

Ms. LAM. Yes, sir.

Mr. KELLER. Okay. Do you have any evidence whatsoever that your role in prosecuting Duke Cunningham is the reason you were asked to resign?

Ms. LAM. I was not looking for evidence; I don't have any indication one way or the other.

Mr. KELLER. I know you weren't looking for it, but do you have any evidence, that you have at all, that you were asked to resign——

Ms. LAM. No, sir.

Mr. KELLER. Okay.

Well, let me just say a few things, and I want to be fair to you. And your office is to be commended for successfully prosecuting that case. And you and the career prosecutors deserve a lot of credit for your work. If you never did anything the rest of your life, you will go down in the books as having a monumental achievement.

Did the Department of Justice headquarters ever discourage you from bringing the case against Congressman Cunningham?

Ms. LAM. No.

Mr. KELLER. In fact, didn't the Department of Justice assist your office in trying to attain documents from Congress in the Cunningham case?

Ms. LAM. In the Cunningham case? I am not sure if that was true in the Cunningham case. It could be; I am not sure.

Mr. KELLER. Okay. Now, in your testimony, you said you were given little or no information about the reason for the request for your resignation. Is that right?

Ms. LAM. That is correct.

Mr. KELLER. And I assume you got the same call that the others have referenced on December the 7th of 2006 from Mike Battle, telling you that you are going to be asked to resign?

Ms. LAM. Yes.

Mr. KELLER. And at that time, he gave you no reasons?

Ms. LAM. That is right.

Mr. KELLER. Okay. Did you ask him for any reasons?

Ms. LAM. Yes.

Mr. KELLER. And what did he say?

Ms. LAM. He said, "I don't know."

Mr. KELLER. Thank you.

You heard earlier from Mr. Moschella that he believes the Department of Justice talked to you regarding concerns that they had relating to the prosecution for gun crimes. Did you recall ever speaking to anyone from the Department of Justice regarding any concerns they had relating to your prosecutions for gun-related crimes?

Ms. LAM. I spoke to Jim Comey when he came out to visit our office, I believe in 2003. It may have been 2004, but I think it was 2003.

Mr. KELLER. Okay. Did you ever have any conversations with anyone from the Department of Justice regarding any concerns that they may have had relating to the need to have more prosecutions for alien smuggling?

Ms. LAM. I had a conversation with the other southwest border U.S. attorneys and the current deputy attorney general about our need for more resources to prosecute immigration along the border.

Mr. KELLER. Okay. Were you, in fact, aware prior to being asked to resign that Border Patrol agents, and Members of Congress from both parties, and the attorney general himself had raised concerns that, in their opinion, you weren't doing enough to prosecute alien smugglers?

Ms. LAM. I did not hear from the Department of Justice about the testimony you referenced today from the attorney general. I knew that there were concerns by the Border Patrol union, although I was in constant contact with Border Patrol management, which disagreed in large part with the union's position.

Mr. KELLER. Okay. You recall back in February 2nd of 2004 receiving a letter from Darrell Issa to you, concerning the need to prosecute more alien smugglers, particularly someone named Antonio Amparo-Lopez?

Ms. LAM. Yes.

Mr. KELLER. And then you replied to him a month later, on March 15, 2004, essentially saying that you have referred this matter to the Department of Justice?

Ms. LAM. That is our requirement, yes.

Mr. KELLER. Okay. Were you aware back in September 23 of 2005 that 19 Members of Congress had sent a letter to President Bush regarding concerns they had relating to the need for more prosecutions in your area of alien smugglers?

Ms. LAM. I was aware of that letter, yes.

Mr. KELLER. Okay. I think you briefly mentioned this, but when I went to San Diego in January of 2006, I talked to Border Patrol agents who were concerned about the need for more prosecutions. And I brought that up with Attorney General Gonzales. You have already had my question and answer to him.

Is your testimony that, after that hearing, when he gave that, nobody from DOJ followed up with you to talk about the need to step it up, in terms of prosecuting more?

Ms. LAM. No.

Mr. KELLER. Okay. One final thing, some folks on the other side have suggested that maybe you should be appointed as outside counsel to help with Cunningham-related cases or other corruption probe cases. And I understand you already have a pretty good job in the private sector. Are you seeking to be outside counsel for those cases?

Ms. LAM. No, that request was made without my knowledge and without consultation with me.

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

Mr. KELLER. Thank you.

Ms. SÁNCHEZ. The Chair now recognizes the gentlewoman from California, Ms. Lofgren, for 5 minutes.

Ms. LOFGREN. Thank you, Madam Chair.

And before going into my questions, I would like to ask unanimous consent to insert in the record a letter from Senator Dianne Feinstein to the attorney general, along with the response that she received from Will Moschella, on behalf of the Department of Justice.

Ms. SÁNCHEZ. Without objection, so ordered.

[The material referred to follows:]

DIANNE FEINSTEIN
CALIFORNIA

COMMITTEE ON APPROPRIATIONS
COMMITTEE ON ENERGY AND NATURAL RESOURCES
COMMITTEE ON THE JUDICIARY
COMMITTEE ON RULES AND ADMINISTRATION
SELECT COMMITTEE ON INTELLIGENCE

United States Senate
WASHINGTON, DC 20510-0504
http://feinstein.senate.gov

June 15, 2006

Honorable Alberto Gonzales
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Gonzales:

During our meeting last week you asked if I had any concerns regarding the U.S. Attorneys in California. I want to follow up on that point and raise the issue of immigration related prosecutions in Southern California.

It has come to my attention that despite high apprehensions rates by Border Patrol agents along California's border with Mexico, prosecutions by the U.S. Attorney's Office Southern District of California appear to lag behind. A concern voiced by Border Patrol agents is that low prosecution rates have a demoralizing effect on the men and women patrolling our Nation's borders.

It is my understanding that the U.S. Attorney's Office Southern District of California may have some of the most restrictive prosecutorial guidelines nationwide for immigration cases, such that many Border Patrol agents end up not referring their cases. While I appreciate the possibility that this office could be overwhelmed with immigration related cases; I also want to stress the importance of vigorously prosecuting these types of cases so that California isn't viewed as an easy entry point for alien smugglers because there is no fear of prosecution if caught. I am concerned that lax prosecution can endanger the lives of Border Patrol agents, particularly if highly organized and violent smugglers move their operations to the area.

Therefore, I would appreciate responses to the following issues:

- Please provide me with an update, over a 5 year period of time, on the numbers of immigration related cases accepted and prosecuted by the

U.S. Attorney Southern District of California, particularly convictions under sections 1324 (alien smuggling), 1325 (improper entry by an alien), and 1326 (illegal re-entry after deportation) of the U.S. Code.

- What are your guidelines for the U.S. Attorney's Office Southern District of California? How do these guidelines differ from other border sectors nationwide?

By way of example, based on numbers provided to my office by the Bureau of Customs and Border Protection and the U.S. Sentencing Commission, in FY05 Border Patrol agents apprehended 182,908 aliens along the border between the U.S. and Mexico. Yet in 2005, the U.S. Attorney's office in Southern California convicted only 387 aliens for alien smuggling and 262 aliens for illegal re-entry after deportation. When looking at the rates of conviction from 2003 to 2005, the numbers of convictions fall by nearly half.

So I am concerned about these low numbers and I would like to know what steps can be taken to ensure that immigration violators are vigorously prosecuted. I appreciate your timely address of this issue and I look forward to working with you to ensure that our immigration laws are fully implemented and enforced.

Sincerely,

Dianne Feinstein
U.S. Senator

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 23, 2006

The Honorable Dianne Feinstein
United States Senator
Washington, D.C. 20510

Dear Senator Feinstein:

This is in response to your letter dated June 15, 2006, to the Attorney General regarding the issue of immigration-related prosecutions in the Southern District of California. We apologize for any inconvenience our delay in responding may have caused you.

Attached please find the information you requested regarding the number of criminal immigration prosecutions in the Southern District of California. You also requested intake guidelines for the Southern District of California United States Attorney's Office. The details of any such prosecution or intake guidelines would not be appropriate for public release because the more criminals know of such guidelines, the more they will conform their conduct to avoid prosecution.

Please know that immigration enforcement is critically important to the Department and to the United States Attorney's Office in the Southern District of California. That office is presently committing fully half of its Assistant United States Attorneys to prosecute criminal immigration cases.

The immigration prosecution philosophy of the Southern District focuses on deterrence by directing its resources and efforts against the worst immigration offenders and by bringing felony cases against such defendants that will result in longer sentences. For example, although the number of immigration defendants who received prison sentences of between 1-12 months fell from 896 in 2004 to 338 in 2005, the number of immigration defendants who received sentences between 37-60 months rose from 116 to 246, and the number of immigration defendants who received sentences greater than 60 months rose from 21 to 77.

Prosecutions for alien smuggling in the Southern District under 8 U.S.C. sec. 1324 are rising sharply in Fiscal Year 2006. As of March 2006, the halfway point in the fiscal year, there were 342 alien smuggling cases filed in that jurisdiction. This compares favorably with the 484 alien smuggling prosecutions brought there during the entirety of Fiscal Year 2005.

The effort to obtain higher sentences for the immigration violators who present the greatest threat to the community also results in more cases going to trial and, consequently, the expenditure of more attorney time. In FY 2004, the Southern District tried at least 37 criminal immigration cases; in FY 2005, the District more than doubled that number and tried over 80 criminal immigration cases.

The Southern District has also devoted substantial resources to investigating and prosecuting border corruption cases which pose a serious threat to both national security and continuing immigration violations. For example, in the past 12 months, the district has investigated and prosecuted seven corrupt Border Patrol agents and Customs and Border Patrol officers who were working with alien smuggling organizations. These investigations and prosecutions typically have time-consuming financial and electronic surveillance components.

Finally, the United States Attorneys' Offices nationwide have been vigorously prosecuting alien smuggling. Data on alien smuggling prosecutions from the Executive Office for United States Attorneys' database shows that these cases have risen steadily during the last three years. In Fiscal Year 2003, there were 2,015 alien smuggling cases filed under 8 U.S.C. sec. 1324. In Fiscal Year 2004, there were 2,451 such cases, and in Fiscal Year 2005, there were 2,682.

Additionally, the Departments of Justice and Homeland Security recently announced additional resources to enhance the enforcement of immigration laws and border security along the Southwest Border. A copy of the press release is enclosed.

We appreciate your interest in this matter. Please do not hesitate to contact the Department of Justice if we can be of assistance in other matters.

Sincerely,

William E. Moschella
Assistant Attorney General

Attachment

United States Attorneys -- Criminal Caseload Statistics[1]

Southern District of California

Standard Sentencing Counts

Immigration

Sentencing

Fiscal Year[2]	Defendants in Cases Filed	Defendants in Cases Terminated	Total Defendants Guilty	Number of Guilty Defendants Not Sentenced To Prison	Percent Change	Number of Guilty Defendants Sentenced To Prison	Percent Change	Percent of Guilty Defendants Sentenced To Prison
93	357	340	324	18		306		94.4%
94	295	276	257	22	22.2%	335	9.5%	93.8%
95	884	850	841	50	127.3%	791	136.1%	94.1%
96	1,425	1,341	1,318	190	280.0%	1,128	42.6%	85.6%
97	1,848	1,692	1,852	302	58.9%	1,550	37.4%	83.7%
98	2,093	1,811	1,741	156	-48.3%	1,585	2.3%	91.0%
99	1,778	1,837	1,737	82	-47.4%	1,655	4.4%	95.3%
00	2,223	2,070	1,942	92	-24.4%	1,850	12.8%	95.6%
01	1,988	2,112	1,977	80	29.0%	1,897	0.9%	96.0%
02	2,056	1,877	1,759	74	-7.5%	1,685	-11.2%	95.8%
03	2,598	2,487	2,385	82	24.3%	2,303	36.7%	96.2%
04	2,833	2,588	2,408	38	-60.9%	2,370	2.9%	98.5%
05	1,914	1,732	1,651	48	36.1%	1,603	-36.8%	98.5%
06	1,540	1,492	1,372	40	-16.4%	1,337	-11.3%	97.1%
Average	1,966	1,830	1,741	90	28.6%	1,461	17.5%	93.9%

Sentencing

Fiscal Year[2]	Number of Guilty Defendants Sentenced To Prison	Defendants Sentenced to Prison 1-12 Months	Percent of Defendants Sentenced to Prison 1-12 Months	Defendants Sentenced to Prison 13-24 Months	Percent of Defendants Sentenced to Prison 13-24 Months	Defendants Sentenced to Prison 25-36 Months	Percent of Defendants Sentenced to Prison 25-36 Months	Defendants Sentenced to Prison 37-60 Months	Percent of Defendants Sentenced to Prison 37-60 Months	Defendants Sentenced to Prison 61+ Months	Percent of Defendants Sentenced to Prison 61+ Months	Defendants Sentenced to Life in Prison	Percent of Defendants Sentenced to Life in Prison	Defendants Sentenced to Death	Percent of Defendants Sentenced to Death
93	306	83	29.6%	223	72.9%	10	3.2%	5	1.6%	3	1.1%	0	0.0%	0	0.0%
94	335	41	12.2%	281	83.9%	4	1.2%	4	1.2%	5	1.5%	0	0.0%	0	0.0%
95	791	54	6.8%	704	89.0%	6	0.8%	16	2.0%	11	1.4%	0	0.0%	0	0.0%
96	1,128	146	12.9%	804	80.1%	15	1.4%	45	4.0%	17	1.5%	0	0.0%	0	0.0%
97	1,550	497	29.9%	994	64.1%	29	1.8%	33	2.1%	38	2.5%	0	0.0%	0	0.0%
98	1,585	404	25.5%	718	45.3%	340	21.5%	67	4.2%	56	3.5%	0	0.0%	0	0.0%
99	1,655	374	22.6%	474	28.6%	629	38.0%	106	6.0%	78	4.7%	0	0.0%	0	0.0%
00	1,850	798	40.2%	573	30.5%	495	26.4%	42	2.3%	14	0.7%	0	0.0%	0	0.0%
01	1,897	931	49.1%	590	30.4%	323	17.0%	50	2.6%	13	0.7%	0	0.0%	0	0.0%
02	1,685	747	44.3%	561	33.3%	326	19.3%	38	2.3%	13	0.8%	0	0.0%	0	0.0%
03	2,303	1,035	44.8%	785	34.1%	418	18.2%	52	2.3%	13	0.6%	0	0.0%	0	0.0%
04	2,370	896	37.8%	745	31.4%	592	25.0%	116	4.8%	21	0.9%	0	0.0%	0	0.0%
05	1,603	838	22.5%	512	34.1%	329	21.9%	244	16.4%	77	5.1%	0	0.0%	0	0.0%
06	1,337	364	29.6%	444	33.3%	186	14.0%	275	20.7%	42	3.2%	0	0.0%	0	0.0%
Average	1,461	473	32.6%	607	41.8%	265	18.2%	79	5.4%	28	2.0%	0	0.0%	0	0.0%

[1] Caseload data extracted from the United States Attorneys' Case Management System.

[2] FY 2006 numbers are straight-line projections based on actual data through the end of March 2006.

United States Attorneys -- Criminal Caseload Statistics [1]
Southern District of California
Standard Matter and Case Counts
Immigration

Cases & Defendants -- Filed, Pending, & Terminated

Fiscal Year [2]	Cases Filed	Percent Change	Defendants Filed	Percent Change	Average # of Defendants Per Case Filed	Cases Pending	Percent Change	Defendants Pending	Percent Change	Average # of Defendants Per Case Pending	Cases Terminated	Percent Change	Defendants Terminated	Percent Change	Average # of Defendants Per Case Terminated
93	330		357		1.08	217		284		1.31	308		340		1.10
94	272	-17.6%	280	-16.6%	1.07	137	-36.9%	181	-32.7%	1.39	345	12.0%	376	10.6%	1.09
95	851	212.9%	864	204.6%	1.04	155	13.1%	221	15.7%	1.43	829	140.3%	850	126.1%	1.03
96	1,367	60.6%	1,435	61.2%	1.04	227	46.5%	300	35.7%	1.32	1,291	55.7%	1,341	57.8%	1.04
97	1,853	35.6%	1,949	35.8%	1.05	259	14.1%	352	17.3%	1.36	1,818	40.8%	1,882	41.1%	1.04
98	1,918	3.5%	2,060	7.4%	1.06	478	84.8%	626	77.8%	1.31	1,695	-6.8%	1,811	-4.3%	1.07
99	1,664	-13.2%	1,778	-13.1%	1.07	445	-6.5%	566	-9.6%	1.26	1,687	-0.5%	1,837	1.4%	1.09
00	2,118	27.2%	2,223	25.0%	1.05	661	34.2%	710	25.4%	1.18	1,901	18.2%	2,070	12.7%	1.06
01	1,937	-8.6%	1,988	-10.6%	1.04	498	-17.5%	580	-18.3%	1.17	2,006	2.3%	2,112	2.0%	1.03
02	1,921	0.7%	2,059	3.6%	1.07	634	27.8%	781	31.2%	1.20	1,782	-11.2%	1,877	-11.1%	1.05
03	2,463	28.2%	2,558	24.2%	1.04	750	18.8%	818	7.5%	1.11	2,358	32.4%	2,497	33.0%	1.06
04	2,527	2.6%	2,632	2.9%	1.04	818	10.4%	918	12.2%	1.13	2,306	-2.2%	2,388	-3.6%	1.03
05	1,441	-43.0%	1,514	-42.5%	1.05	645	-21.0%	714	-22.2%	1.11	1,526	-33.8%	1,732	-33.1%	1.07
06	1,432	-0.6%	1,580	4.4%	1.10	672	4.2%	778	9.7%	1.15	1,412	-7.5%	1,492	-13.8%	1.06
Average	1,676	27.1%	1,986	21.8%	1.06	490	13.1%	556	11.4%	1.20	1,545	18.4%	1,630	17.4%	1.05

[1] Caseload data extracted from the United States Attorneys' Case Management System
[2] FY 2006 numbers are straight-line projections based on actual data through the end of March 2006.

United States Attorneys – Criminal Caseload Statistics[1]

Southern District of California

Standard Disposition Counts

Immigration

Cases & Defendants Tried

Fiscal Year[2]	Cases Terminated	Defendants Terminated	Cases Disposed of by Trial	Percent Change	Cases Tried as Percent of Those Terminated	Defendants Disposed of by Trial	Percent Change	Defendants Tried as Percent of Those Terminated	Average Number of Defendants Per Case Tried
93	365	342	5		1.8%	6		1.8%	1.20
94	348	378	7	40.0%	2.0%	7	16.7%	1.9%	1.00
95	829	850	7	0.0%	0.8%	7	0.0%	0.8%	1.00
96	1,291	1,341	13	85.7%	1.0%	13	85.7%	1.0%	1.00
97	1,819	1,852	7	-46.2%	0.4%	9	-30.8%	0.5%	1.29
98	1,695	1,811	39	457.1%	2.3%	42	366.7%	2.3%	1.08
99	1,687	1,857	52	33.3%	3.1%	54	28.6%	2.9%	1.04
00	1,961	2,070	17	-67.3%	0.9%	20	-63.0%	1.0%	1.18
01	2,006	2,112	42	147.1%	2.1%	47	135.0%	2.2%	1.12
02	1,782	1,877	33	-21.4%	1.9%	35	-25.5%	1.9%	1.06
03	2,358	2,497	29	-12.1%	1.2%	30	-14.3%	1.2%	1.03
04	2,506	2,586	42	44.8%	1.7%	42	40.0%	1.6%	1.00
05	1,624	1,732	89	111.9%	5.5%	91	116.7%	5.3%	1.02
06	1,412	1,482	50	-43.8%	3.5%	50	-45.1%	3.4%	1.00
Average	1,645	1,630	31	56.1%	2.0%	32	47.0%	2.0%	1.09

Defendants - Guilty, Acquitted, Dismissed, Other Terminations

Fiscal Year[2]	Total Defendants Terminated	Total Defendants Guilty	Percent Change	Defendants Found Guilty	Defendants Found Guilty as Percent of Total Guilty	Defendants Who Pled Guilty	Defendants Who Pled Guilty as Percent of Total Guilty	Conviction Rate	Defendants Acquitted	Percent Change	Defendants Dismissed	Percent Change	Other Terminated Defendants	Percent Change
93	340	324		6	1.8%	318	98.1%	93.3%	0		16		0	
94	378	357	10.2%	7	2.0%	350	98.9%	94.9%	0		19	18.8%	0	
95	850	841	135.6%	7	0.8%	834	99.2%	98.5%	0		9	-52.6%	0	
96	1,341	1,316	56.7%	12	0.9%	1,304	99.1%	98.3%	1		22	144.4%	0	
97	1,852	1,852	40.8%	7	0.4%	1,845	99.6%	97.9%	3	200.0%	35	59.1%	2	
98	1,811	1,741	-6.0%	40	2.3%	1,701	97.7%	96.1%	2	-33.3%	68	94.3%	0	
99	1,857	1,737	-0.2%	45	2.6%	1,688	97.3%	94.6%	5	150.0%	95	39.7%	6	
00	2,070	1,942	11.8%	19	1.0%	1,923	99.0%	93.8%	2	-60.0%	126	32.6%	0	
01	2,112	1,977	1.8%	45	2.3%	1,932	97.7%	93.6%	2	0.0%	132	4.8%	1	
02	1,877	1,756	-11.0%	34	1.9%	1,725	98.1%	93.7%	1	-50.0%	116	-12.1%	1	0.0%
03	2,497	2,395	36.2%	28	1.2%	2,367	98.8%	95.9%	2	100.0%	100	-13.8%	0	
04	2,586	2,406	0.5%	37	1.5%	2,369	98.5%	93.0%	5	150.0%	175	75.0%	7	
05	1,732	1,551	-35.5%	50	3.5%	1,495	94.5%	89.5%	5	0.0%	174	2.4%	2	-71.4%
06	1,482	1,372	-11.5%	50	3.6%	1,322	96.4%	92.6%	0		118	-33.3%	4	100.0%
Average	1,630	1,541	17.0%	31	2.0%	1,510	98.0%	94.6%	2	50.7%	84	27.2%	1	9.3%

[1] Caseload data extracted from the United States Attorneys' Case Management System.

[2] FY 2006 numbers are straight-line projections based on actual data through the end of March 2006.

AUG 1 0 2006

Office of Legislative Affairs
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

The Honorable Dianne Feinstein
Ranking Member
Subcommittee on Terrorism,
Technology and Homeland Security
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Feinstein:

On behalf of Secretary Chertoff, thank you for your letter regarding illegal alien apprehensions on the Mexican border. You indicate that apprehension statistics have declined over the last 10 years; however, while there is clearly a relationship between the number of Border Patrol Agents and control of the border, the number of apprehensions will vary from year to year for a variety of reasons. In addition, apprehensions alone are not a reflection of the degree of control the Department of Homeland Security has achieved along the borders.

It is well established that the main motivation driving illegal immigration from Mexico and other Central American countries into the United States (U.S.) is based on economic reasons. Therefore, the condition of the economy and employment rates in the U.S. and its southern neighbors plays a major factor in determining the total flow of illegal aliens. The high rate of economic growth in the U.S. in the late 1990s may well have been a stimulus for greater illegal alien flows and subsequently higher apprehension rates. Similarly, the flow may have decreased as a result of the reduced U.S. growth and short recession in 2000-2001.

However, in Fiscal Year (FY) 2005, over 1.17 million illegal aliens were apprehended at the southwest border. The statistics for FY 2006 were running above the FY 2005 level at the end of the third quarter of FY 2006. As of August 1, 2006, apprehension statistics were significantly lower. There are many possible reasons why apprehensions have risen and then declined. As the number of Border Patrol Agents increases and enforcement efforts are increased and expanded into additional areas, apprehensions can be expected to rise. Once these areas are more secure, smugglers and other criminal activities are reduced and may relocate to other less secure areas. There may also be an impact with the National Guard deployment, although more time will be necessary to determine the degree this deployment has on apprehensions.

With the support of Congress, increased funding has brought more personnel and much needed resources, such as equipment, computers, databases, facilities, vehicles, aircraft, all-weather roads, fencing, vehicle barriers, lighting, and other technologies. These resources have equipped agents to perform more effectively and efficiently, with a better capability to deter and interdict illegal crossings as well as a range of crimes and acts of violence in the border area.

With the priority of gaining operational control of the border, the Border Patrol's primary enforcement efforts are now focused on the immediate border, including routes of transit and egress from the border area, and away from general interior enforcement. The primary investigative and enforcement authority for non-border, i.e. interior areas lies with the U.S. Immigration and Customs Enforcement (ICE).

ICE is responsible for enforcing immigration and customs laws in the interior of the U.S. Under the interior enforcement strategy, as detailed in the Secure Border Initiative (SBI), ICE is expanding the use of basic enforcement tactics, including worksite enforcement actions, the targeting of alien smuggling organizations, and deporting violators.

Pursuant to ICE's interior enforcement responsibilities, ICE apprehended 117,778 illegal aliens in FY 2004, 117,617 illegal aliens in FY 2005, and 92,054 illegal aliens in FY 2006 (through mid-June 2006). These administrative apprehensions for immigration violations are in addition to arrests for criminal violations that are investigated by ICE through identifying, disrupting, and dismantling of criminal organizations.

There are multiple factors that attributed to the level of deportable aliens during FYs 1996-2000 and 2001-2004, such as the division of the legacy Immigration and Naturalization Service, the security priorities from the aftermath of the September 11, 2001, terrorist attacks, the creation of the Department of Homeland Security, the inability of ICE to reinstate final orders on re-entry cases in the Ninth circuit (*see* Morales-Izquierdo v. Ashcroft, 388 F.3d 1299 (9th Cir 2004)), and instances of refusal from foreign governments to repatriate their nationals.

As you know, the Administration, working with Congress, has undertaken two major efforts to stem the flow of illegal immigration and gain operational control of the borders for the first time in the 230-year history of the nation. The first of these is comprehensive immigration reform and the second is SBI. The main challenge that SBI will address is providing the right mix of personnel, technology, and infrastructure, fully integrated into a comprehensive approach to gaining control of the border. At the same time, immigration reform will reduce the economic incentive to attempt to enter the United States illegally. With the support of Congress for these major efforts, DHS is confident in achieving success responding to the critical immigration and border security issues facing the country.

I appreciate your interest in the Department of Homeland Security, and I look forward to working with you on future homeland security issues. If I may be of further assistance, please contact the Office of Legislative and Intergovernmental Affairs at (202) 447-5890.

Sincerely,

Donald H. Kent
Deputy Assistant Secretary
Office of Legislative and Intergovernmental Affairs
U.S. Department of Homeland Security

Ms. LOFGREN [continuing]. Several people here today.

Ms. Lam, Mr. Moschella and, earlier this week, the Department of Justice told Members that it was the low numbers of immigration and gun cases that really was the cause of your need to be replaced and that you should address the President's priorities.

Were you specifically ever told what was expected of you, what the priorities of the President were?

Ms. LAM. I certainly knew what the priorities were. I was never specifically told that if I was not enforcing them it would cost me my job, no.

Ms. LOFGREN. So no one ever came and said, "You need to do X, Y and Z, in terms of prosecution, or else we have got a big problem here"?

Ms. LAM. No.

Ms. LOFGREN. And not about the immigration question, either?

Ms. LAM. The immigration question—I have never made any secret of this, that, given the high numbers on the border, that my view is the way to tackle them—we can best tackle the problem is to attack the problem at its root, as close to the root as we can get, and that is going to be bigger prosecutions that are going to take more resources and result in lower filings.

Ms. LOFGREN. Let me ask you this. It has been referenced, the letter sent by our colleague, Congressman Issa, along with then-Representative Cunningham and 12 other Republican members of the California delegation to the attorney general, then Ashcroft, asking him to require, as I understand it, a zero-tolerance stance against smuggling and a prosecution in every case.

Did the attorney general implement such a policy in response to that letter?

Ms. LAM. No.

Ms. LOFGREN. If he had implemented a policy such as that, did your office have the resources to actually implement such a policy?

Ms. LAM. It would be impossible. There are more than 180,000 people arrested on the California border with Mexico every year. I know in Phoenix, it is almost 600,000 people. I don't think any office in the country has ever prosecuted more than 5,000 or 6,000 felonies a year.

Ms. LOFGREN. No, prosecutors, like everyone in Government, have to make decisions about resource allocations. We all do, and we don't have limitless resources. Since immigration is a focus of the department's criticism of you today, can you explain to us how you went about prioritizing your immigration-related prosecutions in your district?

What were you trying to achieve? Who did you prosecute? Why did you take the approach?

Ms. LAM. Absolutely. When I first arrived in the office in 2002 as the United States attorney, I noted that our filings were very high. However, a large percentage of our filings were being brought against low-level defendants, such as nannies who were returning to the country after going home for the weekend in Mexico and presenting false documents at the border.

These people were being prosecuted as felons and then given time served and released, the same for first-time, low-level foot-

smugglers. It was a judicial revolving door, but no U.S. attorney wanted to be known as the U.S. attorney who lowered filings.

The result was, the office was not able to handle any higher-level investigations and prosecutions. So I made the decision that an adjustment had to occur. We studied the problems very, very closely. It took a couple of years to implement. We are now seeing the fruits of it.

And the letter you have just entered into the record, ma'am, was authored by Will Moschella, only 3 months before I received a phone call on December 7, to Senator Feinstein, defending our approach of seeking longer sentences against the worst offenders on the border.

I think it is a legitimate, valid approach and one that I had every indication that the department was supporting.

Ms. LOFGREN. I am just about out of time. So the department—you saw the letter drafted by Mr. Moschella to Senator Feinstein, essentially endorsing the approach you were taking. And did you ever hear contrary to that letter, that he didn't agree with the process you have just outlined?

Ms. LAM. No, ma'am.

Ms. LOFGREN. Has the department ever indicated concern to you that your district was suffering a higher crime rate than others and that your office and your prosecution policies were deficient?

Ms. LAM. Congresswoman, in fact, in December of 2006, the department sent a team of people out to study why the city of San Diego had the lowest violent crime rate in 25 years. They had met with me, and with the police chief, and with the sheriff, and had a very good meeting, trying to figure out why we had such a successful, low rate of crime.

Ms. LOFGREN. My time is up. I would just like to say how impressed I am by the professionalism of all the witnesses. Thank you very much.

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

The gentleman from Massachusetts, Mr. Delahunt, is recognized.

Mr. DELAHUNT. Yes, I would like to just echo the statement by my colleague from California. I spent 22 years as the elected State's attorney, district attorney in the greater Boston area, and I want to commend all of you for what is your obvious professionalism.

I have to tell you, what really strikes me is the lack of consultation on the part of the leadership at the Department of Justice, with each and every one of you. If there were problems, I would submit that it was incumbent on that leadership to provide you guidance and to have the kind of face-to-face discussion that I believe just simply is reflective of good management.

And in this case, this is a case study of mismanagement, poor management. You have been disrespected, and I think this is a very sad commentary on the operation of the Department of Justice. The longer I listen, the more outraged I become.

But in any event, let me apologize—and I think I speak for most Members on this Committee, that your obvious professionalism is to be acknowledged. And let me, at least for myself, extend my gratitude for the contribution you have made to the United States of America.

Having said that, there are some questions here that I will address to Mr. Charlton. And, Mr. Charlton, let me say, if they didn't take your advice in the policy, in terms of taping confessions of child molesters, they ought to reconsider it. They ought to reconsider it.

I think we can all agree that child molestation is a crime that is particularly offensive and totally—well, let me just let it sit there.

But maybe we ought to have another hearing, Madam Chair, upon that policy and why, particularly what the problem with the Department of Justice is, in terms of adopting what makes common sense, I would dare say, to any prosecutor, to prosecutor, in terms of preserving evidence so that those who molest our children can be incarcerated.

Mr. Charlton, isn't it correct that, on December 7th, Michael Battle, director of the executive office for the United States attorneys, called to notify you that you had been fired.

Mr. CHARLTON. Yes, sir.

Mr. DELAHUNT. Is it further correct that Mr. Battle refused to tell you whether the firing was related to your performance or to the performance of the office?

Mr. CHARLTON. Yes, sir.

Mr. DELAHUNT. Did you then make several additional calls to senior Department of Justice officials to try to find an explanation for the termination?

Mr. CHARLTON. Yes, sir.

Mr. DELAHUNT. Did you finally reach a senior official who told you that your firing was not performance-related?

Mr. CHARLTON. I reached a senior official who gave me a different explanation, yes, sir.

Mr. DELAHUNT. Well, what did he say to you?

Mr. CHARLTON. He told me that this was being done because I raised not only the fact that I had been asked to resign, but that others had been asked to resign. He indicated to me that this was being done so that other individuals would have the opportunity to "touch base" as United States attorney before the end of the President's term.

Mr. DELAHUNT. Okay. And with whom did you speak? Who was that official?

Mr. CHARLTON. With William Mercer, the acting associate attorney general.

Mr. DELAHUNT. I thank you. And with that, I yield back my time.

Ms. SÁNCHEZ. Thank you.

The Chair now recognizes the gentleman from Arizona, Mr. Franks, for 5 minutes.

Mr. FRANKS. Thank you, Madam Chair. Madam Chair, I would like to yield to the distinguished Ranking Member, Mr. Cannon.

Mr. CANNON. I thank the gentleman.

Ms. Lam, just one little detail I would like to follow up on. Is your office, the office you have left, competent to handle the prosecution of these two other indictments that were recently filed? Do you have any concerns about the competency?

Ms. LAM. Under the current leadership, I have no concerns.

Mr. CANNON. Thank you.

And, Mr. McKay, we talked earlier about the phone call you had from the chief of staff for Mr. Hastings. And you indicated or agreed with me, I think, when I said that you thought it was not that important. But it occurred——

Mr. MCKAY. No, I did not say that. I am sorry, sir.

Mr. CANNON. I think what you said was that—I said, so this just didn't arrive at the level of importance to report it?

Mr. MCKAY. That is correct, yes.

Mr. CANNON. Okay, thank you. But as I thought about it later, I realized that, in the Senate, you—I think it was the Senate; maybe it was here—you said that it was a matter of concern such that you called your staff together.

Mr. MCKAY. Yes, that is correct.

Mr. CANNON. So it did raise some concerns with you. Did you talk about whether or not you should call DOJ and report it?

Mr. MCKAY. Yes, I did.

Mr. CANNON. And what did your staff suggest?

Mr. MCKAY. We all three agreed that I had stopped Mr. Cassidy before he crossed the line, and that it was not necessary to report it, and that we would leave it where it was.

Mr. CANNON. Great, thank you. And I think that was highly consistent with what you said earlier.

Did you call Mr. Hastings and suggest to him that his chief of staff had gotten close to the line?

Mr. MCKAY. No, Congressman, I did not. I believe I made that very clear to Mr. Cassidy.

Mr. CANNON. That he was getting close to the line?

Mr. MCKAY. Yes.

Mr. CANNON. So I guess what I am going at here, you felt you communicated that what he was doing was getting close to being inappropriate, but you didn't feel any need to suggest that Mr. Hastings had a problem that he needed to correct within his office?

Mr. MCKAY. No, Congressman, if it had gotten to that level, I would have been calling the Department of Justice about the call. You see my point, his call was disconcerting to me, and it was enough of concern that I called my two senior advisers together.

But, no, I think Mr. Cassidy was very capable of reporting it to his own boss, and I left it at that.

Mr. CANNON. When people do embarrassing things sometimes, they don't tell their bosses. Where is my staff? I will remind them. No, I am sorry. That is a little light, I suppose.

The policy, though, doesn't talk about whether it is important or not. It talks about any contact. I would just leave that with you on the record.

But one of the issues—and, actually, I sort of missed this. I am sorry, but I am just following up on someone else's question. How many sentencing appeals were you recommending that the department authorize? And this goes back to an earlier conversation, I think, with Mr. Jordan.

Mr. MCKAY. I couldn't give you the number of appeals that we recommended to the solicitor general. I can tell you one is one that I handled myself, which was the appeal of the sentence imposed on the millennium bomber, Ahmed Ressam, a matter which I personally handled.

And I did recommend to the solicitor general that his sentence be appealed to the Ninth Circuit.

Mr. CANNON. Then it is like an isolated case. Were you recommending that more sentences would be appealed, or was that an issue?

Mr. MCKAY. Congressman, at some point it became the policy of the Department of Justice—and I believe it became law for us—to report to the department sentences imposed by district judges that fell outside the sentencing guidelines. And my office assiduously did that to Main Justice and to the solicitor general's office.

So I can't tell you the number of appeals we recommended, but there were many appeals in my office.

Mr. CANNON. Was that reporting essentially a recommendation to appeal, in your——

Mr. MCKAY. No, as I indicated earlier, of course, the sentences are imposed by the district judges, not by prosecutors. And so, many times, the judge may impose a sentence below the guideline range not recommended by us. And the procedure, which was followed by me and my office, was to report sentences outside the sentencing guidelines to Main Justice, which we did.

Mr. CANNON. In that process, did you talk to anybody about whether or not you should affirmatively appeal those? Or did you take that report as sufficient?

Mr. MCKAY. Well, I took the report as sufficient. But we did, on certain appeals, make recommendations that they would be appealed to the Ninth Circuit, including the Ressam case.

Mr. CANNON. Okay, so you would make that recommendation, and then you would be authorized or directed by Main Justice to go ahead with an appeal?

Mr. MCKAY. Yes, the solicitor general has complete authority over whether matters are appealed to the circuit courts by U.S. attorneys.

Mr. CANNON. Great. Thank you. I see the time is about over, and I would certainly look forward to a second round.

Ms. LAM. I am sure I am breaking some rule somewhere, but I did want to add something——

Mr. CANNON. It is my time. You are not breaking a rule.

Ms. LAM. Very good. You asked whether my office could competently handle the continuing prosecutions, and I do believe they can. However, I do think it is important to emphasize that, in sensitive prosecutions, high-profile prosecutions, it is very helpful to have a confirmed United States attorney, because of the many interactions with the Department of Justice and the many sensitive issues involved.

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

The gentleman from North Carolina, Mr. Watt, is recognized for 5 minutes.

Mr. WATT. Thank you, Madam Chair.

Mr. McKay, let me just clarify one thing. Did the gentleman who called you from Representative Hastings's office indicate where he was calling at the direction or on behalf of the Congressman, or did he indicate either way?

Mr. MCKAY. He did not. I believe when I responded to him, I told him that I was certain that neither he nor the Congressman was in the process of lobbying me.

Mr. WATT. Okay.

Mr. Bogden, I think you got your call on December 7, 2006, from Michael Battle, the director of the executive office of the United States attorneys, telling you that your services were not going to be needed any longer, is that correct?

Mr. BOGDEN. That is correct, sir.

Mr. WATT. And did you get any explanation on that occasion as to whether this termination was related to your performance or to the performance of your office?

Mr. BOGDEN. He just told me that the Administration wanted the office to go in another direction. When I asked him further what direction that was, he could give me no further details. I pressed him a little further, and he admitted that he wasn't part of the decision process, but he had been given the marching orders to make the call.

I asked him, since I wanted an explanation as to why I had received a call, who I could speak with that could give me some information, he said he thought about that himself, and if he had received such a call, he would reach out to the deputy attorney general, Paul McNulty.

Mr. WATT. And did you subsequently talk to any senior Department of Justice officials to get any additional explanation?

Mr. BOGDEN. Yes, I talked to a couple of them. I attempted to reach out to Deputy Attorney General McNulty. He hadn't returned my call that day, so I reached out to the acting associate attorney general, Bill Mercer, and I had a conversation with Mr. Mercer.

I let him know how disappointed I was and how upset I was, because I really felt that our office was going in the right direction and we were working very hard and achieving much. He then gave me an explanation.

He said that the Administration has a very short 2-year window of opportunity, concerning the United States attorneys positions, and that this would be an opportunity to put others into those positions so they could build their resumes, get an experience as a United States attorney, so that, for future possibilities of being Federal judges or other political-type positions, they would be better enhanced to do so.

Mr. WATT. So, in effect, you were told that you were being fired to make way for some other Republican Party loyalist or political up-and-comer who the Administration wanted to pad their resume?

Mr. BOGDEN. That is what it seemed to me to be.

Mr. WATT. And who was it that told you that?

Mr. BOGDEN. That was the acting associate attorney general, William Mercer.

Mr. WATT. Okay. Had you been engaged in an investigation of Governor Jim Gibbons at that point?

Mr. BOGDEN. I just have to say, as having been a United States attorney, that matters concerning investigation, I don't think it is appropriate for me to either confirm or deny that there was any such investigation.

Mr. WATT. Okay. Can you tell us briefly what your EARS report, released in 2005, indicates about your performance?

Mr. BOGDEN. Well, I had an EARS report. The evaluation was done March 3 to March 7, 2003. The EARS report, the final version, came out August 4, 2004. It was a very positive report. It was one of those—a good report, concerning our relationships with law enforcement, the things we were able to accomplish, things like that.

I think also received another letter, June 2, 2005, which was another letter from the executive office, in this case, the director of EOUSA, at that time Mary Beth Buchanan. She had high praise for our office in a number of areas. Those areas included terrorism, white-collar crime, drug programs, our OCDETF program, what we were doing to combat gun violence.

She noted that our district excelled in presenting the message of zero tolerance of official corruption, as was evidenced by our public corruption investigations. She also commented on our outstanding work in organized crime and crimes in Indian country.

Mr. WATT. And is it true that, under your leadership, your office was one of the top offices in the country, in terms of numbers of immigration cases, drug cases, gang cases, child exploitation cases, and gun cases prosecuted?

Mr. BOGDEN. And I think also identity theft there, sir, all——

Mr. WATT. Identity theft, also.

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

Mr. WATT. Thank you, Madam Chair.

Ms. SÁNCHEZ. Thank you, Mr. Watt.

The gentleman from Tennessee, Mr. Cohen, is recognized for 5 minutes.

Mr. COHEN. Thank you, Madam Chairman.

Mr. Bogden, I would just like to ask you one question, kind of an aside. I see that the Justice Department asserted you were fired because you resisted an obscenity task force. And I know what happens in Las Vegas stays in Las Vegas, what is obscenity in Nevada?

Mr. BOGDEN. Sir, that is the first I have heard that that was any type of issue. That certainly wasn't anything that was relayed to me by either EOUSA or the Department of Justice.

As far as what we have been able to do, we put together a Child Exploitation and Obscenity Initiative back in July of 2005. When we put that initiative into effect, we have been able to increase our child exploitation prosecutions five-fold, so I am kind of surprised to hear that there would be anything contesting what we were doing in the areas of either child exploitation or obscenity.

Mr. COHEN. Thank you, sir.

I know a little bit more about the area around the Delta. And, Mr. Cummins, Congressman Berry speaks very highly of you, as to people throughout Memphis and the Delta.

You were appointed in 2001 by President Bush, is that correct?

Mr. CUMMINS. Yes, Congressman. And while we are talking about your neighboring districts, I would like to recognize that my home State, home district, Congressman Vic Snyder is in attendance and, I may be presumptuous, but I think he is mostly here

because of our friendship and out of concern for what is happening to me and I would just like to publicly say that I appreciate him.

We don't happen to be in the same political party. In fact, I was his opponent in 1996 for Congress. But he works hard and represents our district honorably and I appreciate his attendance here today.

Mr. COHEN. How did you make it—the gentleman said you made it known you didn't want to finish up your term.

Who in the Justice Department did you allegedly tell that to or did you not?

Mr. CUMMINS. The short answer is I didn't. I mean, honestly, Jody and I, my wife, had kind of decided that I had probably passed up some opportunities already during my time as United States attorney and if another one came along, we ought to give it serious consideration.

A lot of our colleagues, maybe a third or more, had already moved on since 2001, when most of us started. And so I don't think I made any secret of that.

I didn't know that you were supposed to keep all—anyway, I think what he is referring to are press reports that came out about comments I made after they had already called me and told me I was fired, when I did start kind of mentioning to the press that I might be moving on the future.

But, frankly, that was part of kind of my attempt to be discreet and kind of conceal the fact that they had handled it like they had handled it.

I chose to try to present a story like I would have expected them to handle it, which would have been more of a consultative process and treated me like I was a member of the team and called me and said, "Hey, we would like to put this other guy in your district," and I am pretty sure I would have done whatever they had asked me to do.

That isn't what happened and I was trying to kind of soften it up so that it wouldn't create a controversy. Obviously, I failed in that.

But I didn't know all these other dismissals were going to take place and had they not, it probably would have gone unnoticed.

Mr. COHEN. Kind of like the Cardinals when they call somebody up from Little Rock, they bring them off the farm team.

Mr. CUMMINS. That is right.

Mr. COHEN. Let you know when you are being relieved.

Mr. CUMMINS. That is right. It is a good analogy. The manager can take the pitcher off the mound anytime he wants. It is kind of nice if you get a pat on the rump and if you have been throwing strikes, they shouldn't go to the press conferences and say you were throwing balls. But they can take you off the mound anytime they want.

Mr. COHEN. On February 20, 2007, you received a letter, I believe, from Mr. Michael Elston.

Mr. CUMMINS. I am not aware of a letter.

Mr. COHEN. A call, excuse me, a call.

Mr. CUMMINS. Yes, sir.

Mr. COHEN. And what was the gist of that call?

Mr. CUMMINS. Well, an article had appeared in the "Washington Post." I mean, I think the call, in short, was stimulated by whatever was said in the article had touched some nerves and there were one or more people at the department at that were irritated that some of us were, at that point, responding to media inquiries, because at that point, they had put forward these explanations about the dismissals that we were concerned about and didn't think were fair.

And I had a conversation with him about it. It was pretty congenial. But at the end of the conversation, there was one part of that I felt like I really—I struggled with it, because I felt like it was a confidential conversation between Mr. Elston and I.

But I also kind of thought he wanted me to tell the others, and so I passed that part. I conveyed to the people at this table that that conversation had taken place.

Mr. COHEN. And you suggested it might be a major escalation of the conflict if they testified. Could it have been a surge?

Mr. CUMMINS. I am not prepared to present my Iraq war plan today, but it was—I am reading from the e-mail I sent him and there was a part where I said that when the subject of testifying in Congress came up, that it was obvious that he viewed that as a major escalation in the controversy.

What I was trying to convince him of was that nobody at this table was driving the controversy, that all of us had attempted to take our orders, whether we thought they were good orders or bad orders, and go off quietly, that really this was about Congress calling the department to task on the decisions they made and it was our reaction to the department's position to try and defend these decisions.

And, frankly, from our perspective, they could have told you all it was none of your business. You might not have liked that, but we probably would have been fine with that and we would have continued to go away quietly.

It was only when they gave the explanations they gave that we—and I was trying to convince them of that, that we weren't trying to stir the controversy, that we turned down voluntary invitations to testify and that I didn't really necessarily anticipate that there was going to be anymore motivation to stir the pot.

But he made it clear that, in his view, that the department had been very restrained in their treatment of the issue and the disclosures they had made to defend their decisions and that if there was a perception that we were somehow trying to stir the pot, that it was likely that we would have to—we, and really I am talking about my colleagues more than me, because I had been separated out at that point—but that they might suffer some embarrassment because of additional disclosure that would be necessary to defend the department's position.

Some people have tried to characterize that as a threat. Mr. Moschella said I characterized it as ″friendly." But I said, "It could have been either. I am not going to characterize for you."

That was the nature of the discussion. It was pretty friendly, but I thought the point was there and I really felt like if I didn't tell these other people that and then they went out and gave an inter-

view the next day and the world fell in on them, that I would feel bad about that.

So I felt like they needed to know this comment was made, go make your own decisions about what you do next, but you need to know the score and that is how I saw it.

Mr. COHEN. Thank you. My time is up. I want to thank you for your comments.

Mr. CUMMINS. I am sorry for the long answer.

Mr. COHEN. That is fine.

I would like to ask the Chairwoman if we couldn't submit this, with unanimous consent, this copy of this e-mail, to make it part of the record.

Ms. SÁNCHEZ. Without objection, so ordered.

The Chair would also like unanimous consent to include in the record several commendations for the work that Mr. Iglesias did in his time as U.S. attorney in New Mexico.

Without objection, so ordered.

We had considered possibly doing a second round of questions. I understand this has probably been a very long day for you.

We still have one other panel of witnesses to hear testimony and to question.

Mr. CANNON. Madam Chair?

Ms. SÁNCHEZ. Yes.

Mr. CANNON. I think that I have a right to 5 minutes for each witness and I thought that we had an understanding that we would have a second round.

I would ask unanimous consent that I be given 5 more minutes to question the witnesses and then if you would like to dismiss, I would not object to that.

Ms. SÁNCHEZ. In light of the fact that you have been indulgent in granting our Members additional time, we will yield to you 5 additional minutes to ask any follow-up questions.

After that, we will dismiss this panel and call up the third panel of witnesses.

Mr. CANNON. Thank you, Madam Chair. It actually has been an extraordinarily long day.

Ms. SÁNCHEZ. Without objection, it will be so ordered.

Mr. Cannon is recognized for 5 minutes.

Mr. CANNON. Thank you. And this has been an extraordinarily long day.

Mr. Cummins, I just want to remind you that leadership changes in parties and we hope you don't change parties. That is not a suggestion that you run against Mr. Snyder or anything like that.

Mr. CUMMINS. I appreciate the friendship I have received from my Democrat friends, but I have no intention of changing parties at this time.

Mr. CANNON. Good. Let me just say that you all have been put in a difficult position. Mr. Moschella I think apologized pretty profoundly for the difficulty.

That said, I think things have been handled differently by different of you all individually.

I just have to say I am a little astonished by some of the things that have been said and, unfortunately, whether you said in the

Senate—I am sorry, in the other body, I think is the correct way to do it, if we are going to be rule oriented here.

And so let me just ask, Mr. Iglesias, I think over in the other body, you talked about loyalty being a two-way street and said you were conflicted about calls from Mr. Domenici and Ms. Wilson and you didn't report those calls.

I think you said that here, as well.

Mr. IGLESIAS. Yes, sir.

Mr. CANNON. You mentioned, I think, there, I am not sure if you said here, that Senator Domenici hung up on you. Is that correct? Would you like to add to that?

Mr. IGLESIAS. Sir, that is close. I think what I testified this morning was that the line went dead and I wasn't sure if he hung up or what, but I took that as he hung up.

Mr. CANNON. Great. And we talked earlier about how you didn't report those contacts and you didn't report them because you were conflicted, because you had some loyalty to these two people.

I get the sense that perhaps Senator Domenici actually recommended you for the job.

Mr. IGLESIAS. That is correct, sir.

Mr. CANNON. And when you said that loyalty goes two ways, you felt that you were justified in lashing back because he had abandoned you.

Mr. IGLESIAS. Well, as I ruminated during the month of December and January, I tried to piece together what had happened and I started hearing in Albuquerque that in early January, they were already asking for names for people to replace me.

This is shortly after the December 7 call.

Mr. CANNON. So you felt abandoned I think is the point, right?

Mr. IGLESIAS. I think that is a good characterization.

Mr. CANNON. Now, you heard Ms. Lam's testimony when she spoke for all of you that you were not going to speculate.

Did you agree with that statement by her that you are not going to speculate about the reasons for your being asked to resign?

Mr. IGLESIAS. That is correct, sir, and there is no way that I could prove beyond a reasonable doubt what happened.

Mr. CANNON. But you are speculating. You speculated in the Senate. You speculated here, right?

Mr. IGLESIAS. Just putting forward facts that happened to me.

Mr. CANNON. No, no, no, you are speculating about conclusions relating to those facts and I think you have characterized them as your conclusions, have you not?

Mr. IGLESIAS. Sir, I really try not to speculate.

Mr. CANNON. I think the term you used was "connecting the dots." Doesn't that mean speculation?

You were the one that did the connection. Nobody came up to you and said, "I was talking to Senator Domenici and I am going to connect the dots for you, because you are not smart enough to figure it out yourself."

You did the connection, right?

Mr. IGLESIAS. I attempted to reconstruct what had happened.

Mr. CANNON. Which was speculative.

Mr. IGLESIAS. Would you please define speculation?

Mr. CANNON. Well, Ms. Lam used speculation. I am suspecting that you agreed to Ms. Lam's testimony, but you apparently have not been able to contain your concerns.

I will tell you that I know Mr. Domenici. He is really smart and really tough and I just don't believe your characterization of how the phone conversation happened.

I don't think he would have called you and done something that should have been reported to the Department of Justice, which you felt, now you say you felt should have been reported, but were conflicted and didn't do it.

You also conveyed yourself, I think, in the Senate, that this happening as like a Pearl Harbor. Is that fair?

Mr. IGLESIAS. My telephone call was on Pearl Harbor Day, sir.

Mr. CANNON. And did you feel like this was a Pearl Harbor Day or was it just the fact that it was——

Mr. IGLESIAS. On a microscopic level, yes, sir.

Mr. CANNON. Well, I would suggest that it is microscopic.

And then you need a month, you are running a big office, but you needed another month in the office to provide a transition in your life. I take it that is because you were not living providently.

Mr. IGLESIAS. Sir, there are very few good legal jobs in Albuquerque, unlike Washington, D.C.

Mr. CANNON. Let me just ask one final question.

You announced an indictment in the press. Do you think that the lawyer for the defendant in that case should bring or can bring a motion based upon you prejudicing his case?

Mr. IGLESIAS. I am not sure what a criminal defense attorney would do. It is debatable, sir.

Mr. CANNON. But you violated policy that is intended to avoid that kind of outcome, is it not, the case?

Mr. IGLESIAS. I am not willing to concede that, sir, no.

Mr. CANNON. Well, you have got a few seconds left. Why don't you tell me what it meant?

Mr. IGLESIAS. I don't understand your question, sir.

Mr. CANNON. You announced an indictment in the press, something you characterized in the case of Ms. Wilson as being like a nuclear scientist being asked to divulge the secrets of a code for blowing up a bomb, and yet you announced it in the press.

That doesn't strike you as bad?

Mr. IGLESIAS. No, sir, I didn't. My last press conference, I avoided the use of the term "indictment." I was talking about matters that were commonly reported in the Albuquerque market.

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

Mr. CANNON. God bless you, you were the U.S. attorney and you talked to the press about it.

I yield back.

Mr. DELAHUNT. Madam Chair?

Ms. SÁNCHEZ. Yes, Mr. Delahunt?

Mr. DELAHUNT. I am going to ask unanimous consent for a minute.

The inference that was drawn by the Ranking Member I think is an inaccurate one.

Ms. SÁNCHEZ. Without objection, so ordered.

Mr. DELAHUNT. I would like to address this to anyone on the panel, but my memory is that the attorney general of the United States, U.S. attorneys and district attorneys call press conferences to announce indictments.

Am I missing something or is that the policy of the United States Government and the Department of Justice?

Mr. CANNON. Would the gentleman yield?

Mr. DELAHUNT. I yield.

Mr. CANNON. Mr. Iglesias was the U.S. attorney at the time he called the press conference and he didn't announce indictments. He announced that there were going to be indictments in the near future, a very different thing.

Mr. DELAHUNT. Well, the statement that you made, Congressman, was regarding the announcement of an indictment. You didn't explain that it was about indictments that would be forthcoming.

But just so that there is no confusion, I think it is very important that we note for the record that it is good policy, sound public policy to announce indictments, whether it comes from a U.S. attorney's office or from the Department of Justice or from a State prosecutor.

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

Mr. KELLER. Madam Chairwoman, I ask unanimous consent for 30 seconds.

Ms. SÁNCHEZ. The gentleman is recognized for 30 seconds.

And I will note this will be the last time that we recognize Members who have already had an opportunity to ask questions.

Mr. KELLER. Thank you.

I just want to wrap up this proceeding on behalf of all of us, I think, on both sides of the aisle and just let you know that we are very empathetic, because we realize that getting fired from your job is sort of the capital punishment of the workplace.

You all have come together today and exposed yourself to a lot of criticism by waiving your privacy rights, and yet you have acted, all of you, very professionally and we appreciate that.

And you probably did deserve a little better than an icy call on December 7, 2006 saying you are fired without given a reason and I am glad that you got——

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

Mr. KELLER [continuing]. That apology today from the Department of Justice and we wish you all the best in your future endeavors.

Ms. SÁNCHEZ. I want to thank all of our witnesses. We know that it is taken you a considerable amount of effort to get here to Washington, D.C. to testify.

We understand it has been a very long day. I think you have been very helpful in shedding some light on what happened factually in terms of your requested resignations.

You have been professional in your answers and, again, I can't thank you enough for being here today to testify.

You are now excused.

And very shortly we will call the third panel of witnesses.

Thank you, again.

At this time, I would ask our third panel of witnesses to please be seated.

I am pleased to introduce our third panel of witnesses.

Our first witness is Representative Darrell Issa, first elected to Congress in 2000. Congressman Issa represents the 49th District of California and currently serves on the House Committee on the Judiciary. He also serves on House Foreign Affairs Committee and the House Government Reform Committee.

Our second witness, the honorable Asa Hutchinson, is a former U.S. attorney for the western district of Arkansas. He served as a U.S. Congressman for the 3rd District of Arkansas from 1996 to 2001 and was a Member of the House Committee on the Judiciary.

In 2001, he was appointed administrator of the Drug Enforcement Administration. In 2003, he was confirmed as the under secretary for border and transportation security for the Department of Homeland Security and served in that capacity until January of 2005.

Our third witness, John Smietanka, served as a U.S. attorney for the western district of Michigan and as the acting U.S. attorney for the northern district of Illinois. He also served as the principal associate deputy attorney general for the Department of Justice. He is currently in private practice in southwest Michigan.

Our fourth witness, Atlee Wampler III, is a former U.S. attorney for the southern district of Florida. He also served as a special attorney for the Department of Justice, organized crime and racketeering section, and the attorney in charge of the Miami Strike Force, organized crime and racketeering section, for DOJ. He is currently the president of the National Association of Former U.S. Attorneys.

Our fifth witness, George Terwilliger, is also a former U.S. attorney, having served in the district of Vermont. He also served as the deputy attorney general for the Department of Justice and as the acting attorney general of the United States. He is currently in private practice.

Finally, our sixth witness, P.J. Halstead, has served as a legislative attorney in the American Law Division of the Congressional Research Service of the Library of Congress since 1998. In this capacity, Mr. Halstead is one of CRS's primary analysts on constitutional law and Congressional oversight issues.

I want to thank you all for your willingness to participate at today's hearing.

Now, it is my pleasure to ask my colleague, Congressman Issa, to proceed with his testimony.

TESTIMONY OF THE HONORABLE DARRELL ISSA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. ISSA. Thank you, Madam Chair and Ranking Member.

I will place my formal statement in the record and, hopefully, since I have such a group of knowledgeable people on the U.S. attorney's office, I will limit my testimony to one U.S. attorney, the U.S. attorney for the southern district of California.

As you have already heard here today, many, many Members of Congress, but, to a certain extent, led by my efforts, because I was one of the Members, I was the Member of the Judiciary closest to the border and in the district that she oversaw, had deep concerns

for a very long time about enforcement against human smugglers at the border.

We voiced that in the appropriate ways that I believe this Committee needs to do it and this body, the U.S. House of Representatives needs to do it.

We are, after all, the oversight over the administration of the laws we pass and the money that we appropriate.

The President and the Vice President were the only two members of the Administration elected. They asked for and had confirmed a number of individuals, thousands of them, and they set policy and they ran for reelection on that policy.

And there were two hallmarks of the policy. One was that, in fact, they said they would secure the border, before 9/11 and especially after 9/11.

Secondly, President Bush has lobbied long and hard this body and particularly this Committee for a comprehensive guest worker program. In the period 2004–2005–2006, I and my colleagues sent numerous different letters and this Committee held hearings in which our concerns about the enforcement in the San Diego region was voiced.

And I would ask unanimous consent that my records of those letters be included in the record.

Mr. CONYERS. [Presiding.] Without objection, it will be included.

[The material referred to follows:]

February 2, 2004

Ms. Carol C. Lam
United States Attorney
880 Front Street, Room 6293
San Diego, California 92101

Dear Ms. Lam:

I write to request information concerning an incident that reportedly occurred on November 20, 2003. According to news reports, Antonio Amparo-Lopez was arrested on suspicion of alien smuggling and held at the Temecula, California, interior checkpoint while border patrol agents contacted your office for guidance.

According to recent reports, Mr. Amparo-Lopez (Alien #A76266395), a known alien smuggler with a long criminal record, was released after your office declined to prosecute.

I respectfully request that your office provide me with information about the facts surrounding the alleged incident of November 20, 2003, and, if applicable, the rationale behind any decision made by your office to decline or delay prosecution of Mr. Amparo-Lopez or any other action that may have contributed to his release.

I look forward to your response. If you have any questions, please feel free to contact me or my Legislative Assistant Josh Brown at (202)-225-3906. Thank you for your attention to this important matter.

Sincerely,

Darrell Issa
Member of Congress

U.S. Department of Justice

Carol C. Lam
United States Attorney
Southern District of California

(619) 557-5690
Fax (619) 557-5782

San Diego County Office
Federal Office Building
880 Front Street, Room 6293
San Diego, California 92101-8893

Imperial County Office
321 South Waterman Avenue
Room 204
El Centro, California 92243-2215

March 15, 2004

Via Facsimile and Federal Express

The Honorable Darrell E. Issa
Representative in Congress
211 Cannon House Office Building
Washington, D.C. 20515

Attn: Josh Brown

Dear Congressman Issa:

Thank you for your correspondence dated February 2, 2004, regarding Antonio Amparo-Lopez. My office has researched the incident you referred to in order to provide accurate information. As we previously informed Mr. Brown from your office, Department of Justice policy prohibits us from responding directly to legislative inquiries; therefore, this matter has been referred to the Office of Legislative Affairs (OLA) in Washington, D.C. OLA will be responding to your request regarding this matter.

Again, thank you for your letter and I expect you shall receive a reply soon.

Very truly yours,

Carol C. Lam

CAROL C. LAM
United States Attorney

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 24, 2004

The Honorable Darrell Issa
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Issa:

This is in response to your letter of February 2, 2004, to Carol C. Lam, United States Attorney for the Southern District of California, regarding the arrest of Antonio Amparo-Lopez. We apologize for any inconvenience our delay in responding may have caused you.

Based upon all of the facts and circumstances of his arrest, the United States Attorney's Office declined to prosecute Mr. Amparo-Lopez.

We appreciate your interest in this matter. Please do not hesitate to contact the Department of Justice if we can be of assistance in other matters.

Sincerely,

William E. Moschella
Assistant Attorney General

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 24, 2004

The Honorable Darrell Issa
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Issa:

This is in response to your letter of February 2, 2004, to Carol C. Lam, United States Attorney for the Southern District of California, regarding the arrest of Antonio Amparo-Lopez. We apologize for any inconvenience our delay in responding may have caused you.

Based upon all of the facts and circumstances of his arrest, the United States Attorney's Office declined to prosecute Mr. Amparo-Lopez.

We appreciate your interest in this matter. Please do not hesitate to contact the Department of Justice if we can be of assistance in other matters.

Sincerely,

William E. Moschella
Assistant Attorney General

Congress of the United States

Washington, DC 20515

July 30, 2004

The Honorable John Ashcroft
Attorney General
United States Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Attorney General Ashcroft:

We write to express our concern with the Department of Justice's current policy of not prosecuting certain alien smugglers. At this time, we ask that you adopt a zero-tolerance policy for alien smuggling. We believe that all cases of alleged immigrant smuggling referred to the Department of Justice by the Department of Homeland Security should be fully pursued and, if the case could reasonably result in a conviction or plea agreement, prosecuted.

It is our understanding that on numerous occasions when the Department of Homeland Security has apprehended alien smugglers and have requested guidance from the U.S. Attorney's office, they have been told to release these criminals. It is unfortunate and unacceptable that anyone in the Department of Justice would deem alien smuggling, on any level or by any person, too low of a priority to warrant prosecution in a timely fashion. In our view, a lack available resources for prosecution is not a valid reason for a decision not to prosecute and, in fact, would signify a mismanagement of your Department's priorities.

Alien smugglers place the safety and well-being of border region communities, Border Patrol officers, local authorities, and illegal immigrants in jeopardy. Smugglers stand at the root of our nation's immigration problem and any failure to prosecute these offenders represents a failure in our nation's current border security strategy.

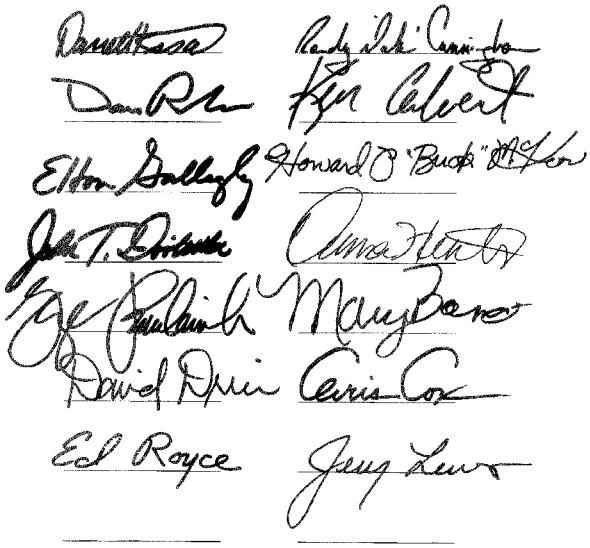
The House Judiciary Committee is currently requesting information on a known alien smuggler Antonio Amparo-Lopez, who was last arrested on suspicion of alien smuggling and held at the Temecula, California, interior checkpoint. In this particular case, Border Patrol agents contacted the Office of the U.S. Attorney for the Southern District of California for guidance on how to proceed with alien Amparo-Lopez (Alien #A76266395), who has a long documented record that includes multiple deportation proceedings and numerous arrests. He was released after your office declined to prosecute.

Alien smugglers, including Amparo-Lopez, should not be given a second, third, or unlimited number of chances before the Department of Justice decides to purse

charges. Alien smuggling is indefensible and when continued unchecked will ultimately lead to far greater taxpayer expenditures than the costs of prosecution and incarceration.

We strongly urge you to consider our request for a zero tolerance alien smuggling policy. If you have any questions or concerns, please do not hesitate to contact us.

Sincerely,



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General Washington, D.C. 20530

JAN 25 2005

The Honorable Darrell Issa
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Issa:

This responds to your letter, dated July 30, 2004, regarding the prosecution of alien smugglers by the Department of Justice. We apologize for any inconvenience our delay in responding may have caused you or your colleagues, to whom we are sending identical responses.

We appreciate your interest in the Department's prosecution of alien smuggling offenses, and share your concern about alien smugglers who place the safety and well-being of law enforcement and the public in jeopardy. Every year, nearly one million illegal aliens are apprehended along our nation's border with Mexico. The United States Attorneys' Offices along the Southwest Border (which includes the Districts of Southern Texas, Western Texas, New Mexico, Arizona, and Southern California) face an enormous challenge in trying to enforce our criminal immigration and narcotics laws along that border. Since the Border Patrol began Operation Gatekeeper ten years ago, those districts have encountered sudden explosions in the number of apprehensions and cases, as illegal immigrants and smugglers have probed the expansive border for more vulnerable points of entry. The District of Arizona, for example, saw apprehensions grow from approximately 100,000 a year to nearly 600,000 a year.

The United States Attorneys' Offices along the Southwest Border place the highest priority on prosecuting alien smuggling cases, focusing first and foremost on those cases that (a) present a potential threat to national security (e.g., the smuggling of aliens from countries with ties to terrorism); (b) present the greatest threat to the health and safety of the community (e.g., where the illegal aliens have prior records for murder, rape, and other violent crimes); and (c) demonstrate willful or reckless disregard for human life. These offices have also reviewed and revised their own policies for prosecuting illegal aliens by, for example, ensuring that felony immigration charges are brought, instead of misdemeanors, against illegal aliens with serious criminal histories.

These strategic approaches to prioritize cases and focus on the most serious offenders have yielded tangible results. For example, crime rates in many cities near the border have fallen during the past decade. The Southwest Border Districts have collectively experienced significant increases in the prosecution of alien smuggling offenses in the past three years. The number of alien smuggling offenses in violation of 8 U.S.C. § 1324 charged by the United States Attorneys' Offices in the Southwest Border Districts in fiscal year 2004 represents an approximate increase of 49 percent from the number of alien smuggling offenses charged in fiscal year 2001.

Although these increases are significant, the Department is committed to improving further its law enforcement role along the border and we continue to develop additional policies and procedures to address the alien smuggling problem. Despite the heavy caseload of immigration offenses confronting the Southwest Border United States Attorneys, they recognize the need to always find better ways to keep this country safe, and they continue to reexamine their responses to immigration violations. Toward this end, the Southwest Border United States Attorneys will be meeting in Arizona in January 2005 to discuss ways to better address the broad range of conduct that includes alien smuggling, as well as other offenses involving the circumvention of our immigration laws. Representatives from the Bureau of Immigration and Customs Enforcement will participate in the meeting, as well. The United States Attorneys are also committed to working jointly with the Civil Rights Division on immigration offenses which involve human trafficking.

We hope this information about our efforts to maintain border security through criminal prosecutions, as well as the challenges we face in those efforts, is helpful and we appreciate your interest in this matter. We will, of course, respond to the House Judiciary Committee inquiry regarding Mr. Amparo-Lopez. Please do not hesitate to contact the Department of Justice if we can be of assistance in other matters.

Sincerely,

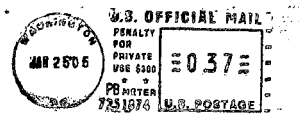
William E. Moschella

William E. Moschella
Assistant Attorney General

U.S. Department of Justice

OFFICE OF LEGISLATIVE AFFAIRS
OLA/70001
Washington, D.C. 20530

Official Business



The Honorable Darrell Issa
U.S. House of Representatives
211 Cannon House Office Building
Washington, DC 20515-0549

20515-0549

Congress of the United States
Washington, DC 20515

September 23, 2005

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

There is a crisis along the Southwest border that needs your immediate attention. We are writing to encourage the dedication of resources toward the increased prosecution of human smugglers known as "coyotes." The Justice Department has stated that they lack the necessary resources to prosecute a number of "coyotes," a situation that must change.

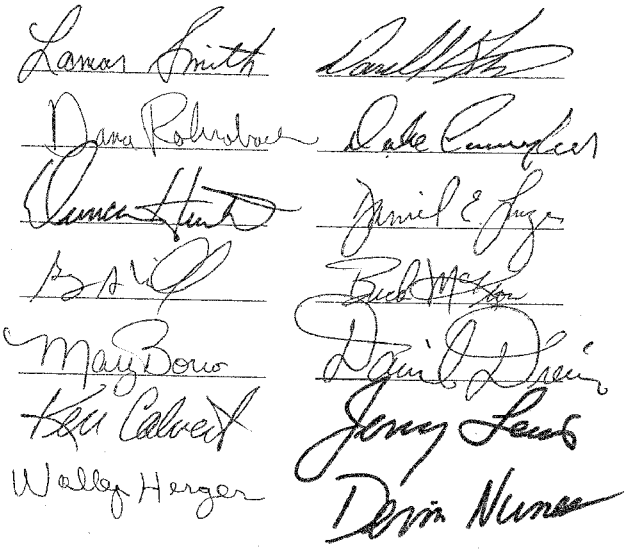
Illegal immigration poses one of the greatest dangers to our national security. Many immigrants who enter illegally are dangerous criminals. Smugglers, who assist the entry of such criminals into the country, deserve the same prosecution as the criminals they transport. Additionally, "coyotes" often endanger the lives of those they transport both during and after transit through harsh travel conditions and lack of food, water or other basic necessities. Human smugglers also hold many individuals captive after their arrival to the United States to extract greater fees from relatives abroad. It is unfathomable that these smugglers who risk the lives of others for profit be allowed to go free.

The U.S. Attorney's Office is responsible for the prosecution of smugglers, but they have had insufficient funds to prosecute these criminals to the fullest extent in the past. For example, the Border Patrol was instructed to release known coyote, Antonio Amparo-Lopez, an individual with 21 aliases and 20 prior arrests. Border Patrol agents have stated on numerous occasions that they find such occurrences demoralizing. Why should they put their lives at risk to apprehend "coyotes" when the system has turned into a catch-and-release fiasco?

Further illustrating the problem, the U.S. Attorney's Office in San Diego stated that it is forced to limit prosecution to only the worst "coyote" offenders, leaving countless bad actors to go free. Again, this means they are free to smuggle more criminals into the United States.

There are many demands for prosecutorial funding today. However, eliminating the multi-layered threat posed by "coyotes" is a priority for the Southwest region. We ask that you dedicate additional resources and direct U.S. Attorneys in the Southwest region to make the prosecution of human smugglers a priority.

Sincerely,



Steve King

Pete Sessions

DARRELL E. ISSA
49TH DISTRICT, CALIFORNIA

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FAX: (202) 225-3303

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SOUTHWEST RIVERSIDE COUNTY
(951) 699-2447

www.issa.house.gov

Congress of the United States
House of Representatives
Washington, DC 20515-0549

COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEES:
ENERGY AND RESOURCES—CHAIRMAN
FEDERAL WORKFORCE & AGENCY ORGANIZATION

COMMITTEE ON
INTERNATIONAL RELATIONS
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EUROPE & EMERGING THREATS
MIDDLE EAST & CENTRAL ASIA

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEES:
COURTS, THE INTERNET & INTELLECTUAL PROPERTY
IMMIGRATION, BORDER SECURITY & CLAIMS

HOUSE POLICY COMMITTEE

October 13, 2005

Ms. Carol C. Lam
United States Attorney
880 Front Street, Room 6293
San Diego, California 92101

Dear Ms. Lam:

I write concerning yet another apparent instance of discretionary non-prosecution of criminal illegal aliens by your office. This reoccurring situation absolutely must change.

I urge you to reconsider your decision not to prosecute Alfredo Gonzales Garcia, a.k.a. Isidro Gonzales Alas, FBI # 180566JA5, a criminal alien who was apprehended by the Border Patrol and remains in their custody. Mr. Garcia has been convicted on narcotics charges on at least two previous occasions and has an outstanding warrant out for his arrest. Nonetheless, I am told that the U.S. Attorney's Office has opted not prosecute Mr. Garcia. Criminal alien repeat offenders pose a significant danger to our citizens, and must be dealt with more severely than a 24-hour detention and release.

Your office has established an appalling record of refusal to prosecute even the worst criminal alien offenders. Your handling of Mr. Garcia is hardly different than the treatment of Antonio Amparo-Lopez, another criminal illegal alien who your office failed to prosecute. Every time one of these criminals is released, our communities become more dangerous.

I implore you to prosecute criminal illegal aliens such as these to every extent possible. If there is some barrier to the prosecution of these criminals that I am unaware of, please communicate it so we can make sure you have the resources and policies in place needed to allow you to bring these criminal aliens and repeat offenders to justice.

Sincerely,

Darrell Issa
Member of Congress

Congress of the United States

Washington, DC 20515

October 20, 2005

The Honorable Alberto Gonzales
Attorney General
United States Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Dear Attorney General Gonzales:

We write to request a meeting with you to discuss our frustration with the current policies within the Administration related to the prosecution of criminal aliens. To date, many illegal aliens, who deserve jail time, fall instead into the current practice of "catch and release." The recidivism rate among criminal aliens is high, and your Department's lack of action aggravates rather than remedies this problem.

The Border Patrol recently arrested illegal alien, Alfredo Gonzales Garcia, near the border in San Diego. Even though Mr. Garcia had at least two prior arrests for selling drugs and was incarcerated on two separate occasions for these offenses, the U.S. Attorney's Office in San Diego declined to prosecute him. Prior to that event, the U.S. Attorney's Office chose not to prosecute Antonio Amparo-Lopez, a human smuggler and illegal alien with multiple prior convictions. In each instance, under the Immigration and Nationality Act, they were both eligible, upon conviction, for a two-year prison sentence, at minimum.

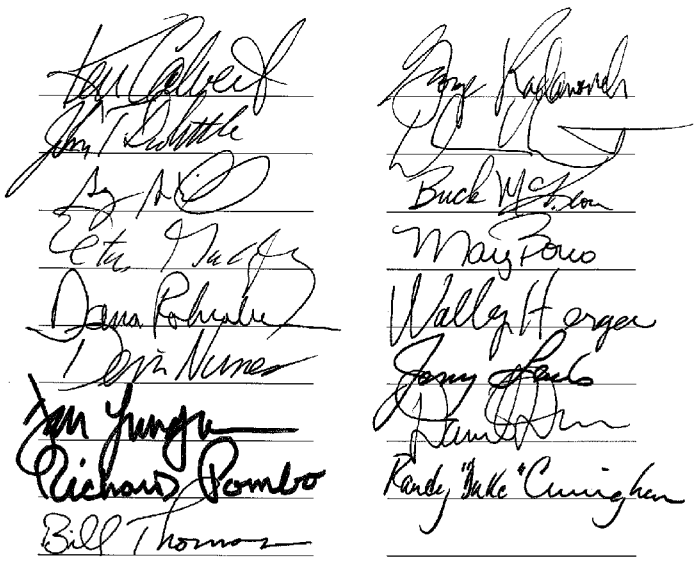
The U.S. Attorney in San Diego has stated that the office will not prosecute a criminal alien unless they have previously been convicted of two felonies in the district. This lax prosecutorial standard virtually guarantees that both of these individuals will be arrested on U.S. soil in the future for committing further serious crimes.

There is one simple reason why "catch and release" cannot continue: it endangers our citizens. It is the responsibility of the Department of Justice to punish dangerous criminals who violate federal laws, and this includes criminal aliens. When we meet, at the very least we encourage you to be prepared to discuss the current policies used by the U.S. Attorneys to determine when to prosecute criminal aliens, including providing us with a copy of the prosecution guidelines that are applied to such cases in the Southern District of California.

Again, we would like to meet to discuss the disparity between crimes committed and prosecutions conducted at your earliest convenience. Please contact us at 202-225-3906 to schedule this meeting.

Sincerely,

Ed Royce



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D C 20530

October 31, 2005

The Honorable Darrell Issa
U S House of Representatives
Washington, DC 20515

Dear Congressman Issa

The Department of Justice has received your letter dated October 13, 2005 We appreciate hearing from you

Your inquiry has been referred to the proper Department component to prepare an appropriate response If you have any questions in the interim, you or your staff may call the Office of Legislative Affairs Please reference workflow number 890960 when inquiring about your letter For your convenience, we have included a copy of your original correspondence

Again, thank you for writing

Sincerely,

James H. Clise /DAAG

for William E Moschella
Assistant Attorney General

Enclosure

DARRELL E. ISSA
49TH DISTRICT, CALIFORNIA

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www.issa.house.gov

Congress of the United States
House of Representatives
Washington, DC 20515–0549

COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEES:
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FEDERAL WORKFORCE & AGENCY ORGANIZATION

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INTERNATIONAL RELATIONS
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EUROPE & EMERGING THREATS
MIDDLE EAST & CENTRAL ASIA

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEES:
COURTS, THE INTERNET & INTELLECTUAL PROPERTY
IMMIGRATION, BORDER SECURITY & CLAIMS

HOUSE POLICY COMMITTEE

May 24, 2006

Ms. Carol C. Lam
United States Attorney
880 Front Street, Room 6293
San Diego, California 92101

Dear Ms. Lam:

In response to your comments on the Border Patrol internal memo my office obtained and released, your statement misses the mark and exhibits a willful disregard to the documented 251 incidents in fiscal year 2004 where the Border Patrol at the El Cajon station apprehended smugglers but led to smuggling charges for roughly 6% of the cases. The memo I released contains a specific enforcement number for each of the 251 incidents that you or the Department of Homeland Security can confirm by simply typing the number into a computer database.

Your failure to address the substantive issues raised in the memo is consistent with previous news reports and comments that I have repeatedly heard from Border Patrol agents who work closely with your office. You have previously disregarded my requests for information that can help me understand the extent of the problems associated with prosecuting alien smuggling cases and the resources you would need to adopt a zero tolerance policy for trafficking in human beings.

In the case of the memo I released, the fact that you have chosen to focus on unspecified alterations to what you freely admit is an "old Border Patrol document" and your assertion that this document was not seen or approved by Border Patrol management does not dismiss the verifiable facts and details in the memo. I can readily understand that the internal memo, written by a Border Patrol employee, is an embarrassment to your office as the memo speaks with such candor about barriers to prosecution that it could not be embraced and released publicly as a report representing the views of Border Patrol management.

On Monday, my office requested your assistance in obtaining a copy of the report you referenced in your statement but your office has not returned that phone call. I find your statement that "all dialogue and debate should be based on well-informed and accurate data" incredibly disingenuous considering your record in response to my past requests for information on criminal aliens and alien smuggling.

The last correspondence I sent to you was October 13, 2005, concerning an alien by the name of Alfredo Gonzales Garcia, a.k.a. Isidro Gonzales Alas, FBI # 180566JA5. In this letter I asked that if there is some barrier to the prosecution of criminal aliens, including smugglers, that I am unaware of, to please communicate it so we can make sure you have the resources and policies in place needed to allow you to bring these criminal aliens and repeat offenders to justice.

Finally, as the representative of a Congressional district that is greatly impacted by border crimes and as a Member of Congress who sits on the Judiciary Committee, the Intelligence Committee, and the Government Reform Committee that collectively have oversight responsibilities for the Department of Justice and the Department of Homeland Security, your lack of cooperation is hindering the ability of Congress to provide proper oversight over your office and to make informed policy decisions. I am asked to craft and vote on legislative policies that determine your legal authority and the resources you receive and having full and correct information on an issue like the challenges of stopping alien smugglers is essential.

I request a joint meeting with you and the Chief Patrol Agent of the San Diego Border Sector to discuss the prosecution of alien smugglers and what resources are needed to establish a zero tolerance policy for prosecuting individuals who traffic in human beings. My office will contact your office to try and arrange a meeting time.

Sincerely yours,

Darrell Issa
Member of Congress

Mr. ISSA. Thank you, Mr. Chairman.

This was not something that was done in the dark of night. This was not done by whispers or political activities. This was done on a bipartisan basis.

And already submitted to the record is Senator Feinstein's request to get to the bottom of the questions of low enforcement, of one category, that of human traffickers, not the 180,000 who try to cross the border every year, but those who, in fact, profit from the trafficking of human beings, those who are known to leave human beings in the desert to die or in the back of trucks to die.

My investigation and activity began when a 21-time offender, Mr. Lopez, who has been repeatedly mentioned here, was not prosecuted, 20 times caught with illegals, 20 times sent home, 20 times not prosecuted. On the 21st time, it was brought to my attention by the Border Patrol.

And I would also include in the record just a little picture, this is what we call the "wall of shame" that the Border Patrol keeps along the border and they do so because these are people who they caught who were released and they were caught as traffickers, repeat offender traffickers.

It is demoralizing to the Border Patrol and it flies in the face of what this Congress has spent billions of dollars trying to do, which is make America safe and selectively prosecute the worst of the worst, and people who traffic in human beings are the worst of the worst.

Now, before September 11, we didn't have the other component, which is if we can't prosecute those who would traffic a human being, who might be from Mexico or New Zealand or Afghanistan or Iraq or Syria, then how do we separate those who simply, as was said earlier, are nannies coming back from a weekend home from those who, in fact, would do us harm?

That is the reason that, in a very straightforward fashion, I lobbied to change the behavior of U.S. Attorney Carol Lam and I was disappointed repeatedly not to be able to do so.

I would also include for the record the statement by—she has already left and I apologize for that—Ms. Lofgren, who, in fact, last summer, on July 5, the day after Independence Day, in fact, particularly wanted to know why this policy was in effect and how outrageous it was that we didn't have, and I will paraphrase it, "a zero tolerance policy at the border."

She did so while we were overseeing the border with the border chief and a day on which Mr. Sensenbrenner and I had met with the U.S. attorney and she was concerned.

Now, that was before the election. It is now after the election, but nothing has changed.

This Committee has a lot of things to look at. The story of Carol Lam is, in fact, that this is an incredibly talented U.S. attorney, a gifted prosecutor, who ran an office that did a lot of big things well.

But I would ask this Committee to put into perspective, not all seven people who were terminated, but Carol Lam, she had a border region. She was repeatedly asked by this Committee and by our Senator to do better on the prosecutions of those who traffic in human beings.

She didn't do so and my only question for this Committee is not why was she let go, but why did she last that long?

[The prepared statement of Mr. Issa follows:]

PREPARED STATEMENT OF THE HONORABLE DARRELL ISSA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Chairwoman Sánchez, Ranking Member Cannon, thank you for allowing me to join you today to share with you some of my experiences surrounding this hearing.

I recognize that this hearing is about the removal of seven U.S. Attorneys, and the concerns of some members that President Bush will use an appointment process stipulated within the Patriot Act reauthorization. In my view, my colleagues with such concerns are putting the cart before the horse, because we have little reason to believe the President will abuse this temporary appointment procedure. To the contrary, the Administration has given me assurances that it plans to work with the Senate to fill the U.S. Attorney positions recently vacated.

Beyond the legislation at hand, it seems the other key issues are whether or not U.S. Attorneys serve at the pleasure of the President, and beyond this point, whether or not any foundation existed for their removal. To the first issue, U.S. Attorneys absolutely serve at the pleasure of the President. The President and the Vice President are the only elected officials within the Administration, and every political appointee is an at-will employee. Period. Significantly, the U.S. Attorneys' testimony states this point quite clearly. I will focus my testimony on the second issue, whether or not any foundation for removal existed, in my experience and knowledge of the US Attorney whose jurisdiction covered my congressional district.

First of all, I would like to recognize Carol Lam for the many positive achievements during her service as U.S. Attorney for the Southern District of California. It would be difficult to overstate the importance of her successful prosecution of Congressman Randy "Duke" Cunningham and other corrupt public officials in San Diego.

U.S. Attorneys, however, are given a myriad of responsibilities, and are expected to prosecute many different criminal activities. People have taken notice of U.S. Attorney Lam's prosecution of corrupt officials, and hopefully this has scared straight any would be profiteers of the public trust. That being said, I am afraid that criminal cartels that traffic in human beings are taking notice that they are less likely to be prosecuted in the San Diego Sector than other areas along the Southwest border.

Last June, Senator Feinstein wrote to Attorney General Gonzales to share her similar concern that Carol Lam's failure to prosecute most alien smugglers would endanger the lives of Border Patrol agents and bring even more violent smuggling syndicates to the California border region.

I first wrote to Carol Lam about border crimes more than three years ago after learning from a reporter that her office had declined to prosecute an alien smuggler apprehended while transporting a car loaded with undocumented immigrants near Temecula, California, in my district. The smuggler, Antonio Amparo-Lopez, had attempted to escape the arresting Border Patrol agents and, upon capture, the Border Patrol learned that the smuggler had 21 known aliases and had been arrested and deported more than 20 times without ever having been prosecuted.

I sought information from sources in the Border Patrol, and others in the law enforcement community, about what was really happening with border prosecutions. Border Patrol agents were forced to accept a reality in which smugglers knew what they could get away with. A smuggler knew he could drive a van full of illegal immigrants across the border without fear of any consequence other than being sent back to Mexico to try again. Smugglers who were American citizens faced no consequences at all.

Border Patrol agents and others within the Department of Homeland Security would privately bring my office information about the problems with prosecutorial guidelines put into effect by U.S. Attorney Carol Lam created in their efforts to secure the border near San Diego from organized smuggling cartels. In May 2006, my office released to the press a memo prepared by a senior source within the Border Patrol that detailed how Carol Lam's policies adversely affected efforts to stop smuggling syndicates. According to the memo, only 6 percent of 289 smuggling suspects caught by Border Patrol agents from the El Cajon station east of San Diego in the 12 months ending in September 2004 were prosecuted.

In August of 2006, former Judiciary Committee Chairman Jim Sensenbrenner and I had consecutive meetings with the Border Patrol's San Diego Sector Chief Darryl Griffen and Carol Lam about this subject. While we attempted to persuade the U.S.

Attorney to focus more resources in a way advocated by Federal law enforcement officers charged with securing the border, we left the meeting unconvinced that U.S. Attorney Lam was prepared to direct more resources toward the prosecution of actual foot soldiers for the smuggling cartels.

For three years, I and other members of Congress wrote Ms. Lam, the U.S. Attorney General, and the President asking that more be done to prosecute those who traffic in human beings. Only someone who believes that trafficking human beings isn't a serious crime could look at Carol Lam's record and see an area that does not deserve legitimate criticism.

My efforts to bring accountability and justice to the foot soldiers of smuggling organizations has not been limited to sending letters to the Administration. I have successfully secured both funding authorizations and appropriations to bring more prosecutorial resources to focus on alien smugglers. Last summer, these efforts began to pay dividends as the Department of Justice announced the addition of 35 new prosecutors to border region offices such as San Diego who will focus exclusively on alien smuggling and other border crimes.

I fully intend to continue my work, on a bipartisan basis, with California's senators and my colleagues in the House of Representatives to ensure that our next U.S. attorney focuses on both border crimes and other critical cases here in the San Diego area.

Mr. CONYERS. The time of the gentleman has expired.

And we now greet a former colleague, Asa Hutchinson. We welcome you to the Judiciary Committee panel.

Mr. CANNON. Mr. Chairman, before Mr. Hutchinson begins, I know that Mr. Issa has been here all day. I understand he is willing to answer questions.

Could we poll the panel to see if anybody has questions for Mr. Issa? Otherwise, I think it is typical to let a Congressman leave if there are no questions for him.

Mr. CONYERS. We do have some that would wish to question him, but I would be willing to excuse Darrell Issa anyway if he has a sufficiently urgent reason to leave, and I would be willing to do it without——

Mr. ISSA. Mr. Chairman, although I took a redeye to get back here, I am willing to stay as long as necessary to meet the requirements of the Committee.

If there is a short group of questions that I could answer quickly, great. Otherwise, I certainly would understand and move with regular order.

Mr. CONYERS. If I could break order, then why don't I just recognize the gentleman from Georgia for the questions he would like to put to you know.

Mr. JOHNSON. Thank you, Mr. Chairman.

Congressman, you have focused a lot on this alleged smuggler, Mr. Antonio Amparo-Lopez, who you say had been arrested and deported 20 times without ever having been prosecuted.

When did those arrests and deportations occur?

Mr. ISSA. They occurred over, I believe, a 7-year period prior to the first complaint, which was in 2004.

Although whether or not he committed other crimes, there is no question that he was not eligible to be where he was and he was deported 20 times before that.

Mr. JOHNSON. When you say deported, do you mean that there were actually some deportation proceedings begun by the INS?

Mr. ISSA. No. We have a procedure when you are not entitled to be in the U.S., when you are an illegal, and the gentlemen to my left can do a much better job of answering the details.

You can voluntarily, you can waive the claim of various rights.

Mr. JOHNSON. So in short, there was no prosecution of the gentleman because he was deported administratively, is that correct?

Mr. ISSA. That is correct. Twenty times he was in the U.S. illegally and was let go back to his home country.

Mr. JOHNSON. And that was administrative, not a decision that was made by the U.S. attorney's office, isn't that correct?

Mr. ISSA. It was correct that—no, no, I take that back. No, he had been put up for prosecution. Prosecution had been refused previously and he was let go.

The Border Patrol doesn't make a decision on prosecution.

Mr. JOHNSON. And how many times had the U.S. attorney's office in the San Diego district refused to prosecute Mr. Lopez.

Mr. ISSA. I don't have that figure today. I have to be quite candid, the 21st time was when the Border Patrol had him on the top of the wall of shame and asked me if we could do something before he left the country again.

Mr. JOHNSON. So pretty much after 20 times of being administratively deported, a complaint was made that the U.S. attorney's office should commence criminal prosecution against this gentleman.

Mr. ISSA. That is correct.

Mr. JOHNSON. All right, thank you.

Ms. SÁNCHEZ. [Presiding.] Mr. Keller is recognized.

Mr. KELLER. Thank you.

Mr. Issa, you were here today. I want to start with the alleged Duke Cunningham connection.

You saw that I asked Will Moschella from DOJ a question and he testified under oath that Ms. Lam's dismissal had absolutely nothing to do with her pursuing Duke Cunningham.

When I asked Ms. Lam, under oath, if she had any evidence whatsoever that her dismissal was really in her prosecution of Duke Cunningham, she said, under oath, "No."

I just want to point out a timeline, based on letters that you sent that totally confirms that. The Duke Cunningham scandal was broken by your local paper, "San Diego Union Tribune," on June 12, 2005, and yet we have a series of letters from you 14 months before that date, calling the attention of the problem to Ms. Lam that she was not prosecuting certain alien smugglers who had been arrested repeatedly.

In fact, your first letter is February 2, 2004. Is that correct?

Mr. ISSA. That is correct.

Mr. KELLER. And it makes common sense, but you obviously had no idea on February 2, 2004 that your colleague, who had just been reelected over and over again, 14 months from now, was going to be involved in some big scandal. Is that correct?

Mr. ISSA. I am quite certain none of us here or on the dais had any idea.

Mr. KELLER. And you aren't the only one to raise those concerns. There were 19 Republicans that signed a letter, but there were also a couple of Democrats who raised the same concerns you did.

Would you talk about that for a little bit?

Mr. ISSA. Senator Feinstein has been an excellent Senator for California and she has shown an interest in an immigration reform policy, but at the same time, an assurance that we should make

our borders secure, and she had written a letter that almost mimicked the exact same concerns I had and perhaps even generated by the other part of the enforcement process, the Border Patrol, being frustrated.

Mr. KELLER. Let me just say, in closing, that I thought Ms. Lam today was very professional and handled herself well. She deserves a lot of credit for the Duke Cunningham prosecution and will go down in the books for that outstanding prosecution.

But you, too, deserve a lot of credit, Darrell. I went to San Diego myself and spent a week in January of 2006, riding around with Border Patrol agents, and they reported to me the same frustrations that you had first been calling to the attention of everyone for 2 years, that they had arrested the same exact people 20 different times, that these people were bringing over about 10 illegal aliens per shot at 1,500 bucks a pop, making 15 grand a week, bring them in 10 times a year.

Next thing you know, that is 150 grand and they were not being prosecuted at all and they were so frustrated because they were risking their lives to arrest folks and they may be shot and then they would turn them over and not be prosecuted.

So I just want to commend you. You were ahead of the curve on that and I can just say, from having been there firsthand, you knew what you were talking about.

Mr. ISSA. Thank you, Mr. Keller. And I think you point out the one great flaw that we tried to get changed in the southern district and that was that the U.S. attorney's policy of less than dozen, no prosecution, had become known.

So it created a guaranteed get-out-of-jail free or never go to jail and that, of course, enhanced a particular type of smuggling.

I want to say one other thing, which is that I happen to believe that Carol Lam is a terrific prosecutor and when it came to big cases, she did extremely well.

It really is a question of balance. Our office felt that we needed to have a little more balance on human smuggling and we endeavored to do so and we really regret that we didn't get that during the period of time in which it might have helped in Federal policy, including a guest worker program and a national reform which this President lobbied for.

Mr. KELLER. I thank you for your leadership.

Madam Chairman, yield back the balance of my time.

Ms. SÁNCHEZ. Thank you.

If there are no further questions for Mr. Issa, you may be excused.

And we will now move on to Mr. Hutchinson.

Mr. Hutchinson, would you please proceed with your testimony?

TESTIMONY OF THE HONORABLE ASA HUTCHINSON, A FORMER REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. HUTCHINSON. Thank you, Madam Chairman, Ranking Member Cannon, Mr. Chairman of the full Committee, Chairman Conyers, colleagues, former colleagues, I should say.

It is good to be back in the home of the Judiciary Committee, where I served 1997 to 2001. I have enormous respect for this Com-

mittee, the work of the Members of this Committee and for its history, as well.

I am here today testifying as a former United States attorney and I have served in that capacity in the 1980's under former President Ronald Reagan, but I have also worked with the United States attorneys both as administrator of the Drug Enforcement Administration, including the current batch of U.S. attorneys, as well as in homeland security, looking at drug enforcement, working with them on immigration enforcement and customs enforcement, as well.

And the purpose of my testimony is, obviously, to answer any questions, but also to talk about the importance of the U.S. attorney and serving at the pleasure of the President in terms of carrying out the President's mission and I certainly support that totally.

The U.S. attorneys who have previously testified, I worked with most of those while I was head of the DEA and at Homeland Security and I have the greatest respect for them.

But I also understand the issue here today is not necessarily the performance as simply the question that they serve at the pleasure of the President of the United States and whenever you serve in that discretionary role, the President can ask for a U.S. attorney's resignation, as has happened many times during the course of history.

But I would just make a couple points before I turn the microphone back.

First, except for the U.S. attorney, except for the U.S. attorney, the Federal prosecutors are career attorneys who are not necessarily committed to the priorities of the Administration. And without the full support of the U.S. attorney, the President, through the attorney general, would have little impact on the strategic priorities of the Federal justice system.

Any new Administration could choose from a laundry list of priorities that range from environmental enforcement to Federal gun laws to fighting terrorism and the priorities change with the necessity of the time and with the goals of the Administration.

With limited resources, the U.S. attorney sets the prosecutorial guidelines, among a long list of Federal agencies, and they invariably change with different Presidents, but they cannot change without the commitment of the presidentially-appointed United States attorney.

So it is essentially that the U.S. attorneys serve at the pleasure of the President and any U.S. attorney enjoys being able to say, as a mark of his or her authority, "I serve at the pleasure of the President of the United States." And as a necessary part of that power and authority goes with the logical inference that the President can request that individual's resignation.

And it would be unacceptable for a U.S. attorney to refuse to enforce Federal immigration laws, drug laws, or to seek the death penalty merely because of disagreement with the Administration's views.

If you disagree with that statement, then it would appear to me that the President's prerogative should be preserved and protected.

With regard to the issue of the appointment of interim United States attorneys, it is my view that the attorney general should have the authority to name interim U.S. attorneys until the presidentially-appointed successor is named, confirmed and takes office.

And while this is not perfect, it is consistent with the objective of the President having the ability to influence Federal enforcement priorities through the attorney general and the United States attorneys.

The role of the U.S. attorney has always been critical to effective enforcement of our Federal criminal laws, but it has been substantially increased since the terrorist attacks of 9/11.

The U.S. attorney not only sets enforcement priorities within the district, but also serves as a unique coordinator of the Federal law enforcement.

In fighting terrorism, it is essential that the U.S. attorney be in synch with the attorney general and properly coordinate with the Department of Justice.

For this reason, the current authority of the attorney general to name interim appointments makes sense and, in my judgment, should be continued.

And with that, I will yield my time and I thank the Committee for its indulgence.

[The prepared statement of Mr. Hutchinson follows:]

PREPARED STATEMENT OF THE HONORABLE ASA HUTCHINSON

Good afternoon. My name is Asa Hutchinson, and it was my privilege to serve on the House Committee on the Judiciary from 1997–2001 before being confirmed to serve as Administrator of the United States Drug Enforcement Administration. It is good to be back, and I am privileged to be testifying on a subject of great interest to me and to anyone who appreciates the importance of United States Attorneys to the administration of justice at the federal level in this nation. I was honored to have served as United States Attorney for the Western District of Arkansas from l982 until l985 during the administration of former President Ronald Reagan.

It is from a number of perspectives that I have learned the critical role that a United States Attorney serves our nation and the priorities of the Administration. I have interacted with United States Attorneys as a defense lawyer; as a member of Congress; as head of the DEA; and as our nation's first Under Secretary for Border and Transportation Security of the Department of Homeland Security. In the latter role, I worked with our federal law enforcement officials on customs, immigration and drug enforcement issues. The dedication, commitment and discretion of U.S. Attorneys is essential if the President's administration is to be successful with its priorities in enforcing federal criminal law. That is why I fully support the President's discretion in naming U.S. Attorneys who support the President's priorities and who are committed to carrying out the president's initiatives and enforcement goals. Let me elaborate on this main point:

1. Except for the U.S. Attorney, the federal prosecutors are career attorneys who are not necessarily committed to the priorities of the Administration. Without the full support of the U.S. Attorney, the President, through the Attorney General, would have little practical impact on the strategic priorities of the federal justice system. Any new administration could choose from a laundry list of priorities that range from environmental enforcement to federal gun laws to fighting terrorism. The priorities change with the necessity of the time and with the goals of the Administration. With limited resources the United States Attorney sets the prosecutorial guidelines for a long list of federal agencies, and those priorities invariably change with different presidents, but they could not change without the commitment of the presidentially appointed United States Attorney.
2. It is essential that the United States Attorneys serve at the pleasure of the President. It logically follows that the President may ask for the resignation of his or her appointee, with or without cause. A caution is necessary at this point. If a President exercises the power to fire a United States Attorney,

then that action is entitled to receive close scrutiny by those with oversight responsibility. I say this because we all recall the Saturday night massacre when the Nixon White House fired a number of federal appointees with investigative and prosecutorial power in the Watergate investigation. The actions of the President on that occasion received broad criticism and ultimately backfired with the appointment of Leon Jaworski who pursued the investigation with vigor and success. While that action was an extreme abuse of presidential power, the lessons of history illustrate that the presidential appointment power over U.S. Attorneys has been largely used to positively influence federal enforcement priorities. For example, it would be unacceptable for the U.S. Attorney to refuse to enforce federal immigration laws, drug laws, or seek the death penalty merely because of a disagreement with the Administration's views. If you agree with that statement ,then it would appear to me that the presidential prerogative should be preserved and protected.

3. With regard to the appointment of interim United States Attorneys, it is my view that the Attorney General should have the authority to name interim U.S. Attorneys until the presidentially appointed successor is named, confirmed and takes office. While this is not perfect, it is consistent with the objective of a President having the ability to influence federal enforcement priorities through the Attorney General and the U.S. Attorneys.

The role of U.S. Attorneys has always been critical to effective enforcement of our federal laws, but their role has increased substantially since the terrorist attacks of 9/11. The U.S. Attorney not only sets federal enforcement priorities within the district but also serves as a unique coordinator of the federal law enforcement effort. In fighting terrorism, it is essential that the U.S. Attorney be in sync with the Attorney General and properly coordinate with the Department of Justice. For this reason the current authority of the Attorney General to name interim appointments makes sense and should be continued.

I would be happy to respond to any questions.

Ms. SÁNCHEZ. Thank you, Mr. Hutchinson.

Mr. Smietanka?

TESTIMONY OF JOHN A. SMIETANKA, FORMER UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF MICHIGAN

Mr. SMIETANKA. I am electronically challenged and I found the button.

Madam Chairman, Mr. Chairman, Mr. Ranking Member, my name is John Smietanka. I practice law in the western area of Michigan, with Smietanka, Buckleitner, Stephenson & Guzon. I have been in private practice now for about 13 years.

For 25 years before that, I was a prosecuting attorney, 12 in the prosecutor's office in Berrien County in the southwestern corner of the State with Congressman Conyers.

For 12 years, I was a United States attorney for the western district of Michigan. I am a recovering politician, elected county prosecutor three times, and ran unsuccessfully for Michigan attorney general twice.

I love and respect the office of the United States attorney and the U.S. Department of Justice very much. I know many former U.S. attorneys sitting in this panel, colleagues of mine, who equally love the department, love the position of U.S. attorney and is a part of our family and we don't like it when our family is attacked.

I also respect politics and politicians, because I was one, and I admire those people who have the guts to go out and run for office and practice what Aristotle called the art of government.

The primary issue that I was asked to testify about was how to deal with the appointment of temporary replacement United States

attorneys when the presidentially appointed incumbent leaves office.

And I jump to the conclusion and I say that I would endorse the Berman bill, because it is essentially what we came to at the recommendation of Attorney General Meese back in 1986 and served in decent stead until 2006.

That policy, that legislation was a modification of what had been going on for decades before that. In fact, I believe Abraham Lincoln and 26 of his successors found that appointment by judges was not constitutionally offensive and was a fine way to deal with what should be an interim position, and I want to emphasize interim position.

The President has the absolute right under the Constitution, under the Judiciary Act of 1789 to name and to replace United States attorneys. They have been under the direction of the attorney general since the 1870's. They are at-will employees or, rather, inferior officers, the technical term.

I suggest when you are talking about now the replacement of a U.S. attorney, an interim U.S. attorney, I would just highlight eight points and I will be finished.

The position of the United States attorney has always been and should a political or policy non-career position. It is a very powerful position. With that should come great accountability.

The appointment of temporary successors to the presidentially-appointed United States attorneys under any legislative and/or executive scheme has dangers that have arisen in the past and will do so in the future.

The appropriate work of the United States attorney's office must go on without improper or undue interference from within or without. As I said, the President has a right to qualified political appointees in her or his Administration who will promote good Government and the Administration's policy priorities.

The Congress, courts, media and the public have parallel rights to scrutinize the work of those political appointees. The removal of a United States attorney by fiat or requested resignation should be approached carefully and may have consequences in how that office and the department functions.

To make temporary replacement appointments of unqualified people would be to make a plaything of the office and extremely demeaning to a very critical office.

And, finally, the appropriate way, as I said before, of appointing interim U.S. attorneys is the process that prevailed from 1986 to 2006, essentially the Berman bill. Whether it is 120 days or some other figure is up to the legislature.

Thank you, Madam Chairman.

[The prepared statement of Mr. Smietanka follows:]

PREPARED STATEMENT OF JOHN A. SMIETANKA

My name is John Smietanka. I currently practice law in Western Michigan in the firm of Smietanka, Buckleitner, Steffes and Gezon. While the majority of our practice is in civil work, federal and state, we also handle a substantial number of federal and state criminal cases.

MY BACKGROUND

I am admitted to practice law in the States of Michigan and Illinois, as well as the federal courts of those two states, the United States Sixth Circuit Court of Appeals and the United States Supreme Court.

Berrien County, Michigan Prosecutor

For 25 years of my career I was a prosecutor, first as an assistant county prosecutor in Berrien County, Michigan for 4 years, and then as Berrien County Prosecuting Attorney for almost 8 years. I was also President of the Prosecuting Attorneys Association of Michigan. During my time as county prosecutor, I was also involved in politics as a member of the Republican Party at both the local and state levels. I was elected 3 times as Prosecuting Attorney by the people of Berrien County.

United States Attorney for the Western District of Michigan

In 1981, the presidentially-appointed United States Attorney for Western Michigan (appointed by President Carter) James Brady, resigned to go into private practice, and, under the law as it existed at the time, the federal district judges in the Western District appointed Robert Greene as Interim United States Attorney. Bob had been an assistant United States Attorney in the office for many years. He served as the Interim United States Attorney until I was confirmed and commissioned in October 1981.

Later in 1981 President Reagan nominated me and the United States Senate confirmed me as the United States Attorney for the Western District of Michigan. In 1985, I was renominated and confirmed for a second four year term. When President George H.W. Bush was elected in 1988, I continued to serve as United States Attorney until January 1, 1994.

I resigned effective on January 1, 1994, upon the confirmation of my successor, Michael Dettmer, the presidentially-appointed United States Attorney of former President Clinton.

I served as U.S. Attorney for 3 Presidents (Reagan, Bush and Clinton) and 5 Attorney Generals (Smith, Meese, Thornburgh, Barr and Reno) and several acting Attorney Generals.

The transitions of the United States Attorney's Office in Western Michigan from the Carter to Reagan/Bush to Clinton United States Attorneys were almost seamless, with each of us cooperating completely and enthusiastically to ensure a smooth and effective transition. Jim Brady and Bob Greene remain good friends of mine.

I mention this to emphasize two points.

- Transitions of an extremely sensitive and powerful political office such as United States Attorney can and should be as smooth as possible, with the goal that the work of the office continue as unaffected as possible.
- As every current and former United States Attorney that I have ever met (and that has been hundreds) has said, this is the best job any lawyer in America can have. We develop a loyalty to our office and the entire Department of Justice that borders on that given to one's family. Like many others, I am a member of the National Association of Former United States Attorneys which is dedicated to ensuring that the Department of Justice continues to live up to its best traditions and goals.

Principal Associate Deputy Attorney General

I also had a unique honor in 1990. I was asked by then United States Deputy Attorney General William P. Barr to take a temporary detail to Main Justice as his Principal Associate. Later, when he became Attorney General in 1991, I was one of his Assistants in that office. In that role, I learned even more of how that department of many diverse divisions and offices, with 88,000 persons working there, functioned. My responsibilities included being the liaison between the Deputy and all of the departmental components (save for the Criminal Division and the Federal Bureau of Investigation, the responsibilities of later Deputy Attorney General George Terwilliger). My area of concern thus included all the United States Attorneys in the country.

Occasionally I participated in the interview process for the candidates for United States Attorney positions, but was never a part of the selection process in the White House.

United States Court of Appeals Nominee

In 1992, President George H. W. Bush nominated me for a vacancy on the United States Sixth Circuit Court of Appeals. However, it was a presidential election year

and over 60 nominees for judicial appointments did not get hearings before the Senate Judiciary Committee that year and our nominations died on the last day of that Congress. I was left with the consolation that it wasn't personal, that very qualified people in our group (now Chief Justice of the United States Supreme Court John Roberts and former Governor of Oklahoma Frank Keating were with me) went on with their lives, and that, as John Roberts said, "We are now entitled to the acronym after our names: AJO: Almost Judge Once.".

Candidate for Michigan Attorney General

In 1994, and again in 1998, I ran unsuccessfully for the position of Michigan Attorney General as the Republican nominee.

In our family we were taught to respect government, politics and politicians. A great aunt of mine once said of our family, "We were raised on politics, sports and cigar smoke." Now, I confess, I am a recovering politician.

With this background the Committee may appreciate a little how much I love the Department of Justice. It also may show that I have no grudge against politics and politicians.

Therefore it troubles me when the word "politics" is sneered at, and is used as a dirty adjective in common speech. And it truly offends me when I hear prosecutors wrongfully tarred with that adjective when undeserved. Finally it causes me the most concern if there is any apparent basis in the actions of politicians, prosecutors or judges for their placing partisan or personal considerations above the honest and effective creation, execution and judging of the law.

THE OFFICE OF UNITED STATES ATTORNEY

Let me briefly highlight the history of the United States Attorneys as part of our federal system of law.

The position was first created in the Judiciary Act of 1789, one of the first laws of our country.

> And there shall be appointed in each district a meet person learned in the law to act as attorney for the United States in such district, who shall be sworn or affirmed to the faithful execution of his office, whose duty it shall be to prosecute in such district all delinquents for crimes and offences, cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned, except before the supreme court in the district in which that court shall be holden. And he shall receive as compensation for his services such fees as shall be taxed therefor in the respective courts before which the suits or prosecutions shall be. . . .

Judiciary Act of 1789, Section 35.

The same law created the position of Attorney General, but did not create a relationship between the two offices, rather assigning the majority of federal legal work to the United States Attorneys, and designating the Attorney General as legal advisor to the United States and its representative in the United States Supreme Court.

In 1870 the Department of Justice was created by Congress and the folding of the United States Attorneys into it took place.

While the process of filling the office of United States Attorney on a 4-year-term basis has been stable for over a century, the method of appointing temporary replacements has varied since my appointment in 1981.

Appointment of Interim or Acting United States Attorneys

For many decades, the appointing of United States Attorneys has been covered by 28 USC § 541.

- Prior to 1986, it was left to the federal district judges to select an "Interim" United States Attorney until a permanent presidentially-appointed person was fully-qualified.
- From 1986 to 2006, the Attorney General was given the first crack at an "interim" U.S. Attorney, and if a new person was not qualified within 120 days, the district court had the discretion to appoint such a person without time limitation (but only until a new presidentially-appointed person was qualified).
- In 2006, the section and the practice were changed to allow the Attorney General's choice to remain in office until a successor was senatorially confirmed.

In addition there is another approach to filling the vacancy, the Vacancies Reform Act, 5 USC §§ 3345–3349d. This provides in the broadest terms for such person as

the First Assistant United States Attorney then serving in the office where the vacancy occurs for a period of 210 days.

PRACTICAL CONSIDERATIONS IN REVIEWING 28 USC § 546:

The position of United States Attorney has always been and should continue to be a political position, that is, a "policy" or non-career appointment.

It guarantees some sensitivity for the distinct culture and history of the people in the district when making discretionary legal decisions.

Examples include:

- Working to achieve proper integration and cooperation between federal, state and local law enforcement authorities (Law Enforcement Coordinating Committees from the 1980s);
- Proper allocation of legal resources in a district that meets local needs (gun, obscenity, drug etc. cases);
- A proper sensitivity to how state and local governmental cultures can be checked for abuses of power (public corruption prosecutions);
- A presumed comfort with the public relations aspect of the United States Attorney's job.

Furthermore, while I have the greatest respect for the career civil servants, we benefit by the responsiveness to the public and the accountability that goes with being a political officer.

WITH GREAT POWER SHOULD GO GREAT ACCOUNTABILITY.

We do need public scrutiny of the types of people that wield governmental authority, especially those who exercise the powerful investigative and prosecutorial tools that Congress has authorized and funded, and the Executive uses, to enforce federal laws.

- Although nomination by a President of suitable persons to be United States Attorneys has its own perils, it does at least cause administrations to be more careful that the persons that they ultimately choose are going to pass congressional and public scrutiny.
- While the current process of "advice and consent" by the United States Senate is not perfect (it can be brutally unfair and partisan, and has permanently negatively affected nominees' lives), it does prepare them and others for the rough and tumble world of federal law enforcement.
- While both aspects of this process do in fact deter good and qualified people from subjecting themselves to it, for the most part it replicates the world of electoral politics where candidates voluntarily expose themselves to "the slings and arrows of outrageous fortune". Hopefully it develops in the survivors a thick skin covering a humbled ego with a certain empathy to the staffs and Assistant United States Attorneys they supervise, the agents and courts they work with, the victims and defendants they must protect, the media they are examined by and the public they serve.

The appointment of successors to the presidentially-appointed United States Attorneys under any legislative and/or executive scheme has dangers that have arisen in the past:

- **Court appointment:** When the courts were the sole appointers of Interim U.S. Attorneys, the danger was that the person so designated would have had a too-close relationship to the court and have allegiance to it rather than the policies and practices of the President, Attorney General or the Department of Justice.
- **Delay by the President or Senate:** When the Administration or the Senate unduly delayed the nomination of a successor, interim or "acting" United States Attorneys could stay in that category for years. (See the extraordinarily difficult situation in **Puerto Rico** from **1993 to 1999** described in the trial and appellate court decisions in *United States v. Fermin Hilario,* 83 F. Supp. 2d 263 (D.P.R. 2000), and *United States v. Del Rosario,* 90 F. Supp. 2d 171 (D.P.R. 2000). See also the First Circuit's reversal of the trial court in *United States v. Hilario,* 219 F.3d 9 (2000). In those cases the acting or Interim United States Attorney was in place for 6½ years. This problem has occurred during different administrations, as witness the years of successive acting/interim United States Attorneys in the **Virgin Islands** in the **1980s.**

- **Temporary appointments for political favoritism:** A danger arises also if a temporary appointment of the Attorney General is not followed by some action to identify and move a successor through the process. It is most of concern where a perception may exist that the Interim United States Attorney is put in place to accomplish a purely partisan political goal. Every administration in the past 30 years has published extensive criteria for identifying the most professionally qualified candidates for U.S. Attorney positions.
- **Changes in the leadership of an organization send messages.** Whenever and for whatever reason one United States Attorney leaves and another comes in, there is profound uncertainty in the career staff of assistants and staff. Sometimes that is good, as when poor management skills or criminality is attacked, or a complacent office needs new ideas and energy; sometimes it is bad, as when the competent office leader is removed without apparent good reason. But sudden and apparently arbitrary changes at the top cannot help but affect the troops. This danger is most apparent in mass actions, such as the approximately 86 same-day terminations of U.S. Attorneys during the Clinton administration, and to a lesser extent, perhaps only by numbers, in the current situation.

The appropriate work of a United States Attorneys' Office must go on without improper or undue interference

Sensitive investigations and prosecutions, most especially those of political or other public figures should never be improperly derailed by a change of administration in the United States Attorney of a district. The best way for that to occur is for the departmental leadership, including both those in Main Justice and the local office itself, to commit themselves to seamless transitions. Unnecessary jerking of the reins distract the most compliant horses.

Judging the reasons for the replacement of a United States Attorney must be done with great care and circumspection

This is the most difficult of all considerations to apply in real life. Resignations are often the method of resolution of conflict giving both the employer and employee a way of avoiding undue embarrassment. In addition it would do the work of no United States Attorney's Office any good, in my judgment, to undergo the stress of a public airing of personality conflicts, odd personal traits or the management quirks of the boss or her or his workers.

When the reason for a hasty departure is the potential criminal behavior of the incumbent, that is a different story. And sometimes non-criminal but tortious behavior occurs and can be fair game for the public and for reason for firings.

In the case of the 7 resignations under scrutiny here, I have absolutely no knowledge of what led to them. I have, nor do I need for my policy comments, no reason to deal with the merits of any of these cases. These 7 resignations and the 86 in 1993, are unique in my experience.

The President has a right to qualified political appointees in her or his administration who will promote good government and the administration's policy priorities

A concomitant right is to dismiss or seek the resignation of those who do not want to follow the lawful directives of that administration's leadership. Again I emphasize I do not know what caused these resignations. If a United States Attorney is charged with enforcing a policy or a decision to do something which is illegal or morally repugnant, that person has a right, or perhaps even a duty, to oppose it internally. If internal opposition is unavailing, the proper course would be to resign rather than to perform illegal or morally repugnant acts.

On the other hand, the President and the Attorney General have the right to remove a United States Attorney who is not doing a good job. To take that power away from the Chief Executive would be of questionable constitutionality, and certainly very bad government.

In any event, the Congress, the Judiciary, the media and the public have continually exercised their prerogatives to evaluate just how well the President appoints and removes.

The appropriate way of appointing Interim United States Attorneys is the process that prevailed from 1986 to 2006

No way to handle this situation is perfect. Each approach has dangers of abuse, inefficiency, favoritism and treading on toes. However, it seems to me that the most effective way is to allow the Attorney General to appoint for a period of time (120 days is a fair number, though not worthy of Mount Rushmore enshrinement), and, if the President fails to nominate or the Senate fails to confirm a candidate, the court could (though not required to) step in. The court could, if the appointee of the Attorney General is doing a good enough job, reappoint that person. The one thing

that is certain is that if the Administration were to put in as Interim United States Attorney someone who was then to fail to be confirmed by the Senate, 28 USC 546 would bar that person from holding the office later. This would militate against an Attorney General immediately putting in a controversial political person that could be forced out ignominiously and forever within 120 days.

This checks-and-balances process would put a premium on the administration, the court, the Senate and the "recommenders" of potential new United States Attorneys working together to speed the process along. Such an approach would be the best guarantee of as little disturbance of the work of the office.

Therefore I endorse the approach of the Berman bill now before this Committee, which restores the principle that:

- An interim U.S. Attorney may be appointed by the Attorney General for 120 days; and
- If a senatorially confirmed U.S. Attorney is not commissioned by then, the district court may appoint an Interim U.S. Attorney.

I am grateful for the opportunity to address the Committee on this issue and am available to answer any questions that you might have.

Ms. SÁNCHEZ. Thank you for your testimony.

Mr. Wampler, you are recognized for your testimony.

TESTIMONY OF ATLEE WAMPLER, III, PRESIDENT, THE NATIONAL ASSOCIATION OF FORMER UNITED STATES ATTORNEYS

Mr. WAMPLER. Madam Chairman, Members of Congress, I am Atlee W. Wampler, III. I am appearing here today as president of the National Association of Former United States Attorneys, and I have filed a position statement of the association with the House Committee on the Judiciary.

The association's membership includes former United States attorneys from every State in the union and every executive Administration back to President Kennedy.

The association's purpose, as stated in its mission statement, is to promote and defend and further the integrity and the preservation of the litigation authority and independence of the office of the United States attorney.

And it is the preservation of integrity and independence of the U.S. attorney that I am here to stress today. This bipartisan association is very troubled with these recent press accounts concerning the termination of a sizeable number of well performing U.S. attorneys.

And, yes, the U.S. attorney serves at the pleasure of the President and the President may fire him or her at any time. However, there is a reasoned tradition that U.S. attorneys serve out the terms, the Administration's terms, and we vigorously oppose any effort to remove a U.S. attorney because of political displeasure or political reward to another person to hold the title of this important office.

Such terminations, unfortunately, give the perception of and generate speculation as to whether political considerations prompted these firings.

The United States attorney is not an executive widget, is not a fungible executive commodity. These terminations cause disruptions in the U.S. attorney's office.

The U.S. attorney is the chief Federal law enforcement officer in the district and he is charged with responsibilities I have set out

in my statement, that are set out in the statute, and they are plenary.

Throughout the 4 to 8 years that a U.S. attorney operates in that position to manage a major law enforcement office, he gains education, training, experience and wisdom and becomes a very valuable asset to the system of justice in this country.

And the U.S. attorney's tasks are extremely demanding, demanding total commitment of the public and private lives, and their work is so stressful that the usual problem that we have at the end of Administration terms is that these highly experienced men and women leave office and depart to lucrative positions in private law firms.

Most importantly, the United States attorney cannot be perceived to be biased toward nor influenced by any political party in power nor by politically prominent people nor people of great wealth.

That polestar requirement manifests the principle that the U.S. attorney must have a degree of substantial independence and that is the major reason for the tradition of U.S. attorneys serving to the end of an Administration's terms.

If the U.S. attorney is doing his or her job of fairly carrying out the prosecution and the laws of the United States, he or she is going to upset some very important and prominent people and people of great wealth. These people are going to complain to the top members of the Administration to remove that U.S. attorney for making decisions that adversely affect them.

And it is the duty of top officials in the Department of Justice and it has been through the history of the Justice Department that I have noted over the last 30 years that they politely listen to these complaints and pay them no heed if the United States attorney is faithfully executing the laws of his or her office.

A President and an attorney general must respect that U.S. attorneys are charged with the statutory duty of enforcement of the laws impartially and fairly in the district, which gives the United States attorney an element of independence.

The U.S. attorney is not charged by Congress with being simply a team player.

Such terminations, rightly or wrongly, give a bad perception and, rightly or wrongly, cause speculation that justice is for sale and retribution can be sold and the dogs of justice can be called off.

A President and an attorney general must exercise discretion in this sensitive area of the Administration of justice, not to do what President's have the power to do, and that is to terminate a performing experienced United States attorney from office.

[The prepared statement of Mr. Wampler follows:]

PREPARED STATEMENT OF ATLEE W. WAMPLER, III

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MARCH 6, 2007

STATEMENT OF
ATLEE W. WAMPLER III AS 2006-2007 PRESIDENT OF
THE NATIONAL ASSOCIATION OF FORMER UNITED STATES ATTORNEYS
REGARDING
H.R. 580, RESTORING CHECKS AND BALANCES
IN THE CONFIRMATION PROCESS OF UNITED STATES ATTORNEYS

I am the President of the National Association of Former United States Attorneys ("NAFUSA"). NAFUSA was founded in March 1979 to promote, defend and further the integrity and the preservation of the litigating authority and independence of the Office of the United States Attorney. Our membership includes United States Attorneys from every administration back to President Kennedy and includes former United States Attorneys from every state in the union. It is with this mission and with our cumulative experience as United States Attorneys that I am here today to present the position of this deeply concerned, bi-partisan organization, NAFUSA.

We are very troubled with recent press accounts concerning the termination of a sizable number of United States Attorneys. Historically, United States Attorneys have had a certain degree of independence because of the unique and integral role the United States Attorneys play in Federal law enforcement. Among other things, the United States Attorney establishes and maintains working and trusting relationships with key Federal, state and local law enforcement agencies. In many respects, while the United States Attorney is a representative of the Department of Justice in each district, the United States Attorney brings to bear his or her experience and knowledge of the law enforcement needs of the district in establishing priorities and allocating resources. Most importantly, United States Attorneys have maintained a strong tradition of insuring that the laws of the United States are faithfully executed, without favor to anyone and without regard to any political consideration. It is for these reasons that the usual practice has been for United States Attorneys to be permitted to serve for the duration of the administration that appointed them.

We are concerned that the role of the United States Attorneys may have been undermined by what may have been political considerations that run counter to the proper administration of justice and the tradition of the Department of Justice. While we certainly recognize that the United States Attorneys serve at the pleasure of the President, we would vigorously oppose any effort by any Attorney General to remove a United States Attorney as a result of political displeasure or for political reward. Any such effort would undermine the confidence of the Federal judiciary, Federal and local law enforcement agencies, the public, and the thousands of Assistant United States Attorneys working in those offices.

We do not mean to suggest that we know the reasons for each of the terminations or, for that matter, all of the relevant facts. Indeed, we encourage the Department of Justice and Congress to make as full and as complete a disclosure of the facts surrounding these firings as is permissible. Still, the reported facts are troubling, perhaps unique in the annals of the Department of Justice, and certainly raise questions as to whether political considerations prompted the decision to terminate so many United States Attorneys. It may well be that legislative attention or a written policy of the Department of Justice is necessary to deal with this and similar situations in the future to afford continuity and protection to United States Attorneys. We will be happy to assist the Department or Congress in any such effort.

We understand that there is a historical unwritten and necessary tradition to maintain a United States Attorney, appointed by the President of the United States and confirmed by the United States Senate, until the end of an administration's term(s) unless the United States Attorney is found to be in dereliction of his or her duties.

We believe that this tradition must be memorialized in legislative history.

Although the Attorney General of the United States is in charge of the United States Department of Justice and sets policies and procedures of the Department, each of the ninety-three (93) United States Attorneys who is Presidentially appointed and United States Senate confirmed, has a substantial degree of independence due to the unique and integral role the United States Attorney has in Federal public law forum of carrying out the prosecution function in the District in which the United States Attorney is confirmed.

The United States Attorney cannot be perceived to be biased toward, nor influenced by the political party in power, nor by politically prominent people, nor people of great wealth. This polestar requirement manifests itself in the principle that the United States Attorney must have substantial independence.

The United States Attorney is the chief Federal law enforcement officer in the District and, through the United States Attorney's experiences in managing the office: (1) establishes and maintains working and trusting relationships with key Federal, state and local law enforcement agencies; (2) gains confidential and sensitive intelligence information from Federal, state and local law enforcement agencies in conducting investigations to use in the gathering of evidence for prosecutions of violations of Federal law; and (3) gains education, training, experience and wisdom over the four to eight years in managing the office to carry out the public law prosecution function.

Thus, the United States Attorney is an essential component of a district's Federal administration of justice and should not be removed by the Attorney General for whim, political displeasure, nor for political reward to another to hold a title of this important office.

United States Attorneys' tasks are extremely demanding and require total commitment of United States Attorneys' public and private lives. To the public, the United States Attorneys' performance of duties is like an iceberg. The public can see only a tiny fraction of the cases and matters that are in open courts and in or awaiting trials. The rest of a United States Attorneys'

waking hours involve participation in planning and execution of undercover operations by Federal investigative agencies, court authorized wire and oral interception operations, long-term Federal grand jury investigations, complex civil cases, and managing a major law firm's criminal and civil caseload and administration. The United States Attorneys' work is so extremely demanding that the usual problem at the end of an administration's term(s) is keeping these highly experienced men and women in office, rather than having them depart to lucrative positions in private law firms. Firing performing United States Attorneys does not foster the tradition of public service to the end of an administration.

BRIEF HISTORY

The Office the United States Attorney was established by the First Congress of the United States, The Judiciary Act of 1789, passed September 24, 1789 in 1 Stat. 73, Chapter XX, Section 35. The Congressional birth of the United States Attorney began; "and there shall be appointed in each district a meet person learned in the law to act as attorney for the United States in such district, . . .". The United States Attorney's duties were set out as: to prosecute in such district all delinquents for crimes and offenses, cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned (except for the Supreme Court). The First Congress continued, "And there shall also be appointed a meet person learned in the law, to act as attorney-general of the United States . . ." whose duties were to conduct cases before the Supreme Court in which the United States was concerned and to give his advice when requested by the President of the United States or the heads of the departments.

Although the Attorney General's position was originally a part-time job, the case and matter load of the Attorney General increased dramatically to the point that, in 1870 after the Civil War, it necessitated a very expensive retention of a large number of private attorneys to handle the workload. A purse string minded Congress passed an Act to Establish the Department of Justice, Chapter 150, 16 Stat. 162 (1870) which set up an executive department of the Government of the United States beginning July 1, 1870. The Act of 1870 gave the Attorney General and the Department of Justice general control over Federal criminal prosecutions and civil suits in which the United States had an interest and general control over Federal law enforcement.

The United States Attorneys' Mission Statement is set out in the United States Attorneys' Manual ("USAM"). It states that the United States Attorneys serve as the Nation's litigators under the direction of the Attorney General. It further states, "Each United States Attorney exercises wide discretion in the use of his/her resources to further the priorities of the local jurisdictions and needs of their communities. United States Attorneys have been delegated full authority and control in the areas of personnel management, financial management, and procurement."

UNITED STATES ATTORNEYS' STATUTORILY REQUIRED DUTIES

The duties of the United States Attorney are set forth by Congress in 28 U.S.C.A. Section 547 as follows: "Except as otherwise provided by law, each United States Attorney, within his district shall - - (1) prosecute for all offenses against the United States; (2) prosecute or defend, for the Government, all civil actions, suits or proceedings in which the United States is concerned; (3) appear in behalf of the defendants in all civil actions, suits or proceedings pending in his district against collectors, or other officers of the revenue or customs for any act done by them or for the recovery of any money exacted by or paid to these officers, and by them paid into the Treasury; (4) institute and prosecute proceedings for the collection of fines, penalties, and forfeitures incurred for violation of any revenue law, unless satisfied on investigation that justice does not require the proceedings; and (5) make such reports as the Attorney General may direct."

USAM 1-2.101 Office of the Attorney General states that the Attorney General serves as head the Department of Justice and the Chief Law Enforcement Officer of the Federal Government. The Attorney General is assisted by the Attorney General's Advisory Committee of the United States Attorneys consisting of fifteen (15) United States Attorneys representing the geographic areas of the nation.

USAM 3-2.100 states that the United States Attorney serves as the Chief Law Enforcement Officer in each judicial district and is responsible for coordinating multiple agency investigations in the district. The USAM then states "Today, as in 1789, the United States Attorney retains among other responsibilities, the duty "to prosecute all offenses against the United States." citing 28 U.S.C. Section 547(1); and then states that the duty is to be discharged under the supervision of the Attorney General, citing 28 U.S.C. Section 519.

USAM 3-2.120 states the procedure of appointments set out by Congress in citing 28 U.S.C. Section 541 that the United States Attorneys are appointed by the President with the advice and consent of the Senate for a 4-year term. It then goes on to say that, "Upon expiration of this term (4 Years) the United States Attorney continues to perform the duties of the office until a successor is confirmed." The USAM continues stating, "The United States Attorneys are subject to removal at the will of the President".

USAM 3-2.140 Authority, states the duties and authority of the United States Attorney within his or her district as set out in 28 U.S.C. Section 547 (which are set out above) and then states the following:

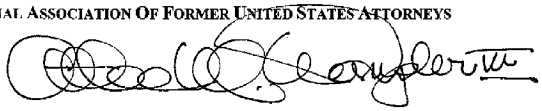
> "By virtue of this granting of statutory authority and of the practical realities of representing the United States throughout the country, the United States Attorneys conduct most of the trial work in which the United States is a party. They are the principal Federal Law Enforcement Officers in their judicial districts. In the exercise of their prosecutorial discretion, United States Attorneys construe and implement the policy of the Department of Justice. Their professional abilities and the need for their impartiality in administering justice directly affect the public's perception of Federal Law Enforcement."

CONCLUSION

The removal of a United States Attorney without cause unnecessarily disrupts the continuity of Federal investigations and prosecutions, gives rise to speculation of undue influence, and wastes valuable Government resources. The removal of a United States Attorney without cause undermines the confidence of the Federal judiciary, Federal and state law enforcement authorities, Assistant United States Attorneys, Federal public defenders and the body public in the integrity of the Federal system of justice.

Although the President has the right to remove a United States Attorney for any reason, the general policy of the United States Department of Justice should be not to remove a United States Attorney appointed by the President and confirmed by the United States Senate without cause until the end of an administration's term(s).

NATIONAL ASSOCIATION OF FORMER UNITED STATES ATTORNEYS



ATLEE W. WAMPLER III
PRESIDENT 2006-2007

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Ms. SÁNCHEZ. Thank you for your testimony, Mr. Wampler.
Now, is it Terwilliger?
Mr. TERWILLIGER. Yes, ma'am, that is exactly right.
Ms. SÁNCHEZ. Excellent, I am a quick study.
You are recognized for your testimony.

TESTIMONY OF GEORGE TERWILLIGER, III, FORMER DEPUTY ATTORNEY GENERAL OF THE UNITED STATES

Mr. TERWILLIGER. Thank you very much, Madam Chair and Ranking Member Cannon and Mr. Conyers. Thank you for inviting me to appear today, despite the lateness of the hour.

The United States attorney in each district plays a vital role in promoting the safety and wellbeing of all Americans. The process for filling United States attorney positions, whether initially or through a vacancy in an Administration, therefore, deserves the thoughtful and careful consideration that they are usually accorded.

I had the privilege of serving as an assistant United States attorney for 8 years, as a United States attorney for 5 years, and to supervise the Nation's 93 United States attorneys as deputy attorney general for a period of over 2 years.

I was involved in decisions to hire United States attorneys, to review their performance and to remove them as necessary.

As a general proposition, in dealing with United States attorneys today, I find that they are their assistants are among the most honorable and dedicated of professionals that one can encounter.

I am here before this Committee today because I believe strongly that protecting the integrity of the office of the United States attorney is essential to our system of justice.

It is also my privilege to know personally much of today's leadership of the Justice Department, including Attorney General Gonzales and Deputy Attorney General McNulty.

In addition, I am fortunate to enjoy the friendship of many of their staff members, as well as many long-serving career Department of Justice lawyers, men and women for whom I have sincere personal and professional admiration.

I have every reason to believe that the department's leaders share my views about the importance of maintaining the integrity of and respect for the office of United States attorney.

In my experience, particularly as deputy attorney general, there are advisors variety of reasons why a change in leadership at a United States attorney's office may be appropriate or even necessary. There is no entitlement to the job.

During my own tenure as United States attorney, I believe it would be fair to say that there were those who praised my performance and there were those who found it wonting.

I received my fair share of criticism for both policy and operational decisions. Such criticism comes with the territory. If one does not want to suffer such criticism, one should not assume the office.

I considered the proper execution of my duties as United States attorney to require both a recognition that I serve as a subordinate of the attorney general and the leadership of the Justice Department and an awareness of my responsibility for forwarding within

my district the goals and objectives of each Administration in which I served.

When I hear Mr. Wampler talk about the independence of the United States attorney's offices, I assume he means the discretion and the respect for the discretion in deciding how to prosecute cases that has traditionally been afforded United States attorneys and their assistants.

But I don't think independence is the right word and I would ask—independence of whom or of what?

It is decidedly not within the United States attorney's responsibility for him or her to execute his duties in a manner that is politically driven.

Where I or the attorney general believed that a United States attorney's performance in regard to their core responsibilities was wonting, we acted on that belief.

Because the United States attorney serves as a subordinate to the President, I think it is most appropriate that the authority to appoint interim United States attorneys be delegated to the attorney general, as it is under current law.

There responsibility for the supervision and management of United States attorneys' offices has been vested by Congress in the attorney general and the Department of Justice.

It seems to me, as both a practical and a legal matter, therefore, that such responsibility should carry with it the authority to appoint the persons necessary to carry it out.

I certainly recognize that the advice and consent process is critical to the balance of power between the Congress and the executive branch and I would hope that both branches of Government would act in a responsible manner to see that the nomination and appointment process necessary to fill a vacancy in the United States attorney's office would move with dispatch.

In conclusion, I regret the circumstances greatly which have led to this hearing. I would respectfully urge all parties to recall simply that United States attorneys, as has been mentioned so many times today, do serve at the pleasure of the President and may be removed for any reason.

I would most respectfully urge Congress and, respectfully, this Committee to accord deference to that fundamental aspect of the office and urge restraint in exploring any particular or individual decision regarding a particular office.

I welcome your questions and I would ask that my full statement be included for the record.

[The prepared statement of Mr. Terwilliger follows:]

PREPARED STATEMENT OF THE HONORABLE GEORGE J. TERWILLIGER, III

Madam Chairwoman and members of the Subcommittee,

Thank you for inviting me to appear today to testify regarding the appointment of interim United States Attorneys. Those filling the office of the United States Attorney in each district play a vital role in promoting the safety and well-being of all Americans. Altering the process for filing vacant United States Attorney positions therefore deserves careful and thoughtful consideration.

It was my privilege to serve as an Assistant United States Attorney for eight years, the United States Attorney for the District of Vermont for five years, and to supervise the nation's 93 United States Attorneys as Deputy Attorney General of the United States. While serving as Deputy Attorney General, I had the opportunity to comment on the merits of potential nominees for the office of United States Attorney, to consult with United States Attorneys as to their performance, and to be involved in the removal or resignation of United States Attorneys.

I considered these duties to be matters wholly within the Executive Branch. Because of the sensitive nature of these duties both to the Department and, obviously, to the persons whose careers were affected, I treated such matters as ones of great confidence. These matters were neither suitable for, nor amenable to, public discourse.

My current private practice brings me into frequent contact with United States Attorneys and their offices. While my practice sometimes places me in the position of persuading United States Attorneys and their Assistants to take another view of certain matters before them, I have the utmost respect, admiration, and, indeed, gratitude for the work that the United States Attorneys and their assistants perform. As a general proposition, but with rare and sometimes troubling exception, I find the United States Attorneys and their assistants to be among the most honorable and dedicated of professionals. I am before the Committee today because I believe strongly that protecting the integrity of the office of United States Attorney is essential to our system of justice.

It was my privilege to serve in the Department of Justice for 15 years. My comments today are informed by my experience and the high offices in which I had the privilege to serve. It is also a privilege for me to know personally much of today's leadership of the Department of Justice, including Attorney General Gonzalez and Deputy Attorney General McNulty. In addition, I am fortunate to enjoy the friendship of many of their staff members and of many long-serving career Department of Justice lawyers, men and women for whom I have sincere personal and professional admiration.

From my experience with the current leadership of the Department, I have every reason to believe that the Department's leaders completely share my views

about the importance of maintaining the integrity of and respect for the office of United States Attorney. I am, of course, aware that some level of controversy has ensued about recent changes in the leadership of several United States Attorneys' offices and the manner in which these changes were brought about. I know, or have had dealings of a professional nature with, some of the United States Attorneys involved. In my view, they are lawyers of considerably high professional reputation.

In my experience, particularly as Deputy Attorney General, there are a variety of reasons why a change in leadership at a United States Attorney's office may be appropriate, or even necessary. These reasons might generally be termed to be on account of "performance," but I would not interpret such a characterization as limited in reference to a level of performance that is either substandard or below some level of appropriate professional behavior. Rather, I would interpret a "performance-related" reason for making a change as having more to do with an overall assessment of the performance of an office. Such a broad assessment would include an office's implementation of the administration's law enforcement policies and priorities.

During my tenure as United States Attorney for the District of Vermont, I believe it would be fair to say that there were those who praised my performance and those who found it wanting. I received my fair share of criticism for both policy and operational decisions. Such criticism comes with the territory; if one does not want to suffer such criticism, one should not assume such an office. I considered the proper execution of my duties to require both a recognition that I served as a subordinate to the leadership of the Department of Justice and an awareness of my responsibility for forwarding within my district the goals and objectives of the administration. I held the United States Attorneys whom I supervised as Deputy Attorney General to the same standards. Where I and/or the Attorney General believed that performance in regard to these core responsibilities was wanting, we acted upon that belief.

United States Attorneys are, of course, political appointees of the President. Their position is, in fact, unique in the Executive Branch bureaucracy. United States Attorneys are responsible for securing the mission of the Executive Branch in their respective districts, and are therefore required, in my judgment, to facilitate teamwork and joint effort in the field among the several Executive agencies vested with law-enforcement, counterterrorism, and other responsibilities vital to the well-being and safety of Americans. It is decidedly not within the scope of a United States Attorney's responsibilities for her or him to execute her or his duties in a manner that is politically-driven. Nothing is more inimical to the administration of justice, and the public's perception of the government's interest that justice be done, than having a prosecutor utilize politics as a basis for, or determining the direction of, the prosecution of a federal case.

That said, it is part of United States Attorney's job, as an officer in a political administration, to carry out, within her or his district, the administration's policies and priorities. United States Attorneys are given an important voice, both as individuals and as a group, in setting those policies and priorities and in deciding how, in a given locale, they are best carried out. However, if a United States Attorney is unable to agree with such policies and priorities and to carry them forward, that United States Attorney does not have, in my judgment, the authority to simply ignore them. Rather, such a United States Attorney should either resign and move on to other pursuits, or, if she or he fails to do so, then the failure to execute such policies and priorities would be grounds for removal.

All of these factors are relevant to the selection of persons to have the privilege to serve in this great office. Given the substantial latitude and discretion that United States Attorneys are traditionally accorded, the selection of a person to serve in this office is a critical decision. I have been working in or with United States Attorneys' offices for my entire legal career, which, I am now forced to acknowledge, is approaching 30 years in duration. In that time, and having had occasion to historically examine the office of United States Attorney, it seems to me that there has been a studied effort to continually professionalize both the functions of those offices and to look more to professional than political credentials for those who should lead them. At least up to some time in the twentieth century, entire United States Attorney's offices, including all assistants, would be replaced with a change in administration. Today, Assistant United States Attorneys, while not in the civil service, are selected and appointed on the basis of their professional, rather than political, credentials. During my time in the Justice Department, it seemed to me that the ideal United States Attorney candidate was someone of experience and accomplishment as a lawyer and, ideally, as a prosecutor, who also had such a political background as to suggest an ability to lead, to carry out an administration's policies and priorities, and, perhaps above all, whose career indicated a soundness of judgment and intellect that would permit the candidate to carry out ably the duties of office if selected.

Considering the importance of the office to the administration of justice, it might, at first blush, seem appropriate for the judicial branch to have a role in appointing interim United States Attorneys in the event of a vacancy. However, upon reflection, I think returning to that process is not well advised. I say this knowing that I first assumed the office of United States Attorney when appointed by then Chief Judge of the United States District Court for the District of Vermont, the late Albert Coffrin, Jr., one of the finest judges and men whom I have had the privilege to know. Nonetheless, because the United States Attorney serves as a subordinate to the President, it is most appropriate that the authority to appoint an interim United States Attorney be delegated to the Attorney General, who is her- or himself, of course, a presidential appointee.

I realize there is some case law supporting the notion that judicial appointment of interim United States Attorneys does not offend the constitutional

principle of separation of powers. I think the holdings in these cases are suspect as matters of constitutional law and have been subject to question by learned minds.

Historical considerations also counsel against returning to the pre-2006 regime. The office of United States Attorney was not created as an appendage to federal courts, but rather began as a presidential appointment supervised by the Executive Branch. The Judiciary Act of 1789 established the office of federal "district attorneys." These federal prosecutors were brought under the supervision of the Treasury Department in 1797, in light of the fact that most of district attorneys' work in the new Republic involved debt collection.[1] It was not until the Civil War that Congress gave District Courts authority to fill interim vacancies arising in the office.[2] The District Courts retained this authority until 1986, when the Attorney General was allowed to make a 120-day interim appointment, upon the expiration of which the District Court had power to appoint an interim United States Attorney.[3] In 2006, the interim appointment process came full circle when Congress vested interim appointment authority solely within the Executive Branch.[4]

Several practical concerns also favor leaving the current system in place. Suppose the District Court, for whatever reason, simply declined to act in making an appointment? The uncertainty that would ensue regarding the authority of the office to carry out its functions is inconsistent with the efficient and predictable administration of justice. Given the tenor of our times, take this supposition one step further and assume that the District Court is not in a position to act because it has been immobilized as a result of terrorism, or even a natural disaster. A vacancy in a United States Attorney position at such a time would be a critical gap that needs to be filled as rapidly as possible and with a person who understands that her or his appointment is firmly under Executive authority. Finally, as a practical matter, as learned and capable as chief judges of the various district courts tend to be, they may not know best about making appointments to Executive offices. The responsibility for the supervision and management of United States Attorney's offices has been vested by Congress in the Attorney General and the Department of Justice. It seems to me, as both a practical and a legal matter, that such responsibility should carry with it the authority to appoint the persons necessary to carry it out. I do recognize and support the notion that the advice and consent process is critical to the balance of power between Congress and the Executive Branch. I would hope that both

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[1] See Ross E. Wiener, Inter-Branch Appointments after the Independent Counsel: Court Appointment of United States Attorneys, 86 Minn. L. Rev. 363, 375-76 (2001).

[2] See United States v. Gantt, 194 F.3d 987, 998 (9th Cir. 1999) (citing Act of March 3, 1863, ch. 93, § 2, 12 Stat. 768 (1863) (Rev. Stat. 1873, § 793)).

[3] See 28 U.S.C. § 546(a)-(d) (1986).

[4] 28 U.S.C. § 546(c) (2006).

branches of government would act in a responsible manner to see that the nomination and appointment process necessary to fill a vacancy in the office of United States Attorney would move with dispatch.

In conclusion, I regret the circumstances which have led to this hearing. I would urge all parties to recall that the United States Attorneys serve at the pleasure of the President and may be removed for any reason, or no reason at all. I would most respectfully urge Congress, and this Committee, to accord deference to that fundamental aspect of the office and urge restraint in exploring any particular or individual decision regarding a particular office.

I thank the Chairwoman and the Sub-Committee for allowing me to be heard. I welcome the members' questions.

Ms. SÁNCHEZ. It will be included. Just so all the witnesses know, your written testimony will all be included as it is written in the record.

Mr. Halstead?

TESTIMONY OF T.J. HALSTEAD, LEGISLATIVE ATTORNEY, AMERICAN LAW DIVISION, CONGRESSIONAL RESEARCH SERVICE

Mr. HALSTEAD. Madam Chair, Members of the Subcommittee, I am pleased to be here today to discuss the Subcommittee's consideration of H.R. 580.

In my testimony today, I would like to address three issues that are relevant to today's hearing, the first dealing with departure statistics for U.S. attorneys, the other two relating to H.R. 580 itself.

Regarding the first issue, Kevin Scott, a colleague of mine in our government and finance division, has done a great deal of work analyzing information that the Department of Justice has provided to us on the appointment of U.S. attorneys by date range, covering a period from April 1993 through February 2007.

Using that data, CRS has determined that there have been 97 instances where Senate-confirmed U.S. attorneys have left office during the course of a presidential Administration as opposed to the mass departures that we traditionally see during the changeover between Administrations.

Of those 97 departures, we have classified 16 of those as resignations, which, for the purposes of our analysis, covers U.S. attorneys whose departures could not be attributed to another category, such as leaving for a position on the Federal bench or to enter or return to the private sector.

Ten of those 16 resignations have occurred during the current Administration and, as you are well aware, recent news reports have stated that five of those 10 resignations were made at the request of the Department of Justice over the past 3 months.

Additional news reports have stated that two other U.S. attorneys who had indicated that they were leaving in order to return to the private sector were also asked to resign and we have news reports indicating that one other U.S. attorney has been asked to resign, but is still serving.

So in sum, there are reports indicating that a total of eight U.S. attorneys have been asked to resign in the past 3 months and the research we have conducted thus far has not revealed a similar streak of departures that reportedly stem from politically-motivated dismissals.

It is important to note, however, that our research on this point is ongoing and may be aided by any future disclosure of information from the Department of Justice.

These dismissals have drawn attention to how interim U.S. attorneys are appointed, in large part, based on the perception that recent changes to that appointment process are closely linked to the recent string of dismissals.

One of the criticisms that has been leveled at the new appointment scheme is that it unconstitutionally deprives the Senate of its advice and consent function.

I have laid this out in detail in my prepared statement, but there is no substantive basis for that argument under current constitutional standards. It is well established that U.S. attorneys are inferior officers of the United States and that Congress could, therefore, remove any advise and consent requirement for their appointment all together, if it so desired.

The constitutional flipside to this argument has been raised by the Department of Justice and others in opposition to H.R. 580, the argument being that a return to the prior appointment scheme would be inconsistent with the separation of powers doctrine, even in light of the long history of judicial involvement in the selection of United States attorneys.

The same cases that establish that U.S. attorneys are inferior officers have also addressed this issue and have all rejected the argument that judicial appointment of Federal prosecutors is constitutionally problematic.

Ultimately, any action that Congress takes with regard to H.R. 580 will hinge on a weighing of the important institutional and policy considerations that surround the appointment of U.S. attorneys and not on constitutional factors.

This brings me to my final point. If Congress, as an institution, is concerned with the potential that the current appointment dynamic may result in the prolonged circumvention of the Senate's advice and consent function for U.S. attorneys, it needs to be aware that even upon a return to the previous version of section 546, there is still a possibility that the Department of Justice may rely on preexisting legal rationales in a way that impacts that advice and consent function.

Our research indicates that under the current Administration, the Department of Justice has made repeated use of the Vacancies Reform Act to install individuals as acting U.S. attorneys and also made several successive interim appointments under the prior version of 546.

Used in conjunction, those two approaches can be used to place interim and acting U.S. attorneys in place for up to a year, if not longer.

It is well within Congress' power to restrict the use of these statutes in such a fashion, but ultimately, as with the question of whether to retain the current appointment dynamic or to return to the previous standard, any decision will hinge upon a Congressional determination as to whether the potential benefits of this statutory flexibility outweigh the dangers such a dynamic poses to the institutional prerogatives of Congress.

Madam Chair, I will conclude my testimony there. I look forward to working with all Members and staff of the Committee as it continues its consideration of this issue.

I look forward to answering any questions you might have.

Thank you.

[The prepared statement of Mr. Halstead follows:]

PREPARED STATEMENT OF T.J. HALSTEAD

Statement of T.J. Halstead
Legislative Attorney, American Law Division
Congressional Research Service

Before

The Committee on the Judiciary
Subcommittee on Commercial and Administrative Law
House of Representatives

March 6, 2007

on

"Restoring Checks and Balances in the Confirmation Process of U.S. Attorneys"

Madam Chairman and Members of the Subcommittee:

My name is T.J. Halstead. I am a Legislative Attorney with the American Law Division of the Congressional Research Service at the Library of Congress, and I thank you for inviting me to testify today regarding the Committee's consideration of H.R. 580.

Recent press accounts indicating that a total of eight U.S. Attorneys have been asked to resign in the past three months have raised interest in patterns of departures of U.S. Attorneys. These apparent dismissals have also drawn congressional attention to the manner in which interim U.S. Attorneys are appointed, as the USA PATRIOT Improvement and Reauthorization Act of 2005 changed the statute governing the appointment of interim U.S. Attorneys to allow the Attorney General to fill a vacancy indefinitely, pending the confirmation of a U.S. Attorney by the United States Senate. Accordingly, my testimony today will focus on three relevant aspects of this matter: (1) Congressional Research Service (CRS) attempts to analyze available information pertaining to departures of U.S. Attorneys; (2) constitutional implications adhering to the new interim appointment structure as well as the current proposal to revert to the prior standard, and; (3) the interpretation and application of relevant statutes, such as the Vacancies Reform Act of 1998, that could be employed in a manner that may impact the advice and consent prerogatives of the Senate upon a return to the prior standard and that may affect the accomplishment of the legislative purpose in amending the current provision.

Regarding the first issue, CRS was initially unable to obtain official data from the Department of Justice. CRS began by contacting the Executive Office for United States Attorneys (EOUSA), which serves as the liaison between U.S. Attorneys and the Department of Justice. CRS first contacted the EOUSA on January 24, 2007, to seek records on the appointment and termination dates for U.S. Attorneys. As of February 20, 2007, the EOUSA had not provided the requested data. On February 22, 2007, CRS published a report, authored by my colleague Kevin Scott who serves in CRS's Government and Finance Division, that addresses the topic of U.S. Attorneys who served less than full four year terms for the period from 1981 through 2006.

On February 23, 2007, the Department of Justice provided to CRS information on U.S. Attorney appointments by date range, covering the period from April 1993, through February 23, 2007. Using that data in conjunction with information contained in the Legislative Information System (LIS), the following observations can be made. Between 1993 and 2006, the 103rd through 109th Congresses, the President nominated and the Senate confirmed 247 U.S. Attorneys. Of those 247, 73 remained in their positions as of March 1, 2007. The remaining 174 have left their positions. Of those who left, 77 were appointed by President Clinton but resigned in 2001, so CRS treated those departures as a product of normal turnover in positions requiring Senate confirmation where the appointees of a departing President leave to allow the incoming President to fill those positions. CRS focused on the remaining 97 departures of Senate-confirmed US Attorneys between 1993 and March 1, 2007. Explanations for those departures were sought, first, from the LIS. The LIS was used to determine if the departing U.S. Attorneys were nominated to another position that required Senate confirmation, either in the executive branch or as a federal judge. For those who were not nominated to another position requiring Senate confirmation, CRS used information provided by the Department of Justice on date of appointment of successor as a starting point to conduct searches of secondary sources, primarily national newspapers and newspapers published in a U.S. Attorney's district, to attempt to ascertain reasons for their departure. Generally, finding the exact reason for departures that were not for other jobs in the federal government, either in the executive branch or in the judiciary, proved to be quite difficult. After searching news reports, it appears that the following breakdown of departing U.S. Attorneys between 1993 and Feb. 23, 2007 represents the best currently available information on departing U.S. Attorneys who did not leave in 2001 (due to change in presidential administration):

- 21 became federal judges (20 Article III judges, one magistrate judge);
- 9 sought elective office;
- 8 took other positions in the executive branch;
- 3 retired;
- 2 took positions in state government;
- 2 became state judges;
- 1 took a position in local government;
- 1 died;
- 34 left for private practice;
- 16 resigned (no other classification was possible).

The final two categories represent those U.S. Attorneys for whom CRS was generally able to find the least information. This can occur because an individual may not state a reason for departure or because news reports do not provide the information. Within the class of 16 individuals who resigned, news reports suggested that, in six cases, their personal

or professional actions may have precipitated the resignation. Of the other ten U.S. Attorneys, CRS found news reports that one, the U.S. Attorney for the District of North Dakota, resigned in 2000 after being diagnosed with a malignant brain tumor. For the remaining nine, news reports generally did not indicate the reason for resignation. Five of the nine U.S. Attorneys (Daniel Bogden, Bud Cummins, David Iglesias, Carol Lam, and Kevin Ryan) who resigned and for whom CRS was unable to locate specific information were reported, in press accounts, to have been asked to resign by the Department of Justice in the past three months.[1] Two other U.S. Attorneys, Paul Charlton and John McKay, indicated that they were leaving their positions to return to the private sector. However, news reports indicate that they were also asked to resign by the Department of Justice. One other U.S. Attorney, Margaret Chiara, reportedly has also been asked to resign. Chiara appears to still be serving as a U.S. Attorney. In sum, press accounts indicate that a total of eight US Attorneys have been asked to resign in the past three months.[2] CRS has not independently verified any of these press reports. Research conducted thus far by CRS has not identified a similar pattern of contemporaneous departures that have been reported to stem from politically motivated dismissals of U.S. Attorneys. It is important to note, however, that research on this point is ongoing and may be aided by any future disclosure of information by the Department of Justice.

While the apparent dismissal of at least eight U.S. Attorneys in recent months has raised interest in patterns of departures, the current controversy has also drawn attention to the constitutionality of the appointment dynamic implemented by the Patriot Act Reauthorization, as well as the constitutional implications of H.R. 580, which would revert to the prior interim appointment structure. In its current iteration, 28 U.S.C. § 546 provides, in pertinent part, that "the Attorney General may appoint a United States attorney for the district in which the office of the United States attorney is vacant," and that any person so appointed may serve until the qualification of a presidentially appointed successor pursuant to the terms of 28 U.S.C. § 541. Section 541 does not require the President to nominate an individual for the position of U.S. Attorney within a certain time frame, giving rise to the possibility that a U.S. Attorney appointed by the Attorney General pursuant to § 546 may serve indefinitely, effectively obviating the advice and consent function reserved for the Senate with regard to U.S. Attorneys appointed by the President under § 541. Despite the institutional and political concerns adhering to the indefinite service of a non-Senate confirmed U.S. Attorney under § 546, a review of applicable judicial precedent establishes that there is no constitutional infirmity inherent in such a dynamic.

The Appointments Clause states that:

> [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but

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[1] The resignations of both Bogden and Iglesias were reportedly effective on Feb. 28, 2007, which occurred after CRS received the data from the Department of Justice.

[2] *See* Dan Eggen, "6 of 7 Dismissed U.S. Attorneys Had Positive Job Evaluations," *Washington Post*, Feb. 18, 2007, p. A11; Nate Reens and John Agar, "Questions Swirl Around Chiara Resignation: Some Speculate U.S. Attorney Was Forced to Quit by White House," *Grand Rapids Press*, Feb. 24, 2007, p. A3.

> the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.[3]

Stated in practical terms, the Appointments Clause establishes that nomination by the President and confirmation by the Senate is the required protocol for the appointment of "principal officers" of the United States, but vests Congress with the discretionary authority to permit a limited class of federal officials to appoint "inferior officers" without confirmation. Accordingly, any argument that the current appointment structure is unconstitutional must center on the assertion that U.S. Attorneys are principal officers who must be appointed by and with the advice and consent of the Senate. However, principles delineated in two Supreme Court cases in recent years have led lower courts to hold that U.S. Attorneys are, in fact, inferior officers who may be appointed without Senate confirmation.

In *Morrison v. Olson*,[4] the Supreme Court held that the appointment of an independent counsel by a special court pursuant to the now-lapsed independent counsel provisions of the Ethics in Government Act did not violate the Appointments Clause, based on its determination that the independent counsel was an inferior officer because her duties were limited, her performance of them was cabined by Department of Justice policy, her jurisdiction was limited, her tenure was restricted, and she held office subject to removal by the Attorney General (thereby indicating that she was inferior to the Attorney General in rank and authority, even though not subordinate to him). In analyzing the issue, the Court stated that "[t]he line between 'inferior' and 'principal' officers is one that is far from clear, and the Framers provided little guidance into where it should be drawn." In reaching its decision, the Court refrained from identifying such a line, stating: "[w]e need not attempt here to decide exactly where the line falls between the two types of officers, because in our view appellant clearly falls on the 'inferior officer' side of that line. Subsequently, in *Edmond v. United States*,[5] the Supreme Court upheld the appointment of judges of the United States Coast Guard Court of Appeals by the Secretary of Transportation, finding that such judges were inferior officers. Regarding the distinction between principal and inferior officers, the Court in *Edmond* stated that:

> [T]he term "inferior officer" connotes a relationship with some higher ranking officer or officers below the President: whether one is an "inferior" officer depends on whether he has a superior. It is not enough that other officers may be identified who formally maintain a higher rank, or possess responsibilities of a greater magnitude. If that were the intention, the Constitution might have used the phrase "lesser officer." Rather, in the context of a clause designed to preserve political accountability relative to important government assignments, we think it evident that "inferior officers" are officers whose work is directed and supervised at some level by others who were appointed by presidential nomination with the advice and consent of the Senate.[6]

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[3] U.S. Const. Art. II, § 2, cl. 2.

[4] 487 U.S. 654 (1988).

[5] 520 U.S. 651 (1997).

[6] cite

Applying these principles to U.S. Attorneys gives rise to the conclusion that they are inferior officers for purposes of the Appointments Clause. In *United States v. Hilario*,[7] for example, the Court of Appeals for the First Circuit held that when measured against the "benchmarks" established in *Morrison* and *Edmond*, "United States Attorneys are inferior officers." In reaching this determination, the court noted that Congress has vested plenary authority over U.S. Attorneys in the Attorney General; that they are subject to closer supervision than the officers at issue in *Edmond*; that they may be removed from participation in particular cases upon a determination by the Attorney General that such an action would be in the interests of the United States; and that the Attorney General may direct the location of U.S. Attorneys' offices, direct that they file reports, fix U.S. Attorneys' salaries, authorize office expenses, and approve staffing decisions. Similar reasoning led the Court of Appeals for the Ninth Circuit to declare that United States Attorneys are inferior officers in *United States v. Gantt*.[8] Based on these precedents, it seems evident that the provisions of § 546 comport with the strictures of the Appointments Clause.

At the same time, however, it is important to note that a return to the appointment scheme in place prior the passage of the PATRIOT Act reauthorization likewise would not be constitutionally problematic, for essentially the same reasons. In its prior iteration, § 546 established that "the Attorney General may appoint a United States attorney for the district in which the office of the United States attorney is vacant," and that any person so appointed could serve until the earlier of the qualification of a § 541 appointee or 120 days after the expiration of the appointment made under § 546. The prior version of the statute further provided that in instances where the appointment made by the Attorney General expired, the district court for such district could appoint a U.S. Attorney to serve until the vacancy was filled. H.R. 580 would amend § 546 to reinstate this appointment scheme. Despite the long history of judicial involvement in the selection of interim U.S. Attorneys, recent statements by Department of Justice officials indicate that the DOJ would view a return to the prior appointment scheme as inconsistent with the doctrine of separation of powers. However, a review of the cases noted above reveals that the courts have not validated such concerns.

Specifically, in addition to determining that the independent counsel was an inferior officer for purposes of the Appointments Clause, the Court in *Morrison v. Olson* held that the judicial role in the appointment of the independent counsel did not violate the strictures of Article III or other relevant separation of powers principles. Regarding Article III concerns, the Court held that a judge's role in appointing an independent counsel did not threaten the impartial adjudication of cases, given that the judges in question had no authority to review the actions of the independent counsel and were disqualified from participating in any related judicial proceedings. Turning to the argument that a judicial appointive function unduly intruded upon executive prerogative, the *Morrison* Court stated that it could discern "no inherent incongruity about a court having the power to appoint prosecutorial officers," adding that "in light of judicial experience with prosecutors in criminal cases, it could be said that courts are especially well qualified to appoint prosecutors." Addressing the constitutionality of judicial appointment of interim U.S. Attorneys specifically, the First Circuit in *Hilario* adopted the reasoning employed by the Court in *Morrison*. Regarding Article III implications, the First Circuit stated that it did not believe that the vesting of appointive authority in the courts served to undermine the integrity of the judiciary, further

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[7] 218 F.3d 19 (1st Cir. 2000).

[8] 194 F.3d 987 (9th Cir. 1999).

noting that the *Morrison* Court had pointed to the judicial appointment of interim U.S. Attorneys to illustrate that the task is not incompatible with judicial functions. The First Circuit in *Hilario* likewise adopted the *Morrison* Court's determination that judicial appointment such officers did not impermissibly encroach upon executive powers, and went on to explain that the judicial appointment provision was tempered in such a fashion as to ensure the independence of an appointee.

These cases establish that there are no constitutional problems with either appointment dynamic. As it currently stands, § 546 allows the Attorney General to appoint a U.S. Attorney who may serve, without Senate confirmation, until such time as the President chooses to send up a nomination pursuant to § 541 that is then acted upon favorably by the Senate. Conversely, there is no constitutional impediment to the reestablishment of the prior standard, as is contemplated by H.R. 580. Accordingly, legislative action hinges not on constitutional inquiry, but upon the weighing by Congress of several competing institutional and policy considerations.

A key aspect of the current controversy centers on the stated concern that § 546, in its current iteration, will result in the prolonged circumvention of the Senate's traditional advice and consent function under § 541. Assuming that this concern will continue to factor prominently in the consideration of H.R. 580, Congress needs to be aware that even upon a return to the previous version of § 546, the possibility remains that the Department of Justice might rely upon pre-existing interpretations of applicable statutory provisions to effectively circumvent the Senate's advice and consent function under § 541.

On September 5, 2003, the DOJ's Office of Legal Counsel (OLC) issued an opinion concluding that the Department could rely on the provisions of the Vacancies Reform Act of 1998 (Vacancies Act) independently of and in conjunction with the provisions of § 546 (the pre-PATRIOT Act reauthorization version). This characterization is significant, as it allows the Department to employ the two statutes sequentially. The Vacancies Act establishes which individuals may be designated by the President to temporarily perform the duties and functions of a vacant office and, subject to certain exceptions, provides that such individuals may serve in an acting capacity for a period not to exceed 210 days. When used along with the prior version of § 546, this approach gives rise to the possibility that the Department could install an acting U.S. Attorney under the Vacancies Act, followed by a § 546 interim appointee (who could be the same person) for a minimum of 330 days without the advice and consent of the Senate (given that the 210 day time limit imposed by the Vacancies Act is tolled during the pendency of a nomination). While it could be argued that this approach runs contrary to the aim of the Vacancies Act, which was designed to protect the Senate's constitutional role in the confirmation process, the OLC opinion is based on a tenable construction of the Act. The current Administration appears to be the only one to have taken this approach, and has appointed at least 27 acting U.S. Attorneys pursuant to the Vacancies Act.

The current Administration also made successive § 546 appointments under the prior version of the statute. Based on the information supplied by the Department of Justice to CRS, there appear to be several instances in which the Attorney General made successive interim appointments of U.S. Attorneys under § 546, of either the same or different individuals. One individual received a total of four successive interim appointments pursuant to this approach. This use of § 546, coupled with the potential sequential use of the Vacancies Act could give rise to a dynamic whereby the advice and consent function of the

Senate could be avoided to a significant degree even under the prior version of § 546. If it so desired, Congress could make clear that § 546 is the exclusive method for making interim appointments to U.S. Attorney positions.

While the granting of successive interim appointments under the prior version of § 546 might seem legally problematic in light of the ability of a district court to appoint a U.S. Attorney who may serve until the vacancy is filled pursuant to § 541, there is at least one court decision which validates this approach, at least under certain circumstances. In *In re Grand Jury Proceedings*,[9] the District Court for the District of Massachusetts held that the successive interim appointment of a U.S. Attorney under § 546 was permissible, given the individual's nomination for the position was pending before the Senate, and where the appropriate district court had expressly declined to exercise its appointive authority under § 546.

Ultimately, as with the question of whether to retain the current appointment dynamic or to return to the previous standard, any decision will hinge upon a congressional determination as to whether the potential benefits of this statutory flexibility outweigh the danger such a dynamic poses to its institutional prerogatives.

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Madam Chairman, that concludes my prepared statement. I would be happy to answer any questions that you or other Members of the Subcommittee might have, and I look forward to working with all Members and staff of the Subcommittee on this issue in the future.

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[9] 671 F.Supp. 5 (D. Mass., 1987).

Ms. SÁNCHEZ. Thank you, Mr. Halstead.

I now recognize myself for 5 minutes for the purpose of asking questions.

Mr. Halstead, my first question is actually for you.

Has the Department of Justice complied with your request for information in order for you to finish your report on U.S. attorneys who have served less than a full 4-year term from 1981 to 2006?

Mr. HALSTEAD. Kevin Scott and Henry Hogue in our government finance division have been doing the vast majority of work regarding the statistical compilations.

My understanding is that there was a disclosure of information from the Department of Justice on February 24, 2007 and I believe we have been told informally that the Department of Justice is in the process of winnowing through its records to see what further disclosures might be made.

Ms. SÁNCHEZ. Thank you.

My next question is for Mr. Wampler.

We learned today that both Mr. Charlton and Mr. Bogden were told by the then acting assistant attorney general, Mr. Mercer, that they were being terminated during the last 2 years of the Bush administration to, in essence, make way for Republicans to pad their resumes. This would assist them in their political or legal careers.

Do you think that that is a good reason to end the services of a sitting U.S. attorney? Does this call into question the previous statements of the Justice Department that they were dismissed for, quote-unquote, "performance-related reasons?"

Mr. WAMPLER. Without commenting on other people's testimony, our association would advocate that a U.S. attorney should not be changed, particularly this close to the end of the Administration.

After all these years of experience and dealings that they have had, they are highly trained executives, other than if they disobey a particular order or a direct requirement.

Despite that, these butting of heads between Department of Justice officials and U.S. attorneys happen often in many Administrations and these are things that should be worked out between well meaning executives to faithfully carry out the laws.

Ms. SÁNCHEZ. Mr. Wampler, Mr. Moschella testified earlier today that Mr. McKay was asked to resign only because he championed an information system and Mr. McKay testified thereafter that everything he did in connection with that project was authorized by the deputy attorney general, Paul McNulty.

In fact, Mr. McKay won a distinguished public service award for his leadership on this project in January of 2007, just 1 month after he asked to resign.

Do you believe that a United States attorney should be forced to resign for this reason alone?

Mr. WAMPLER. I believe the President having power to do that and our association would advocate that the President and the attorney general exercise great discretion and not do that.

Ms. SÁNCHEZ. Mr. Terwilliger, you stated that the U.S. attorneys serve at the pleasure of the President and seemed to imply that the President should be able to fire them for no reason or no good reason, and I have a question for you, because it is very analogous to employment law.

There are at-will employees in employment law and yet we don't believe it is appropriate to fire employees for their race.

Would you argue that it is proper for the President to remove a U.S. attorney for his race?

Mr. TERWILLIGER. Of course not.

Ms. SÁNCHEZ. Would you argue that it would be, in the employment law context, improper to fire an employee for whistleblowing of wrongdoing or misfeasance?

Would you, in your statement about the President has the absolute discretion, would you think that it is appropriate for a President to fire a U.S. attorney if he or she were engaged in whistleblowing or bringing misfeasance to somebody's attention?

Mr. TERWILLIGER. It would depend on the circumstances. If the U.S. attorney, for example, went out of a channel or a chain of command or disclosed grand jury material in the process of whistleblowing or announced an indictment——

Ms. SÁNCHEZ. Let's just stay with the——

Mr. TERWILLIGER [continuing]. In the press in violation of the law and department rules, yes, then I would think it would be appropriate.

Ms. SÁNCHEZ. But would you agree that there are probably strong public policy reasons for not allowing the President absolute unfettered discretion to fire U.S. attorneys for some very bad reason?

Mr. TERWILLIGER. No, because the Constitution is what defines the President's authority to appoint and remove inferior officers and under that system, the check on the President's authority is not legal in nature, it is political, such as having this hearing.

And if the Congress or the public, for that matter, through its elected representatives, think the President has made a bad decision, it can exercise the political check to that power by holding a hearing of this nature, among other things.

Ms. SÁNCHEZ. So you are essentially saying the only remedy would be something political, and that there should be no framework under which a President is prohibited from firing or dismissing U.S. attorneys, even in some instances that we could imagine would be for very bad reasons?

Mr. TERWILLIGER. Respectfully, ma'am, I believe that is what the Constitution says is the way it should be done.

Ms. SÁNCHEZ. The question I am asking you is whether you believe that is.

Mr. TERWILLIGER. Well, I believe in the Constitution, so I believe if that is what the Constitution—if I am correct that that is what the Constitution dictates, we should follow that dictate.

Ms. SÁNCHEZ. All right, thank you.

I would now like to recognize the Ranking Member, Mr. Cannon, for 5 minutes.

Mr. CANNON. I thank the Chairwoman.

Mr. Wampler, you talked about it being a reasonable position to allow a U.S. attorney to serve out his term.

Let me ask you, in your mind, does that change when a new President comes in and decides to replace all U.S. attorneys at once, as, for instance, Clinton did?

Mr. WAMPLER. Yes, sir.

Mr. CANNON. So at the beginning of an Administration, it may make some sense. But when the Administration is ongoing, taking a big group of U.S. attorneys and replacing them is more difficult.

Mr. WAMPLER. They are just two different concepts, sir. When a President assumes office, he gets to appoint these officials. He gets to appoint the U.S. attorneys. So they are going to all be new.

Mr. CANNON. Often, U.S. attorneys continue from one Administration to another, don't they?

Mr. WAMPLER. Yes, sir.

Mr. CANNON. In other words, a new President should have the right to replace everybody, but it creates this kind of a political response, I think Mr. Terwilliger would say, if he does something that is characterizable as beyond the mark.

Mr. WAMPLER. I don't think so. I think when a new President assumes office, it has been pretty much a history that the people that were appointed by the prior Administration are ready to submit their resignations.

Mr. CANNON. Then why is it that you couldn't ask eight U.S. attorneys to quite, less than 10 percent? Why would it be different?

Mr. WAMPLER. Well, it is the same President and he is the one that appointed them in the first place and they have now gained 4, 6 years of experience. And it is not that he can't, he certainly can. We are advocating he shouldn't.

Mr. CANNON. Let me shift gears just a bit and ask all the panelists. If we went back to the way it was and the judge appoints for some period of time, is there any question but that the President, if he disagrees with the appointment, has the ability to say to the U.S. attorney appointed by a judge that he doesn't want him to continue serving and be able to ask for his resignation or fire him?

So there is a check, in fact, on judges doing it. Is there any historical reason to think that would not be the case?

Mr. SMIETANKA. No. Remember—if I could, on this point—the Judiciary Act creates the position of United States attorney, 1789. It has been modified to talk about the replacement and how that U.S. attorney fits into the structure of the Department of Justice in the mid 1800's.

However, the principle that a President can withdraw his authority from that person at any time is true whether or not, in my view, whether or not a judge appoints or the President appoints.

Mr. CANNON. Mr. Halstead?

Mr. HALSTEAD. Yes, I can provide the Committee with citations. It is a fairly well established principle that the President retains that removal authority.

Mr. CANNON. Thank you.

Mr. Terwilliger, let me ask you a question about our prior panel. I know you heard that.

Using quotes here, based on the press conference that Mr. Iglesias called, the paper referred to that as "as he prepared to leave his office."

So he was still in office and he said, "We put corruption cases back on the front burner. As for the investigation of a kickback scheme reportedly involving construction of Albuquerque's metro court and several other buildings, a corruption case rumored to dwarf the Vigil and Montoya cases."

"Iglesias said he expected indictments to come very soon. But as he prepared for a news conference today, in which he expected to focus on a defense of his tenure," putting his tenure above, I think, his—"Iglesias said those indictments would not come under his watch. 'I wish I would have that honor,' he said, 'but it will have to wait for my successor.' "

In your view, is that an inappropriate thing for a retiring U.S. attorney to do?

Mr. TERWILLIGER. With respect, Mr. Cannon, I don't want to judge based on newspaper reports alone, which I am sure have been accurately reported, what a particular individual has done, particularly in a matter as serious as that.

I will say this, though, that I understand perfectly, having been a United States attorney, how difficult it is to involuntarily give up your job and I understand that there may be some residual bitterness about that.

But whatever the circumstances may be, whether it is viewed as a good reason or a bad reason, it cannot possibly justify someone—and I am not saying this is what Mr. Iglesias did, because I don't know, but it cannot justify the very, very serious transgression not just of department policy, but of the law, of reporting about an indictment that hasn't been returned, that is prospective.

Members of the political establishment are vexed constantly by leaks out of the executive branch, whether they are politically-motivated or somebody trying to feather their nest, talking about what is happening in investigations and potential charges and so forth.

We investigated leaks when I was at the Justice Department. We took complaints from members at the department about leaks, very vociferous complaints, as I am sure some Members of this Committee that were around then remember, and it continues up to the present day.

It is a very serious transgression when it occurs.

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

Mr. CANNON. I yield back.

Ms. SÁNCHEZ. The gentleman from Michigan, Mr. Conyers, is recognized for 5 minutes.

Mr. CONYERS. Thank you.

Madam Chairwoman, this is an important panel, because we are now examining the bill that is before the Subcommittee in a way that it hasn't been given the attention previously.

I want to commend you for including this third panel, because it is very important.

House Resolution 580, in essence, suggests that we go back and review the current provisions of the PATRIOT Act and the measure that we are reviewing has only been in the law since March of 2006, when the President signed the bill.

So it seems to me, Mr. John Smietanka, that we really need this hearing maybe further because I don't think that this provision—we were trying to deal with so many other antiterrorist considerations at the time and I solicit your viewpoint for that opinion.

Mr. SMIETANKA. I think that it is now 7 on a long day and to try to get into constitutional or organizational issues on this bill is rather difficult.

I think that I agree with you, Mr. Chairman, that it does deserve attention and careful attention, because as the representative of the Congressional Research Service said, I believe, a few minutes ago and, also, in his prepared statement, that this is a matter of a close call and a careful examination by this Committee.

This is serious business. This is very serious business.

Mr. CONYERS. And it has a lot to do with the public perception of how the U.S. attorney's office operates.

To me, I think that that raises much of the discussion that has gone on today, that we have got a problem of perception here. I don't know if we will ever discover what was in the hearts and minds of so many people, but perception is a very important part of what we are dealing with in making a decision to change this law back to the way that it was.

Mr. SMIETANKA. If I could touch on that point. You have a delicate balance here between the legislature, the executive and the judiciary. You have two acts and a proposed modification of the 546(d), which, in juggling around in how you put this together—Mr. Terwilliger and I, who served together in the same office, a few hundred feet away from each other, have had many discussions on many different issues.

You have heard one point of view from him. You can hear another from me as to the balancing here. I think it deserves a lot of attention and a careful examination and I would compliment Representative Berman for bringing this to the Committee as a bill. But it does need attention.

Mr. CONYERS. I think so, too.

Can I ask Asa Hutchinson, a former colleague on the Committee and who has served in a number of important areas in Government, about weighing in on this, Asa.

How do you think you would recommend the Committee move forward on this very sensitive matter?

Mr. HUTCHINSON. Well, I, again, commend the Committee for serious discussion of it. I think the debate today has been helpful.

The comments of the representative of the Congressional Research Service need to be looked at very carefully.

But, fundamentally, I think you have to separate the circumstance of the seven or eight U.S. attorneys who testified today or who have circumstances that they are concerned about with the constitutional issue and the prerogative of the President, which I think we all fundamentally agree with, that to carry out, whether it is President Clinton or whether it is President Bush, that the U.S. attorneys are key.

And the prerogative of the President to keep them in office or to ask for their resignation, that is a constitutional prerogative that I think is important.

So I would encourage the Committee——

Mr. CONYERS. I hate to tell you this, but that is a separate question entirely.

Mr. HUTCHINSON. I would agree with you.

Mr. CONYERS. And, finally, Mr. Wampler, you represent hundreds and hundreds of former U.S. attorneys.

Do you think that they would join with myself and Mr. Berman and Mr. Scott, all Members of this Committee, that we move back—we are not creating a new system.

We are going back to a system that was taken out in a conference report and which nobody knew that this had happened. This was not debated in the Committees, and was never debated on the floor of the Congress.

It appeared, as you know how these things on conference reports happen.

Mr. WAMPLER. The debate that I had seen among the officers and directors was that the old system worked. It was upheld in the courts regarding the various balance of power and it provided a practical incentive for the President to nominate a new U.S. attorney.

So for those reasons, the consensus that I got from our members was to go back to what was there before.

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

The Chair would now like to recognize the gentleman from Ohio, Mr. Jordan.

Mr. JORDAN. Thank you, Madam Chair.

Mr. Terwilliger, is your critique of the old system a simple separation of powers argument or were there practical problems over that, I believe, approximately 20-year period when it was in effect?

Mr. TERWILLIGER. Thank you for asking me, because there were practical problems and I think there are practical problems.

I was appointed United States attorney three times, the first by the court, then by the attorney general, then by the President, while the political process sorted itself out.

I had colleagues at the time, I can remember one in particular, it is called the great sofa story, which Mr. Smietanka may remember, where the court appointed one U.S. attorney. When that appointment ran out, the attorney general then appointed another individual to be interim. That ran out and it reverted back to the court again and the sofa that one of those U.S. attorneys used had to keep being moved in and out of the offices as it changed.

There is a real possibility where the chief judge does not consult with the department about the appointment, that you could have successive different individuals in there.

I really think, as a practical matter, what I said in my remarks, I really well and truly believe, and that is if you are going to give the responsibility for running these offices to the department and the attorney general, then please give them the authority to put the people in there who have to do the job.

Mr. JORDAN. And let me pick up on something that Mr. Hutchinson said in his testimony.

He talked about the weight that comes from the ability to say, "I serve at the pleasure of the President," and I would certainly agree with that.

Would the panel agree that that is the case? You are all shaking your head.

Then maybe my question should go to Mr. Smietanka here.

Do you think that weight is then diminished if, in fact, the attorney has not been appointed by the Administration and has, in fact,

been appointed by the judge who that attorney may, in fact, stand in front of?

Mr. SMIETANKA. Well, I think you caught it, except for one word and that was diminished because of an appointment by the Administration.

I think the operative word——

Mr. JORDAN. I don't think it matters. I think the——

Mr. SMIETANKA. No, it does. No, no.

Mr. JORDAN. Well, can that person still say that he or she fully serves at the pleasure of the President, when, in fact, the President is not the one putting them in front of—not responsible for them being in front of the judge that they are now bringing the cases?

Mr. SMIETANKA. But your question was, with deference here, is that you said does the weight of being a presidential appointment, is that of significance in doing your job.

Mr. JORDAN. And you shook your head "yes."

Mr. SMIETANKA. Absolutely, absolutely. A presidential appointment, Senatorial confirmation gives you gravitas inside the department, outside the department and wherever you go.

Now, it is not quite the same thing with an attorney general appointment, an interim attorney general appointment.

Mr. JORDAN. That wasn't my question. My question was——

Mr. SMIETANKA. I thought it was.

Mr. JORDAN [continuing]. The attorney general appointment, presidential appointment, prior to confirmation versus an appointment by the judiciary, where the President hasn't weighed in on that individual.

Neither one are going to be confirmed, we understand that. It is just who put them there.

My point is I believe if, in fact, the AG put him there, in that 120-day time period, they are still subject to withdrawal by the President and the President put them there.

So there has to be more weight with that individual under that circumstance than when the judiciary does it.

Mr. SMIETANKA. My whole point here, as I mention in my prepared remarks, is that we should speed the process along for getting a presidentially-appointed, Senatorially-confirmed U.S. attorney.

Mr. JORDAN. Agreed.

Mr. SMIETANKA. That is the key. I happen to think that because of the—this is unfortunate. This is a comment on Washington and the world today.

The confirmation process can drag on for a long time and we need to push people to get it done fairly and expeditiously.

I sat for a year——

Mr. JORDAN. So you believe a judge appointing it pushes it quicker and faster than the Administration appointing it, not taking in the fact the separation of power argument.

Mr. SMIETANKA. I agree. The separation of power, that is done. That is a passé argument.

What is important here is——

Mr. JORDAN. I disagree.

Mr. SMIETANKA. Well, it is passé according to *Morrison v. Olson.* But the Berman bill provides for attorney general appointment.

As I said before, it doesn't make much difference whether it is 120 days or 150 days or whatever it is or 5 days.

My point is that the danger of that judge getting out there and getting involved should move the legislature, the Senate, not this body, the other body, to get moving and that is the pressure that I think is important.

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

The Chair would now like to recognize the gentleman from Georgia, Mr. Johnson, for 5 minutes.

Mr. JOHNSON. Thank you.

Mr. Smietanka, the USA PATRIOT Improvement and Reauthorization Act of 2005, which was signed into law on March 9, 2006, amended 28 USC section 546 in two critical respects.

First, the act effectively removed district court judges from the interim appointment process and vested the attorney general with the sole power to appoint interim United States attorneys, and I believe that you all had been talking about that with respect to the last question or series of questions.

But, secondly, the act eliminated the 120-day limit on how long an interim United States attorney appointed by the attorney general could serve and, as a result, judicial input in the interim appointment process was eliminated and, perhaps more importantly, it created a possible loophole that could permit United States attorneys appointed on an interim basis to serve indefinitely without Senate confirmation.

What is your thought on the ability of an interim U.S. attorney to serve for an indefinite amount of time, never to be confirmed by the Senate?

Mr. SMIETANKA. That has happened. In Puerto Rico, for 6.5 years, we had had interim U.S. attorneys. That caused a great deal of controversy in Puerto Rico because of that. That was during the 1990's, during the Clinton administration.

In the Bush administration and the Reagan administration, the same problem or virtually the same problem happened with the Virgin Islands.

Mr. JOHNSON. Now, under the Clinton administration, though, it happened. I don't know how it happened under 28 USC 546(c), but it certainly can happen, according to the current law that went into effect on March 6, 2006, signed into law.

And I don't really want to talk about what happened in Puerto Rico. What I want to talk about is the current state of the law now and whether or not you think it should revert back to how it was in accordance with the bill that has been introduced or the resolution that has been introduced by Representatives Berman and Conyers.

Mr. SMIETANKA. My point is what I said earlier, that we should do everything we can to get a presidential nominee to the Senate, get them confirmed in the office, because I think it is extremely important that the President have that kind of person, with that kind of swag, if you will, or clout as the U.S. attorney, and I think that that, by definition, is in that process.

The person who is the—I want to use this in the proper term, I am using the term political, a political appointment or a policy appointment.

One of the factors which is very important, I think, for a good U.S. attorney is to have a comfort level with making political/policy decisions, dealing with the public. These are issues, Congressman.

Mr. JOHNSON. And they can do so knowing that they are appointed and confirmed for a full 4-year term or until such time as the President would leave office.

Mr. SMIETANKA. I think there is another aspect, too, and somebody else mentioned, somebody else asked this question.

Can U.S. attorneys carry over into the next presidential term and is that appropriate? Maybe that is the question that wasn't asked, is it appropriate.

I would say it is.

Mr. JOHNSON. Certainly, it is authorized that they would serve until such time as the next appointee was confirmed by the Senate.

But what are your thoughts on that, Mr. Wampler?

Mr. WAMPLER. As I expressed before, the general consensus of the officers and directors of the National Association of Former United States Attorneys was that the old system worked relatively well.

The constitutional challenges were all turned back. It is a resolved issue regarding the separation of powers. And it provides incentive for the President to get the nominations in faster and to get the Senate to look everybody in the eye.

Mr. JOHNSON. Good.

How can you defend it, Mr. Terwilliger? How can you defend the current scheme?

Mr. TERWILLIGER. For the reasons I mentioned, because the current scheme could conceivably result in the circumstance you described, which I agree with you is an undesirable circumstance.

It isn't a reason, in my judgment, respectfully, to throw the baby out with the bathwater. I still think the benefits of having the attorney general make the interim appointment are preferable.

And, again, I think if it were abused, for the reasons——

Mr. JOHNSON. What about the——

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

Mr. JOHNSON. The cap on——

Ms. SÁNCHEZ. I am sorry. If you are clarifying the point.

Mr. JOHNSON. There being no time limit on how long an interim appointee could serve.

Mr. TERWILLIGER. I take your point and I think——

Mr. JOHNSON. Is that good or bad?

Mr. TERWILLIGER. Well, I think anything that moves it back to the district judges is not well advised. That is my position.

I do think it is an undesirable outcome if an interim appointment lasts for an extended period of time.

There may be circumstances, given the nature that these are political appointments, where there will be a political stalemate of some kind and having it revert to the district court, to me, does not justify taking the process out of the political realm that it is designed by Congress and by statute to be in.

But Congress makes the judgment on this, it is your determination.

Ms. SÁNCHEZ. The gentleman's time has expired.

We have among the Subcommittee Members a colleague from the Judiciary full Committee, who is, in fact, the author of the bill that we are currently discussing.

He has been patient and has sat in on the majority of the testimony given today by the three different panels.

I would ask unanimous consent that he be granted 5 minutes to question the last panel of witnesses.

Are there any objections?

Without objection, so ordered.

Mr. Berman, you are recognized for 5 minutes.

Mr. BERMAN. Well, thank you, Madam Chairwoman, and I am cognizant of the time.

But discarding the admonition that one shouldn't ask questions that might draw out answers that he didn't want to hear, I would like to ask Mr. Terwilliger a couple of questions.

Good to see you again, by the way.

Mr. TERWILLIGER. You, too, sir.

Mr. BERMAN. And I would like to follow-up on Mr. Johnson's questions.

In my hypothetical, if the President of the United States, newly elected, seeing a Senate and a Senate Judiciary Committee that he thinks would constrain him more than he wants in the context of who he would like to be administering justice through these U.S. attorney posts, decides the way we are going to handle this is name interim U.S. attorneys for the duration of the time that the Senate looks adverse to the people we want, would you think that would be a wise and good policy?

Mr. TERWILLIGER. No, and if I had the privilege of advising the President, I would tell him that was a very bad policy.

But that being said——

Mr. BERMAN. I got the answer I wanted.

Mr. TERWILLIGER. Okay.

Mr. BERMAN. I understand your point. It could very well be that there is not a separation of powers constitutional issue in this, but if I were you and you had been given an opportunity, you would have responded to that point by saying, "But from a policy matter, do you really want district judges having the authority at some point to name the chief prosecutor in the district in which they are presiding?"

Mr. TERWILLIGER. Well, that is my point, Mr. Berman.

Mr. BERMAN. Right, and I understand that point.

When the Chairman and I introduced this bill, we didn't go back to the pre-1986 or 1984 formulation where the district court makes that appointment and, more than that, there may be even reasons not to do it this way.

But I guess I would like you to respond to this context. We pass a reauthorization of the PATRIOT Act. It goes through both houses. The Justice Department never comes forward with this suggested change.

It goes to a conference committee. The people on the conference committee have no recollection of this, including the Chairman of the Senate conferees, and we know, we think we know, we know nothing for sure, but we think we guess that what probably happened is the Justice Department got the staff of either the House

or Judiciary to insert this at the last minute, as Mr. Conyers said, never debated, never discussed.

And all I am saying is, don't you think it is a better situation to go back to the status quo ante and then have a deliberative discussion of the best way to avoid the potential that you say is bad or a 4-year interim U.S. attorney appointed by the attorney general to avoid the constraints that the confirmation process would otherwise put on him versus the concerns one could have about district judges having the authority?

They hardly ever did it, I take it, since the Reagan administration suggested this change in the law, until the reauthorization of the PATRIOT Act.

But having the authority at some point, if that interim U.S. attorney wasn't doing the job, in the district judge's mind or in the chief judge's mind, having the authority to substitute somebody else whom the attorney general could get rid of the next day by a new appointment as interim U.S. attorney.

In that context, don't you think the best way to do this is straightforwardly and openly and have this discussion on policy?

Mr. TERWILLIGER. Well, I might agree—well, let me say, first of all, I have probably been around Washington too long, because I am starting to enjoy this discussion.

But, secondly, I would not even begin to consider how mystery provisions wind up in bills and what that means to——

Mr. BERMAN. You don't think this was the first time that ever happened?

Mr. TERWILLIGER [continuing]. Of our political process.

But I can agree with everything you said in terms of it being directed toward an open and robust debate about this, because I think, as a citizen, that is how we get the best result, is with an open and robust debate.

I do not think, however, it is necessary to revert to the prior system in order to have that debate. We can have the debate with the current system in place.

Mr. BERMAN. The current system allows an Administration to propose, as Mr. Johnson pointed out, without end, an interim U.S. attorney, never submit a name for confirmation, never submit that person for confirmation, and allow him to spend, in this case of this Administration, 2 years.

I don't know what their intentions are, but the current situation allows that.

We would like to have a discussion about this without that authority being vested that we had no idea was being proposed to be vested in a President.

Mr. TERWILLIGER. I would presume their intentions are honorable, until I see the contrary.

And I would simply say that as was borne out before in the questioning, there is no question that if the President really wanted to do that and you and the Chairman's bill were enacted, he could still do that by removing the district judge's interim appointment and starting over again.

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

I want to thank everybody for their participation, as I said, and their time this evening.

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

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

I also just want to get on the record, number one, that we will be requesting additional information from the DOJ and hope that they will comply with our request in a forthright and expedient manner.

And I also want to warn Members of the Subcommittee that we will have further discussions on H.R. 580, the Berman bill, down the line in the future.

Mr. CANNON. Will the gentlelady yield?

Ms. SÁNCHEZ. I will yield.

Mr. CANNON. I would just like to congratulate the gentlelady on her first hearing. It was well run and with difficult people.

You managed it remarkably well and I look forward to working with the gentlelady in the future hearings and markups.

Ms. SÁNCHEZ. I thank the Ranking Member.

I thank everybody for their time and their patience.

The hearing on the Subcommittee on Commercial and Administrative Law is adjourned.

[Whereupon, at 7:25 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE STEVE COHEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE, AND MEMBER, SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

The Administration's recent mass dismissal of eight U.S. Attorneys raises deeply troubling questions about its attitude towards the rule of law. Based on press reports and public comments made by some of the dismissed U.S. Attorneys, I strongly suspect that these firings were carried out for rank political reasons that had nothing to do with sound law enforcement. Today's hearing will shed the much needed glare of publicity on the Administration's disturbingly political approach to the administration of justice.

While I understand that U.S. Attorneys serve at the President's pleasure, they also have an obligation to support and defend the Constitution and laws of the United States in a non-political manner. Because of this independent obligation, U.S. Attorneys rarely have been forced to resign by the Administration that appointed them. Indeed, in the 25 years prior to the dismissals at issue here, only three U.S. Attorneys had been forced out of their positions in a manner similar to the eight cases at issue here, out of 486 U.S. Attorneys confirmed during that time period. Thus, suddenly asking for the resignations of eight U.S. Attorneys—many of whom were conducting or had conducted corruption investigations or prosecutions of public officials—in just a few months' time seems very suspicious.

It is also telling that the Administration appears to be surprised by the controversy that it has engendered. No doubt, the Administration's reaction stems from the fact that it is not accustomed to aggressive congressional oversight, a result of Congress's almost complete abdication of its oversight responsibilities during the first six years of this Administration. If nothing else, today's hearing sends a clear message to the Administration that it can longer engage in political shenanigans without having to answer publicly for its behavior when something as central to the Nation's creed as the rule of law is at stake.

LETTER FROM RICHARD A. HERTLING, ACTING ASSISTANT ATTORNEY GENERAL, PROVIDING PERSONNEL DATA ON U.S. ATTORNEYS

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 5, 2007

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Linda Sanchez
Chairwoman
Subcommittee on Commercial and
Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman and Chairwoman Sanchez:

This responds to your letter of February 28, 2007, requesting personnel data on United States Attorneys and will supplement the material provided to the Congressional Research Service on your behalf.

We have been able to locate additional data on the names and dates of service of United States Attorneys. We are enclosing from the publication, *The Bicentennial Celebration of the United States,* a listing of United States Attorneys from 1789 to 1994.

We hope that you find this useful. Do not hesitate to contact the Department if we can be of service in other matters.

Sincerely,

Richard A. Hertling

Richard A. Hertling
Acting Assistant Attorney General

Enclosure

cc: The Honorable Lamar Smith
Ranking Minority Member
Committee on the Judiciary

The Honorable Chris Cannon
Ranking Minority Member
Subcommittee on Commercial and
Administrative Law

NORTHERN DISTRICT OF ALABAMA

William Crawford	1820
Frank Jones	1824-1826
Harry J. Thornton	1826-1829
Joseph Scott	1829-1830
Byrd Brandon	1830-1836
John D. Phelan	1836
Edwin R. Wallace	1836-1839
Jermiah Clemens	1839-1840
Joseph A.S. Acklin	1840-1850
Jefferson F. Jackson	1850-1853
George S. Walden	1853-1859
M.J. Turnley	1859-1860
Charles E. Mayer	1876-1880
William H. Smith	1880-1885
George H. Craig	1885
William H. Denson	1885-1889
Lewis E. Parsons, Jr.	1889-1893
Emmet O'Neal	1893-1897
William Vaughn	1897-1902
Thomas R. Roulhac	1902-1907
Oliver D. Street	1907-1913
Robert N. Bell	1913-1919
Erle Pettris	1919-1922
Charles B. Kennamer	1922-1931
Jim C. Smith	1931
John B. Isabell	1931-1933
Jim C. Smith	1933-1946
John D. Hill	1946-1953
Frank M. Johnson, Jr.	1953-1955
Atley A. Kitchings, Jr.	1955-1956
William L. Langshore	1956-1961
Macon L. Weaver	1961-1969
Wayman G. Sherrer	1969-1977
Jesse R. Brooks	1977-1981
Frank W. Donaldson	1981-1992
Jack W. Selden	1992-1993
Claude Harris, Jr.	1993-1994
Walter Braswell	1994-1995
Caryl P. Privett	1995-present

MIDDLE DISTRICT OF ALABAMA

John A. Minnis	1870-1874
N. S. McAfee	1874-1875
Charles E. Mayer	1876-1880
William H. Smith	1880-1885
George H. Craig	1885
William H. Denson	1885-1889
Lewis E. Parsons, Jr.	1889-1893
Henry D. Clayton, Jr.	1893-1896
George F. Moore, Jr.	1896-1897
Warren S. Reese, Jr.	1897-1906
Ernestus J. Parsons	1906-1913
Thomas D. Samford	1913-1924
Grady Reynolds	1924-1931
Arthur B. Chilton	1931-1934
Thomas D. Samford	1934-1942
Edward B. Parker	1942-1953
Hartwell Davis	1953-1962
Ben Hardeman	1962-1969
Leon J. Hopper	1969
Ira DeMent	1969-1977
Barry E. Teague	1977-1981
John C. Bell	1981-1987
James Eldon Wilson	1987-1994
Charles R. Pitt	1994-present

SOUTHERN DISTRICT OF ALABAMA

Henry Hitchcock	1826-1830
John Elliot	1830-1835
John Forsyth, Jr.	1835-1838
George W. Gayle	1838-1842
George I.S. Walker	1842-1846
Alexander B. Meek	1846-1850
Peter Hamilton	1850
A. J. Requier	1850-1858
John P. Southworth	1869
George M. Duskin	1877-1885
John D. Burnett	1885-1889
Morris D. Wickersham	1889-1893
Joseph N. Miller	1893-1897
Morris D. Wickersham	1897-1904
William H. Armbecht	1904-1912
James B. Sloan	1912-1913
Alexander D. Pitts	1913-1922
Aubrey Boyles	1922-1926
Nicholas E. Stallworth	1926-1927
Alexander C. Birch	1927-1935
Francis H. Inge	1935-1943
Albert J. Tully	1943-1948
Percy C. Fountain	1948-1956
Ralph Kennamer	1956-1961
Vernol R. Jansen, Jr.	1961-1969
Charles S. Spunner-White, Jr.	1969-1977
William A. Kimbrough, Jr.	1977-1981
William R. Favre, Jr.	1981
J.B. Sessions, III	1981-1993
Edward Vulevich, Jr.	1993-1995
J. Don Foster	1995-present

DISTRICT OF ALASKA, SITKA

E. W. Haskett	1884-1885
Mottrone D. Ball	1885-1887
Whitaker M. Grant	1887-1889
John C. Watson	1889
Charles S. Johnson	1889-1894
Lytton Taylor	1894-1895
Burton E. Bennett	1895-1898

Three Judicial Districts Created: June 6, 1900

First District, Juneau

Robert A. Frederick	1898-1902
Thomas R. Lyons	1902-1903
John J. Boyce	1903-1910
John Rustgard	1910-1914
John J. Reagan	1914-1915
James A. Smiser	1915-1921
Arthur G. Shoup	1921-1927
Justin W. Harding	1927-1929
Howard D. Stabler	1929-1933
William A. Holzheimer	1933-1944
Lynn J. Gemmill	1944
Robert L. Jernberg	1944-1945
Robert L. Tollefson	1945-1946
Patrick J. Gilmore, Jr.	1946-1954
Theodore E. Munson	1954-1956
Roger G. Connor	1956
C. Donald O'Connor	1956

Second District, Nome

Joseph K. Wood	1900-1901
John L. McGinn	1901-1902
Melvin Grigsby	1902-1903
John L. McGinn	1903-1904
Henry M. Hoyt	1904-1908
George B. Grigsby	1908-1910
Bernard S. Rodey	1910-1913
F. M. Saxton	1913-1917
G. B. Mundy	1917-1918
Gudbrand J. Lomen	1918-1919
J. M. Clements	1919-1921
Wm. Frederick Harrison	1921-1929
Julius H. Hart	1929-1931
Leroy M. Sullivan	1931-1933
Hugh O'Neill	1933-1939
Charles J. Clasky	1939-1944
Frank C. Bingham	1944-1951
James A. von der Heydt	1951-1953
Russell B. Hermann	1953

Third District, Anchorage

Alfred M. Post	1900-1901
Nathan V. Harlan	1901-1908
James J. Crossley	1908-1909
Corneilus D. Murane	1909-1910
George R. Walker	1910-1914
William N. Spence	1914-1917
William A. Munly	1917-1921
Sherman Duggan	1921-1925
Frank H. Foster	1925-1926
William D. Coppernoll	1926-1928
Warren N. Cuddy	1928-1933
Joseph W. Kehoe	1933-1942
Noel K. Wennblom	1942-1946
Raymond E. Plummer	1946-1949
Joseph E. Cooper	1949-1952
Seaborn J. Buckalew, Jr.	1952-1953
William J. Plummer	1953-1960

Fourth District, Fairbanks

James J. Crossley	1909-1914
Rhinehart F. Roth	1914-1921
Guy B. Erwin	1921-1924
Julien A. Hurley	1924-1933
Ralph J. Rivers	1933-1944
Harry O. Arend	1944-1949
Everett W. Hepp	1950-1952
Robert J. McNealy	1952-1953
Theodore F. Stevens	1954-1956
George M. Yeager	1956-1960

ALASKA ADMITTED TO STATEHOOD JANUARY 2, 1959

William T. Plummer	1960
George M. Yeager	1960-1961
Warren C. Colver	1961-1964
Joseph J. Cella, Jr.	1964
Richard L. McVeigh	1964-1968
Marvin S. Frankel	1968-1969
A. Lee Preston	1969
Douglas B. Bailey	1969-1971
G. Kent Edwards	1971-1977
James L. Swartz	1977
Alexander O. Bryner	1977-1980
Rene J. Gonzalez	1980-1981
Michael R. Spaan	1981-1989
Mark R. Davis	1988-1990
Wevley William Shea	1990-1993
Joseph W. Bottini	1993
Robert C. Bundy	1994-present

DISTRICT OF ARIZONA

John Titus	1863
Almon Gage	1863-1864
C. W. C. Powell	1869
E. B. Pomroy	1876-1882
James A. Zabriskie	1882-1885
Owen T. Rouse	1885-1889
Harry R. Jeffords	1889-1891
Thomas F. Wilson	1891-1893
Everett E. Ellinwood	1893-1898
Robert E. Morrison	1898-1902
Frederick S. Nave	1902-1905
Joseph L.B. Alexander	1905-1910
Joseph E. Morrison	1910-1914
Thomas A. Flynn	1914-1922
Frederick H. Bernard	1922-1925

DISTRICT OF ARIZONA - Cont'd

John B. Wright	1925-1929
John C. Gung'l	1929-1933
Clifton Mathews	1933-1935
Frank E. Flynn	1935-1953
Edward W. Scruggs	1953

Jack D.H. Hays . . 1953-1960
Charles A. Muecke . 1960
Mary Anne Reimann . 1960-1961
Charles A. Muecke . 1961-1964
JoAnn D. Diamos . . 1964-1965
Wiliam P. Copple . 1965-1976
Richard C. Gormley 1966-1967
Edward E. Davis . . 1967-1969
Richard K. Burke . 1969-1972
William C. Smitherman 1972-1977
Michael D. Hawkins 1977-1980
Arthur B. Butler, III 1980-1981
A. Melvin McDonald 1981-1985
Stephen M. McName . 1985-1990
Linda A. Akers . . 1990-1993
Daniel G. Knauss . 1993
Janet Napolitano . 1993-present

DISTRICT OF ARKANSAS

Samuel C. Roane . . 1820-1836
Thomas I. Lacey . . 1836
Grandison D. Royston 1836
Samuel S. Hall . . 1836-1838
William C. Scott . 1838-1841
Absalom Fowler . . 1841-1843
Grandison D. Royston 1843-1844
Samuel H. Hempstead 1844-1850
Absalom Fowler . . 1850

EASTERN DISTRICT OF ARKANSAS

Joseph Stillwell . 1882
James W. McConaughey 1853-1854
Lafayette B. Luckie 1856
John C. Murray . . 1856
Read Fletcher . . . 1856-1857
Charles A. Carroll 1857
John M. Harrell . . 1857-1858
Charles E. Jordan . 1861
S. R. Harrington . 1871-1876
Charles C. Waters . 1876-1885
Joseph W. House . . 1885-1889
Charles C. Waters . 1889-1893
Joseph W. House . . 1893-1897
Jacob Trieber . . . 1897-1900
William G. Whipple 1900-1913
William H. Martin . 1913-1919
June P. Wooten . . 1919-1922
Charles F. Cole . . 1922-1930
Wallace Townsend . 1930-1934
Fred A. Isrig . . . 1934-1939
Samuel Rorex . . . 1939-1946
James T. Gooch . . 1946-1953
Ashley Cobb 1953-1962
Robert D. Smith, Jr. 1962-1967
Woodrow H. McClellan 1967-1968
Wilbur H. Dillahunty 1968-1979
George W. Proctor . 1979-1987
Kenneth H. Stoll . 1987
Charles A. Banks . 1987-1993
Richard M. Pence, Jr. 1993-1993
Paula Jean Casey . 1993-present

WESTERN DISTRICT OF ARKANSAS

Jessie Turner . . . 1851-1853
Alfred M. Wilson . 1853-1861
Granville Wilcox . 1861-1869
James H. Huckleberry 1869-1872
Newton J. Temple . 1872-1875
William H.H. Clayton 1875-1885
Monti H. Sandels . 1885-1889
William H.H. Clayton 1889-1893
James F. Read . . . 1893-1897
Thomas H. Barnes . 1897-1898
James K. Barnes . . 1898-1909
Lafayette W. Gregg 1909
John I. Worthington 1909-1913
J. Virgil Bourland 1913-1917
Emon O. Mahoney . . 1917-1920
James Seaborn Holt 1920-1921
Steve Carrigan . . 1920
Samuel S. Langley . 1921-1930
William N. Ivie . . 1930-1934
Clinton R. Barry . 1934-1946
Respess S. Wilson . 1946-1953
Charles W. Atkinson 1953-1961
Charles M. Conway . 1961-1969
Robert E. Johnson . 1969
Bethel B. Larey . . 1969-1973
Robert E. Johnson . 1973-1977
Larry R. McCord . . 1977-1982
W. Asa Hutchinson . 1982-1985
J. Michael Fitzhugh 1985-1993
Paul K. Holmes, III 1993-present

CENTRAL DISTRICT OF CALIFORNIA

Manuel L. Real . . 1965-1986
John X. Van de Kamp 1966-1967
William M. Bryne, Jr. 1967-1970
Robert L. Meyer . . 1970-1972
William D. Keller . 1972-1977
Robert L. Brosio . 1977
Andrea M. Sheridan-Ord 1977-1981
Alexander H.
Williams, III . 1981
Stephen S. Trott . 1981-1983
Alexander H.
Williams, III . 1983-1984
Robert C. Bonner . 1984-1989
Gary A. Feess . . . 1989
Robert L. Brosio . 1989-1990
Lourdes G. Baird . 1990-1992
Terree Bowers . . . 1992-1994
Nora M. Manella . . 1994-present

EASTERN DISTRICT OF CALIFORNIA

John P. Hyland . . 1960-1970
Dwayne D. Keyes . . 1970-1977
Herman Sillas, Jr. 1977-1980
William B. Shubb . 1980-1981
Francis M.
Goldsberry, II . 1981
Donald B. Ayer . . 1981-1986
Peter A. Nowinski . 1986-1987
David F. Levi . . . 1987-1990
Richard Jenkins . 1990-1991
George L. O'Connell 1991-1993
Robert M. Twiss . . 1993
Charles J. Stevens 1993-present

NORTHERN DISTRICT OF CALIFORNIA

Calhoun Benham . . 1850-1853
Samuel W. Inge . . 1853-1856
William Blanding . 1856-1857
Peter Della Torre . 1857-1860
Calhoun Benham . . 1860-1861
William H. Sharp . 1861-1864
Delos Lake 1864-1869
F. M. Pixley . . . 1869
Lorenzo D. Latimer 1869-1873
Walter Van Dyke . . 1873-1876
John M. Coghlan . 1876-1878
Phillip Teare . . . 1878-1883
Samuel G. Hilborn . 1883-1886
John T. Carey . . 1886-1890
Charles A. Garter . 1890-1894
Samuel Knight . . . 1894-1895
Henry S. Foote . . 1895-1899
Frank L. Coombe . . 1899-1901
Marshall B. Woodworth 1901-1905
Robert T. Devlin . 1905-1912
John L. McNab . . . 1912-1913
B. L. McKinley . . 1913
John W. Preston . . 1913-1918
Mrs. A. A. Adams . 1918-1920
Frank M. Silva . . 1920-1921
J. T. Williams . . 1921-1924
Sterling Carr . . . 1924-1925
George J. Hatfield 1925-1933
I. M. Peckham . . . 1933
Harry H. McPike . . 1933-1937
Frank J. Hennessy . 1937-1951
Chauncey F. Tramutolo 1951
Lloyd H. Burke . . 1951-1958
Robert H. Schnacke 1958-1959
Lynn J. Gillard . . 1959-1960
Laurence E. Dayton 1960-1961
Cecil F. Poole . . 1961-1969
James L. Browning, Jr 1969-1977
G. William Hunter . 1977-1981
Rodney H. Hamblen . 1981
Joseph P. Russoniello 1981-1990
William T. McGivern 1990-1992
John A. Mendez . . 1992-1993
Michael J. Yamaguchi 1993-present

SOUTHERN DISTRICT OF CALIFORNIA

J. M. Jones 1850
Alfred Wheeler . . 1851-1853
Isaac S.K. Ogier . 1853-1854
Pacificus Ord . . . 1854-1858
J. R. Gitchell . . 1858-1861
Kimball H. Dimmick 1861
Billington C. Whiting 1861
J. Marion Brooks . 1887-1888
George J. Davis . . 1888-1889
Aurelius W. Hutton 1889-1890
Willoughby Cole . . 1890-1892
Matthew J. Allen . 1892-1893
George J. Denis . . 1893-1897
Frank P. Flint . . 1897-1901
L. H. Valentine . . 1901-1905
Oscar Lawler . . . 1905-1909
Aloysuis McCormick 1909-1913
Albert Schoonover . 1913-1917
John R. O'Connor . 1917-1921
Joesph C. Burke . . 1921-1925
Samuel W. McNabb . 1925-1933
John R. Layng . . . 1933
Pierson M. Hall . . 1933-1937
Benjamin Harrison . 1937-1940
William F. Palmer . 1940-1942
Leo W. Silverstein 1942-1943
Charles H. Carr . . 1943-1946
James M. Carter . . 1946-1949
Ernest A. Tolin . . 1949-1951
Walter S. Binns . . 1951-1953
Laughlin E. Waters 1953-1961
Francis C. Whelan . 1961-1964
Thomas R. Sheridan 1964
Manuel L. Real . . 1964-1966
Edwin L. Miller, Jr. 1966-1969
Harry D. Steward . 1969-1975
Terry J. Knoepp . . 1975-1977
Michael J. Walsh . 1977-1980

SOUTHERN DISTRICT OF CALIFORNIA - Cont'd

M. James Lorenz . . 1980-1981
William H. Kennedy 1981-1982
Peter K. Nunez . . 1982-1988
William Braniff . 1988-1993
James W. Brannigan, Jr 1993
Alan D. Bersin . . 1993-present

CANAL ZONE

William M. Jackson, Jr 1904-1915
Charles R. Williams 1915-1919
A. C. Hindman . . . 1919-1923
Guy H. Martin . . . 1923-1924
P. Edward Mitchell 1924-1925

Charles Joseph Riley 1925
Joseph J. McGuigan 1936-1940
Daniel E. McGrath . 1940-1952
Rowland K. Hazard . 1952-1970
Wallace D. Baldwin 1970
Lester Engler . . . 1970
Frank J. Violanti . 1976

DISTRICT OF COLORADO

Theodore D. Edwards 1861
James E. Dalliba . 1861
Samuel E. Browne . 1862
Lewis C. Rockwell . 1870-1873
H. C. Alleman . . . 1873-1875
Charles D. Bradley 1875-1877
W. S. Decker . . . 1877-1880
Edward S. Johnson . 1880-1882
Andrew W. Brazee . 1882-1885
Henry W. Hobson . . 1885-1889
John D. Fleming . . 1889-1893
Henry V. Johnson . 1893-1897
Greely W. Whitford 1897-1901
Earl M. Cranston . 1901-1908
Thomas Ward, Jr. . 1908-1912
Harry E. Kelly . . 1912-1914
Harry B. Tedrow . . 1914-1921
John F. Symes . . . 1921-1922
Granby Hillyer . . 1922-1924
George Stephan . . 1924-1929
Ralph L. Carr . . . 1929-1933
Thomas J. Morrissey 1933-1947
Ivor Wingren . . . 1947
Max M. Bulkeley . . 1947-1951
Charles S. Vigil . 1951-1953
Donald E. Kelley . 1953-1958
Robert S. Wham . . 1958-1959
Donald G. Brotzman 1959-1961
Lawrence M. Henry . 1961-1969
James L. Treece . . 1969-1977
Cathlin Donnell . . 1977
Joseph F. Dolan . . 1977-1981
Robert N. Miller . 1981-1988
Michael J. Norton . 1988-1993
James R. Allison . 1993
Henry L. Solano . . 1993-present

DISTRICT OF CONNECTICUT

Pierpoint Edwards . 1789
Hesekiah Huntington 1806-1829
Nathan Smith . . . 1829
Asa Child 1829-1834
William S. Holabird 1834-1841
Charles Chapman . . 1841-1844
Jonathan Stoddard . 1844-1849
Thomas C. Perkins . 1849-1853
Elisha S. Abernethy 1853
William D. Shipman 1853-1860
Tilton E. Doolittle 1860-1861
Hiram Willey . . . 1861
Calvin G. Child . . 1870-1880
Daniel Chadwick . . 1880-1884
Lewis E. Stanton . 1884-1888
George G. Sill . . 1888-1892
George P. McLean . 1892-1896
Charles W. Comstock 1896-1900
Francis H. Parker . 1900-1908
John T. Robinson . 1908-1912
Frederick A. Scott 1912-1915
Thomas J. Spellacy 1915-1918
John F. Crosby . . 1918-1919
Edward H. Smith . . 1919-1923
Allan K. Smith . . 1923-1924
John Buckley . . . 1924-1933
Frank S. Bergin . . 1933-1934
George H. Cohen . . 1934
Robert P. Butler . 1934-1945
Adrian W. Maher . . 1945-1953
Simon S. Cohen . . 1953-1958
Harry W. Hultgren, Jr 1958-1961
Robert C. Zampano . 1961-1964
F. Owen Eagan . . . 1964
Jon O. Newman . . . 1964-1969
Stewart H. Jones . 1969-1974
Harold J. Pickerstein 1974
Peter C. Dorsey . . 1974-1977
Richard Blumenthal 1977-1981
Alan H. Nevas . . . 1981-1985
Stanley A. Twardy, Jr 1985-1991
Richard Palmer . . 1991
Albert S. Dabrowski 1991-1993
Christopher Droney 1993-present

DISTRICT OF DELAWARE

George Read Jr. . . 1789-1836
James A. Baynard . 1836-1843
William H. Rogers . 1843-1850
P. Sherwood Johnson 1850-1853
Thomas F. Baynard . 1853-1854
Daniel M. Bates . . 1854-1861
Edward G. Bradford 1861-1866
John Lockwood Pratt 1866-1869
Anthony Higgins . . 1869-1876
William C. Spruance 1876-1880
John C. Patterson . 1880-1888
Alex B. Cooper . . 1888-1891
Beniah Watson . . . 1891-1894
Lewis B. Vandergrift 1894-1899
W. Michael Byrne . 1899-1902
John P. Nields . . 1902
W. Michael Byrne . 1902-1903
John P. Nields . . 1903-1916
Charles F. Curley . 1916-1920
James Hughes, Jr. . 1920-1924
David J. Reinhardt 1924-1927
Leonard E. Wales . 1927-1935
John J. Morris, Jr. 1935-1939
Charles S. Lynch . 1939-1944
John J. Morris, Jr. 1944-1948
William Marvel . . 1948-1953
Leonard G. Hagner . 1953-1961
Alexander Greenfeld 1961-1969
F. L. Peter Stone . 1969-1972
Norman Levine . . . 1972-1973
Ralph F. Keil . . . 1973-1975
W. Laird Stabler, Jr. 1975-1977
John H. McDonald . 1977
James W. Garvin, Jr. 1977-1981
Joseph J. Farnan . 1981-1985
William C. Carpenter 1985-1993
Richard G. Andrews 1993
Gregory M. Sleet . 1994-present

DISTRICT OF COLUMBIA

John T. Mason . . . 1801
Walter Jones, Jr. . 1801-1821
Thomas Swann . . . 1821-1833
Francis S. Key . . 1833-1841
Philip R. Fendall . 1841-1845
James Hoban 1845-1853
Philip B. Key . . . 1853-1859
Robert Ould 1859-1861
Edward S. Carrington 1861-1876
Geoge P. Fisher . . 1870-1876
Harry H. Wells . . 1876-1880
George B. Corkhill 1880-1884
Augustus S. Worthingto 1884-1888
John B. Hoge . . . 1888-1891
Charles C. Cole . . 1891-1893
Arthur A. Birney . 1893-1897
Henry E. Davis . . 1897-1899
Thomas H. Anderson 1899-1901
Ashley M. Gould . . 1901-1903
Morgan H. Beach . . 1903-1905
Daniel W. Baker . . 1905-1910
Clarence R. Wilson 1910-1914
John E. Laskey . . 1914-1921
Peyton Gordon . . . 1921-1928
Leo A. Rover . . . 1928-1934
Leslie C. Garnett . 1934-1937
David A. Pine . . . 1937-1940
Edward M. Curran . 1940-1946
George M. Fay . . . 1946
George E. McNeil . 1946-1947
George M. Fay . . . 1947-1951
Charles M. Irelan . 1951-1953
Leo A. Rover . . . 1953-1956
Oliver Gasch . . . 1956-1961
David C. Acheson . 1961-1965
John C. Conliff, Jr. 1965
David G. Bress . . 1965-1969
Thomas A. Flannery 1969-1971
Harold H. Titus, Jr. 1971-1974
Earl J. Silbert . . 1974-1979
Carl Raul 1979
Charles F. C. Ruff 1979-1981
Stanley S. Harris . 1981-1983
Joseph E. diGenova 1983-1988
Timothy J. Reardon, II 1988
Jay B. Stephens . . 1988-1993
J. Ramsey Johnson . 1993
Eric H. Holder, Jr. 1993-present

WESTERN DISTRICT OF FLORIDA

(No longer in existence)
Alexander Anderson 1822-1822
Tipton B. Harrison 1822-1823
William F. Steele . 1823-1825
Benjamin D. Wright 1825
Albert I. Clagett . 1825
Benjamin D. Wright 1825-1831
John K. Campbell . 1831
George Walker . . . 1831-1838
William H. Brockenborough 1838-1840
James T. Archer . . 1840
Walker Anderson . . 1841-1842
George S. Hawkins . 1842-1845
Chandler C. Yonge . 1845

EASTERN DISTRICT OF FLORIDA

(No longer in existence)
John G. Bird . . . 1821-1822
Alexander Hamilton 1822-1823
Edgar Macon 1823-1826
Thomas Douglas . . 1826-1842

MIDDLE DISTRICT OF FLORIDA (Former)

Adam Gordon 1825-1827
William Allison McRea 1827-1828
James G. Ringgold . 1828-1831
James A. Dunlap . . 1831
John K. Campbell . 1831-1833
George K. Walker . 1833-1837
Charles S. Sibley . 1837-1845

MIDDLE DISTRICT OF FLORIDA

Edward F. Boardman 1961-1969
John L. Briggs . . 1969-1978
John J. Daley . . . 1978-1979
Gary L. Betz . . . 1979-1982
Robert W. Merkle, Jr. 1982-1988
Robert W. Genzman . 1988-1993
Douglas N. Frazier 1993
Larry H. Colleton . 1994
Donna A. Bucella . 1994
Charles R. Wilson . 1994-present

NORTHERN DISTRICT OF FLORIDA

George W. Call, Jr.	1850-1853
Chandler C. Yonge	1853-1863
Culver P. Chamberlin	1863-1876
Horatio Bisbee, Jr.	1869-1873
J. B. C. Drew	1873-1876
John B. Stickney	1876-1882
Edward M. Cheney	1882-1887
Rhydon M. Call	1887-1889
Joseph N. Stripling	1889-1893
Owen J. H. Summers	1893-1894
J. Emmett Wolfe	1894-1898
John Eagan	1898-1903
William B. Sheppard	1903-1907
Emmett Wilson	1907-1909
Fred C. Cubberly	1909-1913
Edward C. Love	1913-1915
John L. Neeley	1915
Phillip D. Beale	1915
John L. Neeley	1915-1921
Fred C. Cubberly	1921-1932
George P. Wentworth	1932-1933
George E. Hoffman	1933-1953
George H. Carswell	1953-1958
Wilfred C. Varn	1958-1961
Charles W. Eggart, Jr	1961
Clinton N. Ashmore	1961-1969
William A. Stafford, J	1969-1975
Clinton N. Ashmore	1975-1976
Nicholas P. Geeker	1976-1982
K. Michael Moore	1982-1983
W. Thomas Dillard, II	1983-1987
K. Michael Moore	1987-1989
Lyndia F. Padgett	1989-1990
Kenneth W. Sukhia	1990-1993
Gregory R. Miller	1993
Patrick M. Patterson	1993-present

SOUTHERN DISTRICT OF FLORIDA

William Allison McRea	1828-1829
John G. Stower	1829-1830
John K. Campbell	1830-1831
Edward Chandler	1831-1834
Adam Gordon	1834
Wylie P. Clark	1834-1839
Charles Walker	1839-1840
L. Windsor Smith	1840-1842
George W. Macrae	1842-1847
L. Windsor Smith	1847-1850
William R. Hackley	1850-1858
John L. Tatum	1858-1861
Thomas J. Boynton	1861-1863
Homer G. Plantz	1863-1869
Claiborn R. Mobley	1869-1876
John Tyler, Jr.	1876-1877
George B. Patterson	1877-1886
Livingstone W. Bethel	1886-1890
G. Browne Patterson	1890-1894
Owen J. H. Summers	1894
Frank Clark	1894-1897
Joseph N. Stripling	1897-1902
John M. Chaney	1902-1912
Richard P. Marks	1912-1913
Herbert S. Phillips	1913-1921
William M. Gober	1921-1929
Wilburn P. Hughes	1929-1933
John W. Holland	1933-1936
Herbert S. Phillips	1936-1953
James L. Guilmartin	1953-1959
E. Coleman Madsen	1959-1961
Edward G. Boardman	1961-1963
William A. Meadows, Jr	1963-1969
Robert W. Rust	1969-1977
Vincent K. Antle	1977
Jacob V. Eskenazi	1977-1980
Atlee W. Wampler, III	1980-1982
Stanley I. Marcus	1982-1985
Leon B. Kellner	1985-1988
Dexter W. Lehtinen	1988-1992
James McAdams	1992
Roberto Martinez	1992-1993
Kendall B. Coffey	1993-1996
William A. Keefer	1996-present

DISTRICT OF GEORGIA

Matthew McAllister	1789-1797
Charles Jackson	1797-1798
George Woodruff	1798-1802
David B. Mitchell	1802-1804
William B. Bullock	1804-1813
Charles Harris	1813-1815
William Davies	1815-1819
Richard W. Habersham	1819-1827
Matthew H. McAllister	1827-1835
Robert M. Charlton	1835-1836
William H. Stiles	1836-1838
John E. Ward	1838-1839
Robert M. Charlton	1839-1840
Solomon Cohen	1840-1842
Alexander Drysdale	1842-1844
Richard A. Cuyler	1844
Henry R. Jackson	1844
Henry Williams	1850-1853
George S. Owens	1853-1856
George A. Gordon	1856-1857
Joseph Ganahl	1857-1860
Hamilton Gouper	1860
John D. Pope	1870-1876
Henry P. Farrow	1876-1880
John S. Bigby	1880-1883

NORTHERN DISTRICT OF GEORGIA

Emory Speer	1883-1885
Ben H. Hill, Jr.	1885-1889
Sion A. Darnell	1889-1893
Joseph S. James	1893-1897
Edgar A. Angier	1897-1905
Farish C. Tate	1905-1913
Alexander Hooper	1913-1921
Clint W. Hager	1921-1934
Lawrence S. Camp	1934-1942
J. Ellis Mundy	1942
M. Neil Andrews	1942-1946
J. Ellis Mundy	1946-1953
James W. Dorsey	1953-1959
Charles D. Read, Jr.	1959-1961
Charles L. Goodson	1961-1977
William L. Harper	1977-1981
Robert J. Castellani	1981
Dorothy Y. Kirkley	1981
James E. Baker	1981-1982
Larry D. Thompson	1982-1986
Stephen S. Cowen	1986
Robert L. Barr, Jr.	1986-1990
Rimantas Rukstele	1990
Joe D. Whitley	1990-1993
Gerrilyn G. Brill	1993
Kent B. Alexander	1994-present

MIDDLE DISTRICT OF GEORGIA

Bascom S. Deaver	1926-1928
Scott Russell	1928-1929
William A. Bootle	1929-1933
T. Hoyt Davis	1933-1945
John P. Cowart	1945-1952
Jack J. Gautier	1952-1953
Frank O. Evans	1953-1961
Floyd M. Buford	1961-1969
Walker P. Johnson, Jr	1969
William J. Schloth	1969-1974
Ronald T. Knight	1974-1977
D. Lee Rampey, Jr.	1977-1981
Joe D. Whitley	1981-1987
Samuel A. Wilson	1981-1988
Edgar Wm. Ennis, Jr.	1988-1993
Samuel A. Wilson, Jr.	1993
James L. Wiggins	1994-1996
H. Randolph Aderhold	1996-present

SOUTHERN DISTRICT OF GEORGIA

Sion A. Darnell	1882-1886
Dupont Guerry	1886-1901
Marion Erwin	1901-1912
Alexander Akerman	1912-1914
Earl M. Donalson	1914-1919
John W. Bennett	1919-1922
F. G. Boatright	1922-1927
Charles L. Redding	1927-1930
Walter W. Sheppard	1932-1933
Charles L. Redding	1933
J. Saxton Daniel	1933-1953
William C. Calhoun	1953-1961
Donald H. Fraser	1961-1969
R. Jackson B. Smith,	1969-1977
William T. Moore, Jr.	1977-1981
Hinton R. Pierce	1981-1992
Jay D. Gardner	1992-1994
Harry D. Dixon, Jr..	1994-present

DISTRICT OF GUAM

James G. Mackey	1950-1952
John P. Raker	1952-1954
Herbert G. Homme, Jr.	1954-1962
James P. Alger	1962-1969
Duane K. Craske	1969-1975
Ralph F. Bagley	1975-1977
David T. Wood	1977-1986
K. William O'Connor	1986-1989
D. Paul Vernier	1989-1991
Frederick A. Black	1991-present

DISTRICT OF HAWAII

John C. Baird	1900
J.J. Dunne	1901-1902
Robert W. Breckons	1902-1913
Jeff McCarn	1913-1915
Horace W. Vaughan	1915-1916
S. C. Huber	1916-1922
William T. Carden	1922-1924
Fred Patterson	1924-1925
Charles F. Parsons	1925-1926
Sanford B.D. Wood	1926-1934
Ingram M. Stainback	1934-1940
Angus M. Taylor, Jr.	1940-1943
Douglas G. Crozier	1943-1945
Edward A. Towse	1945
Ray J. O'Brien	1945-1951
Howard K. Hoddick	1951-1952
A. William Barlow	1952-1954
Louis B. Blissard	1954-1961
Herman T.F. Lum	1961-1967
Yoshima Hayashi	1967-1969
Robert K. Fukuda	1969-1973
Harold M. Fong	1973-1978
Walter M. Heen	1978-1981
Wallace W. Weatherwax	1981-1983
Daniel A. Bent	1983-1993
Elliot Enoki	1993-1994
Steven S. Alm	1994-present

DISTRICT OF IDAHO

Richard Williams	1863-1864
George C. Hough	1864-1867
Joseph W. Huston	1869
Norman Buck	1878-1880
James B. Butler	1880-1881
Wallace R. White	1881-1885
James H. Hawley	1885-1889
Willis Sweet	1889-1890

Fremont Wood . . . 1890-1893
James H. Forney . . 1893-1897
Robert V. Cozier . 1897-1904
Norman M. Ruick . . 1904-1908
Curg H. Lingenfelter 1908-1913
James L. McClear . 1913-1921
Edwin G. Davis . . 1921-1925
James F. Ailshie, Jr. 1925
Hoyt E. Ray 1925-1933
John A. Carver . . 1933-1953
Sherman F. Furey, Jr. 1953-1957
Ben Peterson . . . 1957-1959
Kenneth G. Bergquist 1959-1961
Sylvan A. Jeppesen 1961-1968
Jay F. Bates . . . 1968-1969
Sherman F. Furey, Jr. 1969-1971
Sidney E. Smith . . 1971-1975
Wilbur T. Nelson . 1975
Marion J. Callister 1975-1976
Wilbur T. Nelson . 1976-1977
Paul L. Westberg . 1977
M. Karl Shurtliff . 1977-1981
Guy G. Hurlbutt . . 1981-1984
William Van Hale . 1984-1985
Maurice O. Ellsworth 1985-1993
Patrick J. Molloy . 1993
Betty H. Richardson 1993-present

DISTRICT OF ILLINOIS

William Mears . . . 1813-1819
Jepthah Harden . . 1819-1827
Sidney Breese . . . 1827-1829
Samuel McRoberts . 1829-1831
David J. Baker . . 1831-1839
Ferris Forman . . . 1839-1841
Justin Butterfield 1841-1844
Mark Skinner . . . 1844-1845
David L. Gregg . . 1845-1849
Archibald Williams 1849-1853
Thomas Hayne . . . 1853-1855

CENTRAL DISTRICT OF ILLINOIS

Gerald D. Fines . . 1977-1986
J. William Roberts 1986-1993
Byron G. Cudmore . 1993
Frances C. Hulin . 1993-present

NORTHERN DISTRICT OF ILLINOIS

A. M. Herrington . 1857-1858
Henry S. Fitch . . 1858-1861
Edwin C. Larned . . 1861
Joseph O. Glover . 1869
Mark Bangs 1875-1879
Joseph B. Seake . . 1879-1884
Richard S. Tuthill 1884-1886
William G. Ewing . 1886-1890
Thomas E. Milchrist 1891-1893
Sherwood Dixon . . 1893-1894
John C. Black . . . 1894-1899
Solomon H. Bethea . 1899-1905
Charles B. Morrison 1905-1906
Edwin W. Sims . . . 1906-1911
James H. Wilkerson 1911-1914
Charles F. Clyne . 1914-1922
Edwin Olson 1922-1927
George E. Q. Johnson 1927-1931
Dwight H. Green . . 1931-1935
Michael J. Igoe . . 1935-1938
William J. Campbell 1938-1940
J. Albert Woll . . 1940-1947
Otto Kerner, Jr. . 1947-1954
Irwin N. Cohen . . 1954
Robert Tisdes . . . 1954-1961
James P. O'Brien . 1961-1963
Frank E. McDonald . 1963-1964
Edward V. Hanrahan 1964-1968
Thomas A. Foran . . 1968-1970
William J. Bauer . 1970-1971
James R. Thompson . 1971-1975
Samuel K. Skinner . 1975-1977
Thomas P. Sullivan 1977-1981
Gregory C. Jones . 1981
Dan K. Webb 1981-1985
Anton R. Valukas . 1985-1989
Ira H. Raphaelson . 1989-1990
Fred L. Foreman . . 1990-1993
Michael J. Shepard 1993
James B. Burns . . 1993-present

SOUTHERN DISTRICT OF ILLINOIS

William E. Troutman 1905-1910
Charles A. Karch . 1910-1914
James G. Burnside . 1918-1922
W.O. Potter 1922-1926
Harold G. Baker . . 1926-1931
Paul F. Jones . . . 1931-1935
Arthur Roe 1935-1942
Henry Grady Vien . 1942-1943
William W. Hart . . 1943-1953
Clifford M. Raemer 1953-1957
Carl W. Feickert . 1957-1965
Henry A. Schwarz . 1965-1977
James R. Burgess, Jr. 1977-1982
Frederick J. Hess . 1982-1993
Clifford J. Proud . 1993
Walter C. Grace . . 1993-present

EASTERN DISTRICT OF ILLINOIS

Wm J. Allen 1855-1859
Wm. K. Parish . . . 1859-1860
Elliott B. Herndon 1860-1861
Lawrence Weldon . . 1861-1866
John E. Rosette . . 1866-1869
Bluford Wilson . . 1869-1874
John P. VanDorston 1874-1876
James A. Connally . 1876-1885
Gustavus Van Hoorebeke 1885-1889
James A. Connally . 1889-1893
Wm. B. Shutt . . . 1893-1897
J. Otis Humphrey . 1897-1901
Thomas Worthington 1901-1905
Wm. A. Northcott . 1905-1914
Edward C. Knotts . 1914-1922
Thomas Williamson . 1922-1926
Walter M. Provine . 1926-1931
Frank K. Lemon . . 1931-1935
Howard L. Doyle . . 1935-1953
Marks Alexander . . 1953
John B. Stoddart . 1953-1958
Marks Alexander . . 1958
Harlington Wood, Jr. 1958-1963
Edward R. Phelps . 1963-1965
Richard E. Eagleton 1965-1969
Frank J. Violanti . 1969-1971
Donald B. Mackay . 1971-1977

DISTRICT OF INDIANA

Elijah Sparks . . . 1813-1814
William Hendricks . 1814-1817
Thomas H. Blake . . 1817-1818
Alexander A. Meek . 1818-1821
Charles Dewey . . . 1821-1829
Samuel Judah . . . 1829-1833
Tilghman A. Howard 1833-1839
John Pettit 1839-1841
Courtland Cushing . 1841-1845
Daniel Mace 1845-1848
Lucien Barbour . . 1848-1850
Hugh O'Neal 1850-1854
Benjamin Thomas . . 1854-1855
Alvin P. Hovey . . 1856-1858
Daniel W. Voorhees 1858-1861
John Hanna 1861-1866
Alfred Kilgore . . 1866-1869
Thomas Browne . . . 1869-1875
Nelson Trusler . . 1876-1880
Charles L. Holstein 1880-1885
John E. Lamb . . . 1885-1886
David Turfire . . . 1886-1887
Emory B. Sellers . 1887-1889
Solomon Claypool . 1889
Smiley N. Chambers 1889-1893
Frank B. Burke . . 1893-1897
Albert W. Wishard . 1897-1901
Joseph B. Kealing . 1901-1909
Charles W. Miller . 1909-1913
Frank C. Dailey . . 1913-1916
L. Ertus Slack . . 1916-1918
Frederick Van Nuys 1919-1921
Homer Elliott . . . 1922-1924
Alexander G. Cavins 1925
Albert Ward 1925-1928
George L. Rulison . 1928

NORTHERN DISTRICT OF INDIANA

Oliver Mullins Loomis 1928-1933
James R. Flemming . 1933-1941
Alexander Campbell 1941-1949
Gilmore Haynie . . 1949-1953
Joseph H. Lesh . . 1953-1954
Phil M. McNagny Jr. 1954-1958
Kenneth C. Raub . . 1959-1962

NORTHERN DISTRICT OF INDIANA - Cont'd

Philip C. Potts . . 1962
Alfred Moellering . 1962-1970
William C. Lee . . 1970-1973
John R. Wilks . . . 1973-1977
David T. Ready . . 1977-1981
R. Lawrence Steel, Jr 1981-1985
James G. Richmond . 1985-1991
John F. Hoehner . . 1991-1993
David A. Capp . . . 1993
Jon E. DeGuilo . . 1993-present

SOUTHERN DISTRICT OF INDIANA

George Jeffrey . . 1929-1933
Van Nolan 1933-1940
B. Howard Caughran 1940-1950
Matthew Welsh . . . 1950-1952
Marshall Hanley . . 1952-1953
Jack Brown 1953-1956
Don Tabbert 1957-1961
Richard P. Stein . 1961-1967
K. Edwin Applegate 1967-1969
Stanley B. Miller . 1970-1974
John E. Hirschman . 1974-1975
James B. Young . . 1975-1977
Virginia Dill McCarty 1980-1981
Sarah Evans Barker 1981-1984
Richard L. Darst . 1984
John D. Tinder . . 1984-1987
Bradley L. Williams 1987
Deborah J. Daniels 1988-1993
John J. Thar . . . 1993
Judith A. Stewart . 1993-present

TERRITORY OF IOWA (6/12/1838)

Cyrus S. Jacobs . . 1838
Isaac Van Allen . . 1838-1840
Charles Weston . . 1840-1843
John G. Deshler . . 1843-1845
Edward Johnston . . 1845-1847
Isaac M. Preston . 1847-1850
Stephen Whicher . . 1850-1852
Joseph C. Knapp . . 1852-1859
W.H.F. Gurley . . . 1860-1863
Robert H. Gilmore . 1863-1865
Caleb Baldwin . . . 1865-1867
Milton D. Browning 1867-1869

William Fletcher Sapp	1869-1873
James T. Lane	1873-1882
DeWitt C. Cram	1882-1883

NORTHERN DISTRICT OF IOWA

Maurice D. O'Connell	1883-1886
Timothy P. Murphy	1886-1890
Mauice D. O'Connell	1890-1894
Cato Sells	1894-1898
Horace G. McMillan	1898-1907
Frederick F. Faville	1907-1913
Anthony Van Wageman	1913-1914
Frank A. O'Connor	1914-1921
Guy P. Linville	1921-1927
Bennett E. Rhinehart	1927-1931
Harry M. Reed	1931-1934
Edward G. Dunn	1934-1940
Tobias E. Diamond	1940-1952
Michael L. Mason	1952-1953
F. G. Van Alstine	1953-1961
Donald E. O'Brien	1961-1967
Steve Turner	1967
Asher E. Schroeder	1967-1969
Evan L. Hultman	1969-1977
James H. Reynolds	1977-1982
Evan L. Hultman	1982-1986
Robert L. Teig	1986-1986
Charles W. Larson	1986-1993
Robert L. Teig	1993
Stephen J. Rapp	1993-present

SOUTHERN DISTRICT OF IOWA (7/20/1882)

John S. Runnels	1882-1885
Daniel O. Finch	1885-1889
Lewis Miles	1889-1893
Charles D. Fullen	1893-1902
Lewis Miles	1902-1907
Marcellus L. Temple	1907-1914
Claude R. Porter	1914-1918
Edwin G. Moon	1918-1922
Ralph Pringle	1922-1924
Edwin G. Moon	1924
Ross R. Mowry	1924-1932
Robert W. Colflesh	1932-1934
Edwin G. Moon	1934-1939
Cloid I. Level	1939
John K. Valentine	1939-1940
Hugh B. McCoy	1940
Maurice F. Donegan	1940-1949
William R. Hart	1949-1953
Roy L. Stephenson	1953-1960
Roy W. Meadows	1960-1961
Donald A. Wine	1961-1965
Philip T. Riley	1965
Donald M. Statton	1965-1967
Jerry E. Williams	1967
James P. Rielly	1967-1969
Allen L. Donielson	1969-1976
George H. Perry	1976-1977
Paul A. Zoss, Jr.	1977
James R. Rosenbaum	1977
Roxanne Barton Conlin	1977-1981
Kermit B. Anderson	1981
Richard C. Turner	1981-1986
Christopher D. Hagen	1986-1990
Gene W. Shepard	1990-1993
Don Carlos Nickerson	1993-present

DISTRICT OF KANSAS

Andrew J. Isaacs	1854-1857
William Weer	1857-1858
Alson C. Davis	1858-1861
Thomas Means	1861
John T. Burris	1861
Robert Crozier	1861-1864
James S. Emory	1864-1867
Samuel Riggs	1867-1869
Albert H. Horton	1869-1873
Cyrus I. Scofield	1873
George R. Peck	1874-1879
James R. Hallowell	1879-1885
William C. Perry	1885-1889
Joseph W. Ady	1889-1893
William C. Perry	1893-1897
Isaac E. Lambert	1897-1901
John S. Dean	1901-1905
Harry J. Bone	1905-1913
Fred Robertson	1913-1921
Albert F. Williams	1921-1930
Sardius M. Brewster	1930-1934
Summerfield S. Alexander	1934-1942
George H. West	1942-1945
W. Randolph Carpenter	1945-1948
Lester Luther	1948-1952
Eugene W. Davis	1952-1953
George Templar	1953-1954
William C. Farmer	1954-1958
William C. Leonard	1958-1961
Newell A. George	1961-1968
Benjamin E. Franklin	1968-1969
Robert J. Roth	1969-1975
E. Edward Johnson	1975-1977
James P. Buchele	1977-1981
Jim J. Marquez	1981-1984
Benjamin L. Burgess, Jr.	1984-1990
Lee Thompson	1990-1993
Jackie N. Williams	1993
Randall K. Rathbun	1993-1996
Jackie N. Williams	1996-present

DISTRICT OF KENTUCKY

George Nicholas	1789
James Brown	1791
William Murry	1791-1793
George Nicholas	1793
John Breckinridge	1793-1794
William McClung	1794-1796
William Clark	1796-1800
Joseph Hamilton Davies	1800-1806
George M. Bibb	1807-1808
Robert Trimble	1813-1816
George M. Bibb	1819-1824
John J. Crittenden	1827-1829
Thomas Bell Monroe	1833-1834
Lewis Sanders, Jr	1834-1838
P. S. Loughborough	1838-1850
William H. Caperton	1850-1853
C. C. Rogers	1853-1861
Edward I. Bullock	1861
James M. Harlan	1861-1863
Thomas E. Bramlette	1863
Joshua Tevis	1863-1864
B. H. Bristow	1866-1870
Gabriel C. Wharton	1870-1876
H. F. Finley	1876-1877
Gabriel C. Wharton	1877-1881
George M. Thomas	1881-1885
John C. Wickliffe	1885-1889
George W. Jolly	1889-1894
William M. Smith	1894-1898

EASTERN DISTRICT OF KENTUCKY

James H. Tinsley	1901-1909
James N. Sharp	1909-1911
Edwin P. Morrow	1911-1914
Thomas D. Slattery	1914-1921
Sawyer A. Smith	1921-1933
Mac Swinford	1933-1937
John T. Metcalf	1937-1944
Claude P. Stephens	1944-1953
Edwin R. Denney	1953-1955
Henry J. Cook	1955-1960
Jean L. Auxier	1960-1961
Bernard T. Moynahan, Jr.	1961-1963
George I. Cline	1963-1970
Eugene E. SIler, Jr.	1970-1975
Eldon L. Webb	1975-1977
Patrick J. Molloy	1977-1981
Joseph L. Famularo	1981
Louis DeFalaise	1981-1991
Karen K. Caldwell	1991-1994
Joseph L. Famularo	1994-present

WESTERN DISTRICT OF KENTUCKY

Ruben D. Hill	1856-1906
George Du Relle	1906-1914
Perry B. Miller	1914-1919
W. V. Gregory	1919-1922
Sherman W. Ball	1922-1927

WESTERN DISTRICT OF KENTUCKY - Cont'd

Thomas Sparks, Jr.	1927-1935
Bunk Gardner	1935-1938
Eli H. Brown, III	1938-1945
David C. Walls	1945-1953
Charles F. Wood	1953-1954
J. Leonard Walker	1954-1959
William B. Jones	1959-1961
William E. Scent	1961-1965
Boyce F. Martin, Jr.	1965
Ernest W. Rivers	1965-1970
John T. Smith	1970
George J. Long, Jr.	1970-1977
J. Albert Jones	1977-1980
John L. Smith	1980-1981
Alexander T. Taft, Jr	1981
Ronald E. Meredith	1981-1985
Alexander T. Taft, Jr	1985-1986
Joseph M. Whittle	1986-1993
Michael Troop	1993-present

DISTRICT OF LOUISIANA

James Brown	1805-1808
Philip Grymes	1808-1810
Tully Robinson	1810-1811
John R. Grymes	1811-1814
Tully Robinson	1814
John Dick	1814-1821
John W. Smith	1821-1823

EASTERN DISTRICT OF LOUISIANA

John W. Smith	1821-1829
John Slidell	1829-1833
Henry Carlton	1833-1836
P.K. Lawrence	1836-1837
Thomas Slidell	1837-1838
Benjamin F. Linton	1838-1841
Balie Peyton	1841-1845
Solomon W. Downs	1845-1846
Thomas I. Durant	1846-1850
Logan Hunton	1850-1853
E. Warren Moise	1853-1855
Thomas S. McCay	1855-1856
Franklin H. Clack	1856-1857
Thomas J. Semmes	1857-1859
Henry C. Miller	1859-1863
Rufus Waples	1863
James R. Beckwith	1870
Albert H. Leonard	1878-1885
Charles Parlange	1885-1889
William Grant	1889-1892
Ferdinand B. Earhart	1892-1896
J. Ward Gurley, Jr.	1896-1900
William W. Howe	1900-1907
Rufus E. Foster	1907-1909
Carlton R. Beattie	1909-1913
Walter Guion	1913-1917
Joseph W. Montgomery	1917-1919
Henry Mooney	1919-1921

Louis H. Burns . . 1921-1925
Wayne G. Borah . . 1925-1928
Edmond E. Talbot . 1928-1933
William H. Norman . 1933
Rene A. Viosca . . 1933-1934
Warren Doyle . . . 1934-1937
Herbert W. Christenberry 1937-1941
Robert Winestein . 1941-1947
J. Skelly Wright . 1948-1949
John M. McKay . . . 1949-1950
George R. Blue . . 1950-1953
M. Hepburn Many . . 1953-1957
Kathleen Ruddell . 1957-1961
Louis C. LaCour . . 1961-1969
Gerald J. Gallinghouse 1969-1978
John P. Volz . . . 1978-1991
Harry A. Rosenberg 1991-1993
Robert J. Boitmann 1993
Eddie J. Jordan, Jr. 1994-present

MIDDLE DISTRICT OF LOUISIANA

Douglas M. Gonzales 1972-1976
Cheney C. Joseph, Jr. 1976-1977
Donald L. Beckner . 1977-1981
Stanford O. Bardwell, Jr. 1981-1986
P. Raymond Lamonica 1986-1994
L. J. Hymel 1994-present

WESTERN DISTRICT OF LOUISIANA

John Brownson . . . 1823-1830
Benjamin F. Linton 1830-1841
Henderson Taylor . 1841-1842
Caleb L. Swayze . . 1842-1849
Henry Boyce 1849-1850
Lawrence P. Crain . 1850-1853
Joseph H. Kilpatrick 1853-1854
Peter Alexander . . 1854-1856
Claiborne C. Briscoe 1856
Floyd Walton . . . 1856-1860
Leon D. Marks. . . 1860
James R. Beckwith . 1870
H. B. Talliaferro . 1881
Milton C. Elstner . 1881-1885
Montfort S. Jones . 1885-1889
Milton C. Elstner . 1889-1893
Charles W. Seals . 1893-1898
Milton C. Elstner . 1898-1910
E. H. Randolph . . 1910-1913
George W. Jack . . 1913-1917
Robert A. Hunter . 1917
Joseph Moore . . . 1917-1921
Yandell Beahmer . . 1921
Hugh C. Fisher . . 1921-1922
Philip H. Mecom . . 1922-1935
Benjamin F. Roberts 1935-1937
Harvey G. Fields . 1937-1945
Malcolm E. Lafargue 1945-1950
William J. Fleniken, Sr. 1950
Harvey L. Carey . . 1950
William J. Fleniken, Jr. 1950-1952
Thomas F. Wilson . 1953-1962
Edward L. Shaheen . 1962-1969
Donald E. Walter . 1969-1977
Edward L. Shaheen . 1977-1979
Joseph R. Keene . . 1979-1981
Joseph S. Cage, Jr. 1981-1993
William J. Flanagan 1993
Michael D. Skinner 1993-present

DISTRICT OF MAINE

William Lithgow, Jr. 1789-1796
Daniel Davis . . . 1796-1801
Silas Lee 1801-1814
William S. Preble . 1814-1820
Ether Shepley . . . 1820-1833
John Anderson. . . 1833-1837
Joseph Howard . . . 1837-1841
John Holmes 1841-1843
Gorham Parks . . . 1843-1845
Augustine Haines . 1845-1848
George Shepley . . 1848-1849
Thomas A. Deblois . 1849-1853
George Shepley . . 1853-1861
George F. Talbot . 1861-1870
Nathan Webb 1870-1878
Wilbur F. Lunt . . 1878-1885
George E. Bird . . 1886-1890
Issac W. Dyer . . . 1890-1894
Albert W. Bradbury 1894-1898
Issac W. Dyer . . . 1898-1906
Robert T. Whitehouse 1906-1914
Stephen C. Perry . 1914-1915
John F.A. Merrill . 1915-1922
Frederick R. Dyer . 1922-1933
John D. Clifford, Jr. 1933-1947
Edward J. Harrington 1947
Alton A. Lessard . 1947-1953
Peter Mills 1953-1961
Alton A. Lessard . 1961-1965
William E. McKinley, Jr. 1965
Lloyd P. LaFountain 1966-1969
Peter Mills 1969-1977
George J. Mitchell 1977-1979
James W. Brannigan, Jr. 1979-1980
Thomas E. Delahanty, II 1980-1981
Thomas E. Delahanty, II 1980-1981
Richard S. Cohen . 1981-1993
Jay P. McCloskey . 1993-present

DISTRICT OF MARYLAND

Richard Potts . . . 1789-1792
Zebulon Hollingsworth 1792-1806
John Stephen . . . 1806-1810
Thomas B. Dorsey . 1810-1812
Elias Glenn 1812-1824
Nathaniel Williams 1824-1841
Z. Collins Lee . . 1841-1845
William L. Marshall 1845-1850
Z. Collins Lee . . 1850-1853
William M. Addison 1853-1862
William Price . . . 1862
Archibald Sterling, Jr. 1878-1886
Thomas G. Hayes . . 1886-1890
John T. Ensor . . . 1890-1894
William L. Marbury 1894-1898
John C. Rose . . . 1898-1910
John P. Hill . . . 1910-1915
Samuel K. Dennis . 1915-1920
Robert R. Carman . 1920-1922
Amos W.W. Woodcock 1927-1931
Simon E. Sobeloff . 1931-1934
Bernard J. Flynn . 1934-1953
George C. Doub . . 1953-1956
Walter E. Black, Jr. 1956-1957
Leon H.A. Pierson . 1957-1961
Joseph D. Tydings . 1961-1963
Robert H. Kernon . 1963
Thomas J. Kenney . 1963-1967
Stephen H. Sachs . 1967-1970
George Beall . . . 1970-1975
Jervis S. Finney . 1975-1978
Russell T. Baker . 1978-1981
Herbert Better . . 1981
J. Frederick Motz . 1981-1985
Catherine C. Blake 1985-1986
Breckinridge L. Willcox 1986-1991
Richard D. Bennett 1991-1993
Gary P. Jordan . . 1993
Lynne Ann Battaglia 1993-present

DISTRICT OF MASSACHUSETTS

Christopher Gore . 1789-1796
Harrison G. Otis . 1796
John Davis 1796-1801
George Blake . . . 1801-1829
Andrew Dunlop . . . 1829-1835
John Mills 1835-1841
Franklin Dexter . . 1841-1845

DISTRICT OF MASSACHUSETTS - Cont'd

Robert Rantoul, Jr. 1845-1850
George Lunt 1850-1853
Benjamin F. Hallett 1853-1857
Charles L. Woodbury 1857-1861
Richard H. Dana, Jr. 1861-1868
George S. Hillard . 1868-1870
David H. Mason . . 1870-1873
George P. Sanger . 1873-1886
George M. Stearns . 1886-1887
Owen A. Galvin . . 1887-1890
Frank D. Allen . . 1890-1893
Sherman Hoar . . . 1893-1897
Boyd B. Jones . . . 1897-1901
Henry P. Moultin . 1901-1905
Melvin O. Adams . . 1905-1906
Asa P. French . . . 1906-1914
George W. Anderson 1914-1917
Thomas J. Boynton . 1917-1920
Danial J. Gallagher 1920-1921
Robert O. Harris . 1921-1925
Harold P. Williams 1925-1926
Frederick H. Tarr . 1926-1933
Francis J.W. Ford . 1933-1938
John A. Canavan . . 1938-1939
Edmund J. Brandon . 1939-1946
George F. Garrity . 1946-1947
William T. McCarthy 1947-1949
George F. Garrity . 1949-1953
Anthony Julian . . 1953-1959
Elliot L. Richardson 1959-1961
W. Arthur Garrity . 1961-1966
Paul F. Markham . . 1966-1969
Herbert F. Travers, Jr. 1969-1971
James N. Gabriel . 1971-1972
Joseph L. Tauro . . 1972
James N. Gabriel . 1973-1977
Edward F. Harrington 1977-1981
William F. Weld . . 1981-1986
Robert S. Mueller, II 1986-1987
Frank L. McNamara, Jr 1987-1989
Jermiah T. O'Sullivan 1989
Peter A. Mullin . . 1989
Wayne A. Budd . . . 1989-1993
A. John Pappalardo 1993
Donald K. Stern . . 1993-present

DISTRICT OF MICHIGAN

Solomon Sibley . . 1815-1824
Andrew G. Whitney . 1824-1826
Daniel LeRoy . . . 1826-1834
Daniel Goodwin . . 1834-1841
George C. Bates . . 1841-1845
John Norvell . . . 1845-1850
George C. Bates . . 1850-1853
Samuel Barstow . . 1852-1853
George E. Hand . . 1853-1857
Joseph Miller, Jr. 1857-1861
William L. Stoughton 1861-1862
Alfred Russell . . 1861-1863

EASTERN DISTRICT OF MICHIGAN

Aaron B. Maynard . 1863
Sullivan M. Cutcheon 1877-1885
Cyrenius P. Black . 1885-1890
Theodore F. Shepard 1890-1894
Jared W. Finney . . 1894
Alfred P. Lyon . . 1894-1898
Jared W. Finney . . 1898
William D. Gordon . 1898-1906

Frank H. Watson	1906-1911
Arthur J. Tuttle	1911-1912
Clyde I. Webster	1912-1916
John E. Kinnane	1916-1921
Earl J. Davis	1921-1924
Delos G. Smith	1924-1927
Ora L. Smith	1927-1928
John R. Watkins	1928-1931
Gregory H. Frederick	1931-1936
John C. Lehr	1936-1947
Thomas P. Thornton	1947-1949
Joseph C. Murphy	1949
Edward T. Kane	1949-1952
Philip A. Hartl	952-1953
Frederick W. Kaess	1953-1960
George E. Woods, Jr.	1960-1961
Lawrence Gubow	1961-1968
Robert J. Grace	1968-1969
James H. Brickley	1969-1970
Ralph B. Guy, Jr.	1970-1976
Frederick S. Van Tiem	1976
Philip M. Van Dam	1976-1977
James K. Robinson	1977-1980
Richard A. Rossman	1980-1981
Leonard R. Gilman	1981-1985
Joel M. Shere	1985
Roy C. Hayes	1985-1989
Stephen J. Markman	1989-1993
Ross Parker	1993
Alan M. Gershel	1993
Saul A. Green	1994-present

WESTERN DISTRICT OF MICHIGAN

Frederick O. Rogers	1863-1869
John H. Standish	1869-1877
Marsden C. Burch	1877-1882
John W. Stone	1882-1886
G. Chase Godwin	1886-1890
Lewis G. Palmer	1890-1894
John Power	1894-1898
George G. Covell	1898-1910
Fred C. Wetmore	1910-1914
Edward J. Bowman	1914
Myron H. Walker	1914-1922
Edward J. Bowman	1922-1930
Fred C. Wetmore	1930-1933
Joseph M. Donnelly	1933-1937
Fred C. Wetmore	1937
Francis T. McDonald	1937-1940
Joseph F. Deeb	1940-1953
Wendell A. Miles	1953-1960
Robert J. Danhof	1960-1961
George E. Hill	1961-1964
Robert G. Quinn	1964-1965
Harold D. Beaton	1965-1969
John P. Milanowski	1969-1974
Frank S. Spies	1974-1977
James S. Brady	1977-1981
Robert C. Greene	1981
John A. Smietanka	1981-1994
Thomas J. Gezon	1994
Michael H. Dettmer	1994-present

DISTRICT OF MINNESOTA

Henry L. Moss	1849-1853
Daniel H. Dustin	1853-1854
John E. Warren	1854-1855
Norman Eddy	1855-1857
Eugene M. Wilson	1857-1861
George A Nourse	1861-1863
Henry L. Moss	1863-1868
Cushman K. Davis	1868-1873
William W. Billson	1873-1882
D. B. Searle	1882-1885
George N. Baxter	1885-1890
Eugene G. Hay	1890-1894
E. C. Stringer	1894-1989
Robert G. Evans	1898-1901
Milton D. Purdy	1901-1902
Charles C. Houpt	1902-1914
Alfred Jaques	1914-1922
Lafayette French, Jr.	1922-1928
Lewis L. Drill	1928-1933
George F. Sullivan	1933-1937
Victor E. Anderson	1937-1948
John W. Graff	1948-1949
Clarence U. Landrum	1949-1952
Philip Neville	1952-1953
George E. Mac Kinnon	1953-1958
J. Clifford Janes	1958
Fallan Kelly	1958-1961
J. Clifford Janes	1961
Miles W. Lord	1961-1966
Hartley Nordin	1966
Patrick J. Foley	1966-1969
Jonathan E. Cudd	1969
Robert T. Renner	1969-1977
Thorwald Anderson, Jr	1977
Andrew W. Danielson	1977-1979
Thorwald Anderson, Jr	1979-1980
Thomas K. Berg	1980-1981
John M. Lee	1981
James M. Rosenbaum	1981-1985
Francis X. Hermann	1985-1986
Jerome G. Arnold	1986-1991
Thomas B. Heffelfinger	1991-1993
Francis X. Hermann	1993
David Lee Lillehaug	1994-present

DISTRICT OF MISSISSIPPI

Thomas Anderson	1813-1814
William Crawford	1814-1818
Bela Metcalf	1818-1822
William B. Griffith	1822-1828
Felix Houston	1828-1830
George Adams	1830-1836
Richard M. Gaines	1836-1838

NORTHERN DISTRICT OF MISSISSIPPI

Samuel F. Butterworth	1838-1841
Oscar F. Bledsoe	1841-1848
Andrew K. Blythe	1848-1850
Woodson 1. Ligon	1850-1853
Nathaniel S. Price	1853-1854
John A. Orr	1854-1857
Flavius J. Lovejoy	1857
G. W. Wells	1870
Thomas Walton	1876-1878
Green C. Chandler	1878-1885
Charles B. Howry	1885-1889
Henry C. Niles	1889-1891
Mack A. Montgomery	1891-1893
Andrew F. Fox	1893-1896
Chapman L. Anderson	1896-1897
Mack A. Montgomery	1897-1905
William D. Frazee	1905-1912
Lester G. Pant	1912-1914
Wilson S. Hill	1914-1921
J. L. Roberson	1921
Samuel E. Oldham	1921-1925
John H. Cook	1925-1929
Lester G. Pant	1929-1937
George T. Mitchell	1937-1942
James O. Day	1942-1945
Chester L. Sumners	1945-1951
Noel H. Malone	1951-1954
Chester L. Sumners	1954
Thomas R. Ethridge	1954-1961
B. Euple Dozier	1961
Hosea M. Ray	1961-1981
Glen H. Davidson	1981-1985

NORTHERN DISTRICT OF MISSISSIPPI - Cont'd

Robert Q. Whitwell	1985-1993
Alfred E. Moreton, III	1993-present

SOUTHERN DISTRICT OF MISSISSIPPI

Richard M. Gaines	1840-1850
Horatio J. Harris	1850-1859
Carnot Posey	1859-1866
R. Leachman	1866-1869
G. Gordon Adam	1869-1870
E. Phillip Jacobson	1870-1873
Felix Branigan	1873-1875
William E. Dedrick	1875-1876
Luke Lea	1876-1885
J. Bowmar Harris	1885-1888
A. H. Longino	1888-1889
Albert M. Lea	1889-1897
Robert C. Lee	1897
Albert M. Lea	1897-1903
Robert C. Lee	1903-1915
Joseph George	1915-1919
Julian P. Alexander	1919-1921
Edward E. Hindman	1921-1929
Ben F. Cameron	1929-1933
Robert M. Bourdeaux	1933-1938
Toxey Hall	1938-1947
Joseph E. Brown	1947-1954
Robert E. Hauberg	1954-1980
George L. Phillips	1980-1994
Brad Pigott	1994-present

DISTRICT OF MISSOURI

John Scott	1814-1817
Charles Lucas	1817-1818
Robert Wash	1818-1819
James H. Peck	1819-1822
Joshua Barton	1822-1823
Robert Wash	1823-1824
Edward Bates	1824-1827
Beverley Allen	1827-1829
George Shannon	1829-1834
Arthur L. Magennis	1834-1840
Montgomery Blair	1840-1844
William M. McPherson	1844-1845
Thomas T. Gantt	1845-1850
John D. Cook	1850-1852
John D. Coulter	1852-1853
Thomas C. Reynolds	1853

EASTERN DISTRICT OF MISSOURI

Calvin F. Burns	1857-1861
Asa S. Jones	1861-1862
William W. Edwards	1862-1863
William N. Grover	1863
Chester H. Krum	1870-1876
William H. Bliss	1876-1887
Thomas P. Bashaw	1887-1889
George D. Reynolds	1889-1894
William H. Clopton	1894-1898
Edward A. Rozier	1898-1902
David P. Dyer	1902-1907
Henry W. Blodgett	1907-1901
Charles A. Houts	1901-1914
Arthur L. Oliver	1914-1919
W. L. Hensley	1919-1920
James E. Carroll	1920-1923
Allen Curry	1923-1926
Louis H. Brewer	1926-1934
Harry C. Blanton	1934-1947
Drake Watson	1947-1951
George L. Robertson	1951-1953
William W. Crowdis	1953
Harry Richards	1953-1959
William H. Webster	1959-1961
D. Jeff Lance	1961-1962
Richard D. Fitzgibbon, Jr.	1962-1967
Veryl L. Aiddle	1967-1969
James E. Reeves	1969

Daniel Bartlett, Jr. 1969
James E. Reeves . . 1969-1973
Donald J. Stohr . . 1973-1976
Barry A. Short . . 1976-1977
Robert D. Kingsland 1977-1981
Thomas E. Dittmeier 1981-1990
Stephen B. Higgins 1990-1993
Edward L. Dowd, Jr. 1993-present

WESTERN DISTRICT OF MISSOURI

M. M. Parsons . . . 1857-1858
Alfred M. Lay . . . 1858-1861
James J. Clark . . 1861
James O. Broadhead 1861
Robert J. Lackey . 1861-1864
Bennett Pike . . . 1864
James S. Botsford . 1871-1878
Col. L.H. Waters . 1878-1882
William Warner . . 1882-1885
Ross Guffin 1885
Maecenas E. Benton 1885-1889
Elbert E. Kimball . 1889
George A. Neal . . 1889-1894
John R. Walker . . 1894-1898
William Warner . . 1898-1905
Arba S. Van Valkenburg 1905-1910
Leslie J. Lyons . . 1910-1913
Francis M. Wilson . 1913-1920
Sam O. Hargus . . . 1920
James W. Sullinger 1920-1921
Charles C. Madison 1921-1925
Roscoe C. Patterson 1925-1929
William L. Vandeventer 1929-1934
Maurice M. Milligan 1934-1940
Richard K. Phelps . 1940
Maurice M. Milligan 1940-1945
Sam M. Wear 1945-1953
Edward L. Scheufler 1953-1961
F. Russell Millin . 1961-1967
Calvin K. Hamilton 1967-1969
Bert C. Hurn . . . 1969-1977
Ronald S. Reed, Jr. 1977-1981
J. Whitfield Moody 1981
Robert G. Ulrich . 1981-1989
Thomas M. Larson . 1989
Jean Paul Bradshaw 1989-1993
Michael A. Jones . 1993
Marietta Parker . . 1993
Stephen L. Hill, Jr. 1994-present

DISTRICT OF MONTANA

Robert S. Anderson 1877-1879
J.W. Andrews . . . 1879-1880
James S. Dryden . . 1880
James W. Walker . . 1880-1881
Frank M. Eastman . 1881-1883
W.H. DeWitt 1883-1885
Robert B. Smith . . 1885-1889
Elbert D. Weed . . 1889-1894
Preston H. Leslie . 1894-1898
William B. Rogers . 1898-1902
Carl Rasch 1902-1908
James W. Freeman . 1908-1913
Burton K. Wheeler . 1913-1918
Edward C. Day . . . 1918-1920
W.W. Patterson . . 1920
George F. Shelton . 1920
John L. Slattery . 1921
Wellington D. Rankin 1926-1934
James H. Baldwin . 1934-1935
John B. Tansil . . 1935-1950
Dalton T. Pierson . 1951
Krest Cyr 1951-1961
H. Moody Brickett . 1961-1969
Otis L. Packwood . 1969-1975
Keith L. Burrows . 1975-1976
Thomas A. Olson . . 1976-1977
Robert T. O'Leary . 1977-1981
Robert L. Zimmerman 1981
Byron H. Dunbar . . 1981-1990
Lorraine I. Gallinger 1990
Doris Swords Poppler 1990-1993
Sherry S. Matteucci 1993-present

DISTRICT OF NEBRASKA

Experience Estabrook 1854-1859
Leavitt L. Bowen . 1859-1860
Robert A. Howard . 1860-1861
David A. Collier . 1861-1864
Daniel Gantt . . . 1864
James Neville . . . 1876-1878
Genio M. Lambertson 1878-1887
George E. Pritchett 1887-1890
Benjamin S. Baker . 1890-1894
Andrew J. Sawyer . 1894-1898
Williamson S. Summers 1898-1904
Irving F. Baxter . 1904-1905
Charles A. Goss . . 1905-1910
Francis S. Howell . 1910-1915
Thomas S. Allen . . 1915-1921
James C. Kinsler . 1921-1930
Charles E. Sandall 1930-1935
Joseph T. Votava . 1935-1954
Donald R. Ross . . 1954-1956
Harry W. Shackelford 1956
William C. Spire . 1956-1961
Theodore L. Richling 1961-1969
Richard A. Dier . . 1969-1972
William K. Schaphorst 1972-1975
Daniel E. Wherry . 1975-1977
Edward G. Warin . . 1977-1981
Thomas D. Thalkin . 1981
Daniel E. Wherry . 1975-1977
Edward G. Warin . . 1977-1981
Thomas D. Thalkin . 1981
Ronald D. Lahners . 1981-1993
Thomas J. Monaghan 1993-present

DISTRICT OF NEVADA

Benjamin Bunker . . 1861
Theodore D. Edwards 1863-1865
Robert M. Clarke . 1865-1866
William Campbell . 1866-1870
W. S. Wood 1870
J. Seely 1870-1875
Charles S. Varian . 1875-1883
Trenmore Coffin . . 1883-1887
Thomas E. Hayden . 1887-1909
John W. Whitcher . 1889-1894
Charles A. Jones . 1894-1897
Sardis Summerfield 1897-1906
Samuel Platt . . . 1906-1914
William Woodburn . 1914-1922
George Springmeyer 1922-1926
Harry H. Atkinson . 1926-1934
E. P. Carville . . 1934-1939
William S. Boyle . 1939
Miles N. Pike . . . 1939-1942

DISTRICT OF NEVADA - Cont'd

Thomas O. Craven . 1942-1945
James W. Johnson, Jr. 1953-1954
Madison B. Graves . 1954-1955
Franklin P.R.
Rittenhouse . . 1955-1958
Howard W. Babcock . 1958-1961
John W. Bonner . . 1961-1966
Joseph L. Ward . . 1966-1969
Robert A. Linnell . 1969
Bart M. Schouweiler 1969-1972
Joseph L. Ward . . 1972
V. DeVoe Heaton . . 1972-1975
Lawrence J. Semenza 1975-1977
B. Mahlon Brown . . 1977-1981
Lamond R. Mills . . 1981-1985
William A. Maddox . 1985-1989
Richard A. Pocker . 1989-1990
Leland E. Lutfy . . 1990-1992
Douglas N. Frazier 1992
Monte Stewart . . 1992-1993
Kathryn Landreth . 1993-present

DISTRICT OF NEW HAMPSHIRE

Samuel Sherburne, Jr. 1789-1794
Edwards St. Loe
Livermore . . . 1794-1797
Jermiah Smith . . . 1797-1801
Edwards St. Loe
Livermore . . . 1801
John S. Sherbourne 1801-1804
Jonathan Steele . . 1804
Daniel Humphreys . 1804-1827
William Plumer, Jr. 1827-1828
Daniel M. Christie 1828-1829
Samuel Cushman . . 1829-1830
Daniel McDurell . . 1830-1834
John P. Hale . . . 1834-1841
Joel Eastman . . . 1841-1845
Franklin Pierce . . 1845-1847
Josiah Minot . . . 1847-1850
William W. Stickney 1850-1853
John H. George . . 1853-1858
Anson S. Marshall . 1858-1861
Charles W. Rand . . 1861
Henry P. Rolfe . . 1869
Joshua G. Hall . . 1878-1879
Ossian Ray 1879-1881
Charles H. Burns . 1881-1885
John S. H. Frink . 1885-1890
Jas. W. Remick . . 1890-1894
Oliver E. Branch . 1894-1898
Charles J. Hamblett 1898-1907
Charles W. Hoitt . 1907-1914
Fred H. Brown . . . 1914-1922
Raymond U. Smith . 1922-1934
Alexander Murchie . 1934-1945
Dennis E. Sullivan 1945-1949
Robert D. Branch . 1949
John J. Sheehan . . 1949-1954
Maurice P. Bois . . 1954-1961
William H. Craig, Jr. 1961-1963
John D. McCarthy . 1963
Louis M. Janelle . 1963-1969
David A. Brock . . 1969-1972
William B. Cullimore 1972-1973
Carroll F. Jones . 1973
William J. Deachman, II 1973-1977
William H. Shaheen 1977-1981
Robert J. Kennedy . 1981
W. Stephen Thayer, III 1981-1984
Bruce Kenna 1984-1985
Richard Wiebusch . 1985
Peter E. Papps . . 1985-1989
Jeffrey R. Howard . 1989-1993
Peter E. Papps . . 1993
Paul M. Gagnon . . 1994-present

DISTRICT OF NEW JERSEY

Richard Stockton . 1789-1791
Abraham Ogden . . . 1791-1798
Lucius H. Stockton 1798-1801
Frederick Frelinghuysen 1801
George C. Maxwell . 1801-1803
William S. Pennington 1803-1804
Joseph McIlvaine . 1804-1821
Lucius Q.C. Elmer . 1824-1838
Garrett D. Wall . . 1829-1834
James S. Green . . 1835-1848
William Halstead . 1850-1853

Garrett S. Cannon . 1853-1858
Anthony Q. Keasby . 1861-1882
Job H. Lippincott . 1886-1897
Samuel F. Bigelow . 1897-1888
George S. Duryee . 1888-1890
Henry S. White . . 1890-1894
John W. Beekman . . 1894-1896
J. Kearny Rice . . 1896-1900
David O. Watkins . 1900-1903
Cortland Parker, Jr. 1903
John B. Vreeland . 1903-1913
J. Warren Davis . . 1913-1916
Charles F. Lynch . 1916-1919
Joseph L. Bodine . 1919-1920
Elmer H. Geran . . 1920-1922
Walter G. Winne . . 1922-1928
James W. McCarthy . 1928
Phillip Forman . . 1928-1932
Harlan Besson . . . 1932-1935
John J. Quinn . . . 1935-1940
William F. Smith . 1940-1941
Charles M. Phillips 1941-1943
Thorn Lord 1943-1945
Edgar H. Rossback . 1945-1948
Isaiah Matlack . . 1948
Alfred E. Modarelli 1948-1951
Grover C. Richman, Jr 1951-1953
William F. Tompkins 1953-1954
Raymond Del Tufo, Jr. 1954-1956
Herman Scott . . . 1956
Chester A. Weidenburner 1865-1961
David M. Satz, Jr. 1961-1969
Donald Horowitz . . 1969
Frederick B. Lacey 1969-1971
Herbert J. Stern . 1971-1974
Jonathan L. Goldstein 1974-1977
Robert J. Del Tufo 1977-1980
William W. Robertson 1980-1981
W. Hant Dumont . . 1981-1985
Thomas W. Greelish 1985-1987
Samuel J. Alito, Jr. 1987-1990
Michael Chertoff . 1990-1994
Faith S. Hochberg . 1994-present

DISTRICT OF NEW MEXICO

Francis P. Blair, Jr. 1846
Elias P. West . . . 1851-1853
Miguel A. Otero . . 1853
William W.H. Davis 1853-1854
William C. Jones . 1854-1858
R. H. Tompkins . . 1858-1860
Theodore D. Wheaton 1860
S. M. Ashenfelter . 1870-1872
Thomas B. Catron . 1872-1878
Sidney M. Barnes . 1878-1883
George W. Pritchard 1883-1885
Joseph Bell 1885
Thomas Smith . . . 1885-1889
Eugene A. Fisk . . 1889-1893
John H. Hemingway . 1893-1896
George P. Money . . 1896
William B. Childers 1896-1905
W. H. H. Llwewllyn 1905-1907
David J. Leahy . . 1907-1912
Stephen B. Davis, Jr. 1912-1913
S. Burkhart 1913-1921
George R. Craig . . 1921-1924
John W. Wilson . . 1924-1929
Hugh B. Woodward . 1929-1933
William J. Barker . 1933-1937
Everett M. Grantham 1937-1942
Howard F. Houk . . 1942-1946
Everett M. Grantham 1946-1951
Mauricio Sanchez . . 1951-1953
Paul F. Larrazolo . 1953-1957
James A. Bourland . 1957-1961
John F. Quinn, Jr. 1961-1969
Ruth C. Streeter . 1969
Victor R. Ortega . 1969-1978
Rufus E. Thompson . 1978-1982
Don J. Svet 1982
William L. Lutz . . 1982-1991
Don J. Svet 1991-1993
Larry Gomez 1993
John J. Kelly . . . 1993-present

DISTRICT OF NEW YORK

Richard Harrison . 1789-1801
Edward Livingston . 1801-1803
Nathan Stanford . . 1803-1815

EASTERN DISTRICT OF NEW YORK

Benjamin D. Silliman 1865-1865
Benjamin F. Tracy . 1866-1877
Asa W. Tenney . . . 1877-1885
Mark D. Wilber . . 1885-1889
Jesse Johnson . . . 1889-1894
John Oakey 1894
James L. Bennett . 1894-1898
George H. Pettit . 1898-1902
William J. Young . 1902-1915
Louis R. Bick . . . 1915
Melville J. France 1915-1919
James D. Bell . . . 1919
LeRoy W. Ross . . . 1919-1921
Wallace E.J. Collins 1921
Ralph C. Greene . . 1921-1925
William A. DeGroot 1925-1929
Howard W. Ameli . . 1929-1934
Leo J. Hickey . . . 1934-1937
Harold St. Leo
O'Dougherty . . 1937-1938
Michael F.L. Walsh 1938-1939
Vine H. Smith . . . 1939
Harold M. Kennedy . 1939-1944
Vincent T. Quinn . 1944-1945
Miles F. McDonald . 1945
Vincent T. Quinn . 1945-1946
Vincent J. Keogh . 1946-1950
Frank J. Parker . . 1950-1953
Leonard P. Moore . 1953-1957
Cornelius W.
Wickersham, Jr. 1957-1961
Elliot Kahaner . . 1961
Joseph P. Hoey . . 1961-1969
Vincent T. McCarthy 1969
Edward A. Neaher . 1969-1971
Robert A. Morse . . 1971-1973
Edward J. Boyd, V . 1973-1974
David G. Trager . . 1974-1978

EASTERN DISTRICT OF NEW YORK - Cont'd

Edward R. Korman . 1978-1982
Raymond J. Dearie . 1982-1986
Reena Raggi 1986
Andrew J. Maloney . 1986-1992
Mary Jo White . . . 1992-1993
Zachary W. Carter . 1993-present

NORTHERN DISTRICT OF NEW YORK

Roger Skinner . . . 1815-1819
Jacob Sutherland . 1819-1823
Samuel Beardsley . 1823-1831
Nathan S. Benton . 1831
Joshua A. Spencer . 1841-1845
William F. Allen . 1845-1847
George W. Clinton . 1847-1850
James R. Lawrence . 1850-1853
Henry A. Foster . . 1853
John B. Skinner . . 1853
Samuel B. Garvin . 1853-1858
James B. Spencer . 1858-1861
William A. Dart . . 1861
Richard Crowley . . 1875-1879
Martin I. Townsend 1879-1886
Daniel N. Lockwood 1886-1889
DeAlva S. Alexander 1889-1893
William A. Poucher 1893-1897
Emory E. Close . . 1897-1899
Charles H. Brown . 1899-1900
George B. Curtiss . 1900-1913
John H. Gleason . . 1913-1916
Dennis B. Lucey . . 1916-1921
Clarence E. Williams 1921
Hiram C. Todd . . . 1921-1922
Earle HY. Gallufo . 1922
Benjamin C. Mead . 1922-1923
Oliver D. Burden . 1923-1936
Ralph L. Emmons . . 1936-1943
Irving J. Higbee . 1943-1951
Edmund Port 1951-1953
Anthony F. Caffrey 1953
Theodore F. Bowes . 1953-1961
Justin J. Mahoney . 1961-1969
James M. Sullivan, Jr 1969
Samuel T. Betts, III 1969-1973
James M. Sullivan, Jr 1973-1976
Paul V. French . . 1976-1978
George H. Lowe . . 1978-1982
Gustove J. DiBianco 1982
Frederick J. Scullin, Jr. 1982-1992
Gary L. Sharpe . . 1992-1994
Thomas J. Maroney . 1994-present

SOUTHERN DISTRICT OF NEW YORK

Jonathan Fisk . . . 1815-1819
Robert Tillotson . 1819-1828
John Duer 1828-1829
James A. Hamilton . 1829-1834
William M. Price . 1834-1838
Benjamin F. Butler 1838-1841
Ogden Hoffman . . . 1841-1845
Benjamin F. Butler 1845-1848
Charles McVean . . 1848
Lorenzo B. Shepherd 1848-1850
J. Prescott Hall . 1850-1853
Charles O'Conner . 1853-1854
John McKeon 1854-1858
Theodore Sedgwick . 1858-1859
James I. Roosevelt 1859-1861
E. Delafield Smith 1861
Stewart L. Woodford 1877-1883
Elihu Root 1883-1885
William Dorsheimer 1885-1886
Stephen A. Walker . 1886-1889
Edward Mitchell . . 1889-1894
Henry B. Platt . . 1894
Wallace Macfarlane 1894-1898
Henry L. Burnett . 1898-1906
Henry L. Stevenson 1906-1909
Henry A. Wise . . . 1909-1913
Marshall H. Snowden 1913-1917
Francis G. Coffey . 1917-1921
William Hayward . . 1921-1925
Emory R. Buckner . 1925-1927
Charles H. Tuttle . 1927-1931
George Z. Medalie . 1931-1933
Thomas E. Dewey . . 1933
Martin Conboy . . . 1933-1935
Francis W.H. Adams 1935
Lamar Hardy 1935-1939
Gregory F. Noonan 1939
John T. Cahill . . 1939-1941
Mathias F. Correa . 1941-1943
Howard F. Corcoran 1943
James B.M. McNally 1943-1944
John F.Y. McGohey . 1944-1949
Irving H. Saypol . 1949-1951
Miles J. Lane . . . 1951-1953
J. Edward Lumbard . 1953-1955
Lloyd F. MacMahon . 1955
Paul W. Williams . 1955-1958
Arthur H. Christy . 1958-1959

S. H. Gillespie, Jr. 1959-1961
Morton S. Robson . 1961
Robert M. Margenthau 1961-1962
Vincent L. Broderick 1962
Robert M. Margenthau 1962-1970
Whitney N. Seymour 1970-1973
Paul J. Canon . . . 1973-1975
Thomas J. Cahill . 1975-1976
Robert B. Fiske, Jr. 1976-1980
William M. Tendy . 1980
John S. Martin, Jr. 1980-1983
Rudolph W. Guiliani 1983-1989
Benito Romano . . . 1989
Otto Obermaier . . 1989-1993
Roger S. Hayes . . 1993
Mary Jo White . . . 1993-present

WESTERN DISTRICT OF NEW YORK

Charles H. Brown . 1900-1906
Lymon M. Bass . . . 1906-1909
John L. O'Brien . . 1909-1914
John D. Lynn . . . 1914-1915
Stephen T. Lockwood 1915-1922
William Donovan . 1922-1924
Thomas Penney, Jr. 1924-1925
Richard H. Templeton 1925-1934
George L. Grobe . . 1934-1953
John O. Henderson . 1953-1959
Neil A. Farmelo . . 1959-1961
John T. Curtin . . 1961-1967
Thomas A. Kennelly 1968
Andrew F. Phelan . 1968-1969
Edgar C. NeMoyer . 1969
Kenneth H. Schroeder, Jr. . 1969-1972
John T. Elfvin . . 1972-1975
Richard J. Arcara . 1975-1981
Roger P. Williams . 1981-1982
Salvatore R. Martoche 1982-1986
Roger P. Williams . 1986-1988
Dennis C. Vacco . . 1988-1993
Patrick H. NeMoyer 1993-present

DISTRICT OF NORTH CAROLINA

John Sitgreaves . . 1790
William Hill . . . 1790-1795
Benjamin Wood . . . 1795-1808
Robert H. Jones . . 1808-1816
Thomas P. Devereux 1816-1817
James McKay 1817-1821
Thomas P. Devereux 1820-1829
H. L. Holmes . . . 1839-1840
James B. Sheppard . 1840
William H. Haywood 1840-1843
Duncan K. McRae . . 1843-1850
Hiram W. Husted . . 1850-1853
Robert P. Dick . . 1853

EASTERN DISTRICT OF NORTH CAROLINA

D. H. Starbuck . . 1870-1873
Richard C. Badger . 1873-1878
J. W. Albertson . . 1878-1882
W.S.O.B. Robinson . 1882-1885
Fabius H. Busbee . 1885-1889
Chas. A. Cook . . . 1889-1893
Charles B. Aycock . 1893-1898
Claude M. Bernard . 1898-1902
Harry Skinner . . . 1902-1910
Herbert F. Seawell 1910-1913
Francis D. Winston 1913-1916
James O. Carr . . . 1916-1919
Thomas D. Warren . 1919-1920
E. F. Aydlett . . . 1920-1921
Irvin B. Tucker . . 1921-1930
Walter H. Fisher . 1930-1934
James O. Carr . . . 1934-1945
Charles F. Rouse . 1945-1946
John H. Manning . . 1946-1951
Charles P. Green . 1951-1953
Julian T. Gaskill . 1953-1961
Robert H. Cowen . . 1961-1969
Warren H. Coolidge 1969-1973
Thomas P. McNamara 1973-1976
Carl L. Tilghman . 1976-1977
George M. Anderson 1977-1980
James L. Blackburn 1980-1981
Samuel J. Currin . 1981-1987
J. Douglas McCullough 1987-1988
Margaret P. Currin 1988-1993
James R. Dedrick . 1993
John D. McCullough 1993
Janice McKenzie Cole 1994-present

MIDDLE DISTRICT OF NORTH CAROLINA

Frank Linney . . . 1927-1928
Edwin L. Gavin . . 1928-1932
John R. McCrary . . 1932-1934
Carlyle W. Higgins 1934-1947
Bryce R. Holt . . . 1947-1954
Edwin M. Stanley . 1954-1957
Robert L. Gavin . . 1957-1958
James E. Holshouser 1958-1961
Lafayette Williams 1961
William H. Murdock 1961-1969
William L. Osteen . 1969-1974
N. Carlton Tilley, Jr. 1947-1977
Benjamin H. White, Jr. 1977-1981
Henry M. Michaux . 1977-1981
Kenneth W. McAllister 1981-1986
Robert H. Edmunds, Jr. 1986-1993
Benjamin H. White, Jr. 1993
Walter C. Holton, Jr. 1994-present

WESTERN DISTRICT OF NORTH CAROLINA

D. H. Starbuck . . 1870-1876
Virgil S. Lusk . . 1876-1880
James E. Boyd . . . 1880-1885

WESTERN DISTRICT OF NORTH CAROLINA - Cont'd

Hamilton C. Jones . 1885-1889
Charles Price . . . 1889-1893
Robert B. Glenn . . 1893-1897
Alfred E. Holton . 1897-1914
William C. Hammer . 1914-1920
Stonewall J. Durham 1920-1921
Frank A. Linney . . 1921-1927
Thomas J. Harkins . 1927-1931
Charles A. Jonas . 1931-1932
Frank C. Patton . . 1932-1933
Marcus Erwin . . . 1933-1939
W. Roy Francis . . 1939-1940
Theron L. Candle . 1940-1945
David E. Henderson 1945-1948
Thomas E. Uzzell . 1948-1953
James M. Baley, Jr. 1953-1961
Hugh E. Monteith . 1961
William Medford . . 1961-1969
James O. Israel, Jr. 1969
Keith S. Snyder . . 1969-1977
Harold M. Edwards . 1977-1981
Harold J. Bender . 1981
Charles R. Brewer . 1981-1987
Thomas J. Ashcraft 1987-1993
Jerry W. Miller . . 1993
Mark T. Calloway . 1994-present

TERRITORY OF DAKOTA

Harvey M. Vale . . 1861
William E. Gleason 1861-1865
James Christian . . 1865
George H. Hand . . 1866-1869
Warren Gowles . . . 1869-1872
William Pound . . . 1872-1877
Hugh J. Campbell . 1877-1885
John E. Garland . . 1885-1888
William E. Purcell 1888-1889
John C. Murphy . . 1889

North And South Dakota Admitted To The Union November 2, 1889

DISTRICT OF NORTH DAKOTA

John F. Selby . . . 1890-1891
Edgar W. Camp . . . 1891-1894
James F. O'Brien . 1894
Tracy R. Bangs . . 1894-1898
Partick H. Rourke . 1898-1911
Edward Engerud . . 1911-1914
Melvin A. Hildreth 1914-1923
Seth W. Richardson 1923-1929
Peter B. Garberg . 1929-1933
Powless W. Lanier . 1933-1954
Ralph B. Maxwell . 1954
Robert Vogel . . . 1954-1961
John O. Garaas . . 1961-1968
Eugene K. Anthony . 1968-1969
Harold O. Bullis . 1969-1977
Eugene K. Anthony . 1977
James R. Britton . 1977-1981
Rodney S. Webb . . 1981-1987
Gary H. Annear . . 1987-1990
Stephen D. Easton . 1990-1993
John T. Schneider . 1993-present

DISTRICT OF OHIO

William McMillan . 1801-1803
Michael Baldwin . . 1803-1804
William Creighton . 1804-1810
Samuel Herrick . . 1810-1818
John C. Wright . . 1818-1823
Joseph S. Benham . 1823-1829
Samuel Herrick . . 1829-1830
Noah H. Swayne . . 1830-1839
Israel Hamilton . . 1839-1841
Charles Anthony . . 1841-1845
Thomas W. Bartley . 1845-1850
Samson Mason . . . 1850-1853
Daniel O. Morton . 1853-1857

NORTHERN DISTRICT OF OHIO

R. P. Ranney . . . 1857
George W. Belden . 1857-1861
Robert T. Paine . . 1861
George Willey . . . 1870-1877
John C. See 1877-1881
Edward S. Meyer . . 1881-1883
E. H. Eggleston . . 1883-1885
Robert S. Shields . 1885-1890
Isaac N. Alexander 1890
Allan T. Brinsmade 1890-1895
Ernest S. Cook . . 1895
Samuel D. Dodge . . 1895-1899
John J. Sullivan . 1899-1908
William L. Day . . 1908-1911
Ulysses G. Denman . 1911-1915
Edwin S. Wertz . . 1915-1923
A. E. Bernsteen . . 1923-1929
Wildred J. Marhon . 1929-1933
Emerick B. Freed . 1933-1941
Francis B. Kavanagh 1941-1942
Donald C. Miller . 1942-1952
John J. Kane, Jr. . 1952-1954
Sumner Canary . . . 1954-1959
Russell E. Ake . . 1959-1961
Merle M. McCurdy . 1961-1968
Bernard J. Stuplinski 1968-1969
Robert B. Krupansky 1969-1970
Robert W. Jones . . 1970
Frederick M. Coleman 1970-1977

William D. Beyer . 1977-1978
James R. Williams . 1978-1982
J. William Petro . 1982-1984
William J. Edwards 1984
Patrick M. McLaughlin 1984-1988
William Edwards . . 1988-1989
Joyce J. George . . 1989-1993
Patrick J. Foley . 1993
Emily Sweeney . . . 1993-present

SOUTHERN DISTRICT OF OHIO

Hugh I. Jewett . . 1855-1856
John H. O'Neill . . 1856-1858
Stanley Matthews . 1858-1861
Flamen Ball 1861-1869
Channing Richards . 1877-1885
Philip H. Kumler . 1885-1887
William B. Burnet . 1887-1889
John W. Herron . . 1889-1894
Harlan Cleveland . 1894-1898
William E. Bundy . 1898-1903
Sherman T. McPherson 1903-1916
Stuart R. Bolin . . 1916-1920
James R. Clark . . 1920-1922
Thomas H. Morrow . 1922-1923
Benson W. Hough . . 1923-1925
Haveth E. Mau . . . 1925-1934
Francis C. Canny . 1934-1939
James H. Cleveland 1939
Leo C. Crawford . . 1939-1944
Bryon B. Harlan . . 1944-1946
Ray J. O'Donnell . 1946-1953
Hugh K. Martin . . 1953-1961
Joseph P. Kinneary 1961
Robert M. Draper . 1966-1969
Robert J. Makley . 1969
William W. Milligan 1969-1977
James E. Rattan . . 1977-1978
James C. Cissell . 1978-1982
Christopher K. Barnes 1982-1985
Anthony W. Nyktas . 1985-1986
D. Michael Crites . 1986-1993
Barbara L. Beran . 1993
Edmund A. Sargus, Jr. 1993-1996
Dale Goldberg . . . 1996-present

DISTRICT OF OKLAHOMA

Horace Speed . . . 1890-1894
Caleb R. Brooks . . 1894-1898
Samuel L. Overstreet 1898-1899
John W. Scothorn . 1899-1900
Horace Speed . . . 1900

CENTRAL DISTRICT OF OKLAHOMA

John H. Wilkins . . 1901-1906
Thomas B. Lathone . 1906

NORTHERN DISTRICT OF OKLAHOMA

John M. Goldesberry 1925-1933
Clarence E. Bailey 1933-1937
Whitfield Y. Mauzy 1937-1953
John S. Athens . . 1953-1954
B. Hayden Crawford 1954-1958
Robert S. Rizley . 1958-1961
Russell H. Smith . 1961
John M. Imel . . . 1961-1967
Laurence A. McSoud 1967-1969
Nathan G. Graham . 1969-1977
Hubert A. Marlow . 1977
Hubert H. Bryant . 1977-1981
Francis A. Keating, II 1981-1983
Layn R. Phillips . 1983-1987
Tony M. Graham . . 1987-1993
Frederick L. Dunn, II 1993
Stephen Charles Lewis 1993-present

EASTERN DISTRICT OF OKLAHOMA

William Cregg, Jr. 1907-1913
D. Hayden Linebaugh 1913-1917
W. P. McGinnis . . 1917-1919
C. W. Miller . . . 1919
Archibald Bonds . . 1919-1920
C. W. Miller . . . 1920
Berry J. King . . . 1920-1921
John T. Harley . . 1921
Frank Lee 1921-1930
W. F. Rampendahl . 1930-1934
Cleon A. Summers . 1934-1952
E. Edwin Langley . 1952-1953
Frank D. McSherry . 1953-1961
R. Edwin A. Langley 1961-1965
Robert B. Green . . 1965-1969
William J. Settle . 1969-1974
Richard A. Pyle . . 1974-1977
Julian K. Fite . . 1977-1980
James E. Edmondson 1980-1981
Betty O. Williams . 1981-1982
Gary L. Richardson 1982-1984
Donn F. Barker . . 1984-1985
Roger Hilfiger . . 1985-1990
Sheldon J. Sperling 1990
John W. Raley, Jr. 1990-present

WESTERN DISTRICT OF OKLAHOMA

William M. Mellette 1902-1907
John Embry 1907-1912
Isaac D. Taylor . . 1912
Homer N. Boardman . 1912-1913

WESTERN DISTRICT OF OKLAHOMA - Cont'd

Isaac D. Taylor . . 1913-1914
John A. Fain . . . 1914-1920
Frank E. Randell . 1920
Robert M. Peck . . 1920-1921
W. A. Maurer . . . 1921-1925
Ray St. Lewis . . . 1925-1931
Herbert K. Hyde . . 1931-1934
William C. Lewis . 1934-1938
Charles E. Dierker 1938-1947
Robert E. Shelton . 1947-1953
Fred M. Mack . . . 1953-1954
Paul W. Cress . . . 1954-1961
Andrew B. Potter . 1961-1969
William R. Burkett 1969-1975
David L. Russell . 1975-1977
John E. Green . . . 1977-1978
Larry D. Patton . . 1978-1981
David L. Russell . 1981-1982
John E. Green . . . 1982
William S. Price . 1982-1989
Robert E. Mydans . 1989
Timothy D. Leonard 1989-1992
Joe L. Heaton . . . 1992-1993
John E. Green . . . 1993
Vicki Miles-LaGrange 1993-1994
Rozia McKinney-Foster 1994-1995
Patrick M. Ryan . . 1995-present

DISTRICT OF OREGON

Isaac W.R. Bromley 1848-1850
Amory Holbrook . . 1850-1853
Benjamin F. Harding 1853-1854
William H. Farrar . 1854-1859
Andrew J. Thayer . 1859-1860
James K. Kelley . . 1860-1862
Erasmus D. Shattuck 1862
Edward W. McGraw . 1863-1865
Joseph M. Dolph . . 1865-1868
J.C. Cartwright . . 1868-1872
Addison C. Gibbs . 1871-1873
Rufus Mallory . . . 1873-1882
J. F. Watson . . . 1882-1886
Lewis S. McArthur . 1886-1890
Franklin P. Mays . 1890-1893
Daniel R. Murphy . 1893-1897
John H. Hall . . . 1897-1905
Francis J. Heney 1905
William C. Bristol 1905-1908
John McCourt . . . 1908-1913
Everett A. Johnson 1913
Clarence L. Reames 1913-1918
Robert R. Rankin . 1918
Bert E. Haney . . . 1918-1919
B. H. Goldstein . . 1919
Lester W. Humphreys 1919-1923
John S. Coke . . . 1923-1925
George Neuner . . . 1925-1933
Carl C. Donaugh . . 1933-1945
Henry L. Hess . . . 1945-1954
Clarence E. Luckey 1954-1961
Sidney I. Lezak . . 1961-1982
Charles H. Turner . 1982-1993
Jack C. Wong . . . 1993
Kristine Olson . . 1994-present

DISTRICT OF PENNSYLVANIA

William Lewis . . . 1789-1791
William Rawle . . . 1791-1799
Jared Ingersoll . . 1800-1801

EASTERN DISTRICT OF PENNSYLVANIA

Alexander J. Dallas 1801-1815
Charles J. Ingersoll 1815-1829
George M. Dallas . 1829-1831
Henry D. Gilpin . . 1831-1937
John M. Reed . . . 1837-1844
William M. Meredith 1841-1842
Henry M. Watts . . 1840
Thomas McKean Pettit 1845-1849
John W. Ashmead . . 1849
John C. Van Dyke . 1854
George M. Wharton . 1857-1860
George A. Coffey . 1861-1864
Charles Gilpin . . 1864-1868
John P. O'Neil . . 1868-1869
Aubrey H. Smith . . 1869-1873
William McMichael . 1873-1875
John K. Valentine . 1875-1888
John R. Read . . . 1888-1892
Ellery P. Ingham . 1892-1896
James M. Beck . . . 1896-1900
James B. Holland . 1900-1904
J. Whitaker Thompson 1904-1912
John C. Smartley . 1912-1913
Francis F. Kane . . 1913-1920
Charles D. McAvoy . 1920-1921
George W. Coles . . 1921-1929
Calvin S. Boyer . . 1929-1930
Howard B. Lewis . . 1931
Edward W. Wells . . 1931-1933
Charles D. McAvoy . 1933-1937
Guy K. Bard 1937
J. Cullen Ganey . . 1937-1940
Edward A. Kallick . 1940
Gearld A. Gleeson . 1940-1953
Joseph G. Hildenberger 1953
W. Wilson White . . 1953-1957
G. Clinton Fogwell, Jr. 1957
Harold K. Wood . . . 1957-1959
Joseph L.McGlynn, Jr. 1959-1961
Walter E. Alessandroni 1959-1961
Joseph S. Lord, III 1961
Drew J.T. O'Keefe . 1961-1969
Louis C. Bechtle . 1969-1972
Carl Joseph Melone 1972
Robert E.J. Curran 1972-1976
Jonas C. Undercofler, III 1976
David Marston . . . 1976-1978
Robert N. Deluca . 1978

Peter F. Vaira . . 1978-1983
Robert N. Deluca . 1978
Peter F. Vaira . . 1978-1983
Edward S.G. Dennis 1983-1988
Michael M. Baylson 1988-1993
Michael J. Rotko . 1993
Michael R. Stiles . 1993-present

MIDDLE DISTRICT OF PENNSYLVANIA

Samuel J. M. McCarrell 1901-1907
Charles B. Witmer . 1907-1911
Andrew B. Dunsmore 1911-1913
Rogers L. Burnett . 1913-1921
Andrew B. Dunsmore 1921-1934
Frank J. McDonnell 1934-1935
Arthur A. Maguire . 1935
Frederick V. Follmer 1935-1946
Arthur A. Maguire . 1946-1953
Joseph C. Kreder . 1953
J. Julius Levy . . 1953-1957
Robert J. Harrigan 1957-1958
Daniel H. Jenkins . 1958-1961
Bernard J. Brown . 1961-1969
John S. Cottone . . 1969-1979
Carlton M. O'Mally, Jr. 1979-1982
David D. Queen . . 1982-1985
James J. West . . . 1985-1993
Wayne P. Samuelson 1993
David M. Barasch . 1993-present

WESTERN DISTRICT OF PENNSYLVANIA

James Hamilton . . 1801-1819
Andrew Stewart . . 1818-1821
Alexander Brackenridge 1821-1830
George W. Buchanan 1830-1832
Benjamin Patton, Jr. 1830-1839
John P. Anderson . 1839-1841
Cornelius Darragh . 1841-1844
William O'Hara Robinson 1844-1845
John L. Dawson . . 1845-1850
J. Bowman Sweitzer 1850-1853
Charles Shaler . . 1853-1857
Richard B. Roberts 1857-1861
Robert B. Carnahan 1861-1870
Henry B. Swope . . 1870-1874
David Reed 1874-1876
Henry H. McCormick 1876-1880
William A. Stone . 1880-1886
George A. Allen . . 1886-1889
Walter Lyon 1889-1893
Stephen C. McCandless 1893
Harry A. Hall . . . 1893-1897
Daniel B. Heiner . 1897-1902
James S. Young . . 1902-1905
John W. Dunkle . . 1905-1909
John H. Jordon . . 1909-1913
Edwin L. Humes . . 1913-1918
R. Lindsay Crawford 1918-1919
Edwin L. Humes . . 1919-1920
Robert J. Dodds . . 1920
D. J. Driscoll . . 1920-1921
Walter Lyon 1921-1925
John D. Meyer . . . 1925-1929
Louis E. Graham . . 1929-1933
Horatio S. Dumbauld 1933-1935
Charles F. Uhl . . 1935-1939
George Mashank . . 1939-1941
Charles F. Uhl . . 1941-1947
Owen McIntosh Burns 1947-1949
Edward C. Boyle . . 1949-1953
John W. McIlvaine . 1953-1955
D. Malcolm Anderson, Jr. 1955-1957
Herbert I. Teitelbaum 1957-1961
Joseph S. Ammerman 1961-1963
Gustave Diamond . . 1963-1969
Richard L. Thornburgh 1969-1975
Blair A. Griffith . 1975-1978
Robert J. Cindrich 1978-1981
J. Alan Johnson . . 1981-1988
Charles D. Sheehy . 1988-1989
Thomas W. Corbett, Jr 1989-1993
Frederick W. Thieman 1993-present

DISTRICT OF PUERTO RICO

Noah B. K. Pettingill 1900-1903
Willis Sweet . . . 1903-1905
A. G. Stewart . . . 1905
Frank Femille . . . 1905-1906
Jose R. F. Savafe . 1906-1907
Henry M. Hoyt . . . 1907-1910
Foster V. Brown . . 1910-1911
Byron S. Ambler . . 1911
William N. Landers 1912
Foster V. Brown . . 1912
J. Henry Brown . . 1915
Miles M. Martin . . 1915-1921
Ira K. Wells . . . 1921-1924
John L. Gay 1928-1931

DISTRICT OF PUERTO RICO - Cont'd

Frank Bianchi . . . 1931
Frank Martinez . . 1931-1932
Harry F. Besosa . . 1932-1933
A. Cecil Snyder . . 1933-1942
Walter L. Newsom, Jr. 1942
Philip F. Herrick . 1942-1946
Francisco Pousa Feliu 1948
Harley A. Miller . 1948-1953
Pascual A. Rivera . 1953
Ruben D. Rodriguez-Antongiori . . . 1953-1958
Francisco A. Gil, Jr. 1958-1969
Blas C. Herriro, Jr. 1969-1970
Julio Morales-Sanchez 1970-1979
Jose A. Quiles . . 1979-1980
Raymond L. Acosta . 1980-1982
Jose Q. Quiles . . 1982
Daniel F. Lopez-Romo 1982-1993
Charles E. Fitzwilliam 1993
Guillermo Gil . . . 1993-present

DISTRICT OF RHODE ISLAND

William Channing . 1790-1794
Ray Green 1794-1797
David L. Barns . . 1797-1801
David Howell . . . 1801-1812
Asher Robbins . . . 1812-1820
John Pitman 1820-1824
Dutee J. Pearce . . 1824-1825
Richard W. Greene . 1825-1845
Walter S. Burges . 1845-1850
James M. Clark . . 1850-1853
George H. Browne . 1853-1861
Wingate Hayes . . . 1861
Nathan F. Dixon, Jr. 1877-1885
David S. Baker . . . 1885-1889
Rathbone Gardner . 1889-1893
Charles E. Gorman . 1893-1897
Charles A. Wilson . 1897-1911
Walter R. Stiness . 1911-1914
Marvey A. Baker . . 1914-1920
Peter C. Cannon . . 1920-1921
Norman S. Case . . 1921-1926
Henry M. Boss, Jr. 1926
John S. Murdock . . 1926-1929
Henry M. Boss, Jr. 1929-1934
J. Howard McGrath . 1934-1940
George F. Troy . . 1940-1952
Edward M. McEntee . 1952-1953
Jacob S. Tenkin . . 1952-1955
Joseph Mainelle . . 1955-1961
Raymond J. Pettine 1961-1966
Frederick W. Faerber, Jr. 1966-1967
Edward P. Gallogly 1967-1969
Lincoln C. Almond . 1969-1973
Everette C. Sammartino 1973-1978
Paul F. Murray . . 1978-1981
Lincoln C. Almond . 1981-1993
Edwin J. Gale . . . 1993
Sheldon Whitehouse 1994-present

DISTRICT OF SOUTH CAROLINA

John J. Pringle . . 1789-1792
Thomas Parker . . . 1792-1820
Robert Y. Haynes . 1820
John Gadsden . . . 1820-1831
Edward Frost . . . 1831
Robert B. Gilchrist 1831-1840
Edward McCrady . . 1840-1850
William Whaley . . 1850
James L. Petigru . 1850-1853
Thomas Evans . . . 1853-1856
James Conner . . . 1856-1860
John Phillips . . . 1866-1867
David T. Corbin . . 1867-1877
L.C. Northrup . . . 1878-1881
Samuel W. Melton . 1881-1885
Leroy F. Youmans . 1885-1893
Abial Lathrop . . . 1889-1893
William P. Murphy . 1893-1896
Abial Lathrop . . . 1896-1901
John C. Capers . . 1901-1906
Ernest F. Cochran . 1906-1914
Francis H. Weston . 1914-1918

EASTERN DISTRICT OF SOUTH CAROLINA

Francis H. Weston . 1918-1922
D. Ernest Meyer . . 1922-1930
Henry E. Davis . . 1930-1934
Claude N. Sapp . . 1934-1947
Benjamin S. Whaley 1947-1953
N. Welsh Morrisette, Jr. 1953-1961
Terrell L. Glenn . 1961-1968

WESTERN DISTRICT OF SOUTH CAROLINA

Francis H. Weston . 1915
J. William Thurmond 1915-1921
Ernest F. Cochran . 1921-1923
Joseph A. Talbert . 1923-1933
Charles C. Wyche . 1933-1937
Oscar H. Doyle . . 1937-1950
Edward P. Riley . . 1951
John C. Williams . 1951-1954
Joseph E. Hines . . 1954-1961
John E. Williams . 1961-1968

DISTRICT OF SOUTH CAROLINA

Klyde Robinson . . 1968-1969
Joseph O. Rogers, Jr. 1969-1971
John K. Grisso . . 1971-1975
Thomas P. Simpson . 1975
Mark W. Buyck, Jr. 1975-1977
Thomas P. Simpson . 1977
Thomas E. Lydon, Jr. 1977-1981
Henry D. McMaster . 1981-1985
Vinton D. Lide . . 1985-1989
E. Bart Daniel . . 1989-1992
John S. Simmons . . 1992-1993
Margaret B. Seymour 1993
J. Preston Strom, Jr. 1993-1996
Margaret B. Seymour 1996
J. René Josey . . . 1996-present

DISTRICT OF SOUTH DAKOTA

Henry M. Vail . . . 1861
William E. Gleason 1861-1865
James Christian . . 1865
George H. Hand . . 1866-1869
Warren Gowles . . . 1869-1872
William Pound . . . 1872-1877
Hugh J. Campbell . 1877-1885

John E. Garland . . 1885-1887
William E. Purcell 1888-1889
John Murphy 1889

North And South Dakota Admitted To The Union November 2, 1889

William E. Sterling 1890
Ezra W. Miller . . 1890-1893
James D. Elliott . 1897-1907
William G. Porter . 1907
Edward E. Wagner . 1907-1913
Charles J. Morris . 1913
Robert P. Stewart . 1913-1919
E.W. Fiske 1919-1921
S. Wesley Clark . . 1921-1926
Olaf Eidem 1926-1934
George Philip . . . 1934-1947
Leo P. Flynn . . . 1947-1953
Clinton G. Richards 1953-1961
Harold C. Doyle . . 1961-1969
William F. Clayton 1969-1977
David V. Vrooman . 1977-1978
Robert D. Hiaring . 1978-1979
Terry L. Pechota . 1979-1981
Jeffrey L. Viken . 1981
Philip N. Hogen . . 1981-1991
Kevin V. Schieffer 1991-1993
Ted L. McBride . . 1993
Karen E. Schreier . 1993-present

DISTRICT OF TENNESSEE

Andrew Jackson . . 1790-1797
Thomas Gray 1797-1798
William P. Anderson 1798-1802
Thomas Stuart . . . 1802-1803

EASTERN DISTRICT OF TENNESSEE

Edward Scott . . . 1805-1807
James Trembles . . . 1807-1808
Hugh L. White . . . 1808-1809
James Trembles . . . 1809-1810
John McCampbell . . 1810-1821
Prior Lea 1821-1828
John A. McKinney . 1828-1840
George W. Churchill 1840-1843
Crawford W. Hall . 1843-1844
Thomas C. Lyon . . 1844-1850
Samuel R. Rogers . 1850-1853
J. C. Ramsey . . . 1853
Richard J. Hays . . 1853-1857
J. C. Ramsey . . . 1857-1861
John L. Hopkins . . 1861
John M. Fleming . . 1861
E. C. Camps 1869-1876
George Andrews . . 1876-1879
Xenophen Wheeler . 1879-1883
James M. Meek . . . 1883-1885
James C.J. Williams 1885-1889
Hugh B. Lindsay . . 1889-1893
James H. Bible . . 1893-1897
James E. Mayfield . 1897
William D. Wright . 1897-1905
James R. Penlaud . 1905-1910
James B. Cox . . . 1910-1913
Lewis M. Coleman . 1913-1917
Wesley T. Kennerly 1917-1921
George C. Taylor . 1921-1928
Everett Greer . . . 1928-1930
William J. Carter . 1930-1933
James B. Frazier, Jr. 1933-1948
Otto T. Ault . . . 1948-1953
John H. Reddy . . . 1953
John C. Crawford, Jr. 1953-1961
John H. Reddy . . . 1961-1969
Robert E. Simpson . 1969
John L. Bowers, Jr. 1969-1977
Robert E. Simpson . 1977
John H. Cary . . . 1977-1981
William T. Dillard 1981
John W. Gill, Jr. . 1981-1991
Jerry G. Cunningham 1991-1993
David G. Dake . . . 1993
Guy W. Blackwell . 1993
Carl K. Kirkpatrick 1993-present

MIDDLE DISTRICT OF TENNESSEE

James P. Grundy . . 1839
Return J. Meigs . . 1841-1842
John M. Lea 1842-1844
Thomas D. Mosley . 1844-1850
W. F. Kercheval . . 1850-1853
Thomas B. Childress 1853-1861
Herman Cox 1861-1862
John Trimble . . . 1862-1863
Horace H. Harrison 1863
R. McPhail Smith . 1869-1872
Horace H. Harrison 1872-1873
Archelus M. Hughes 1873-1877
James A. Warder . . 1877-1882
Andrew McClain . . 1882-1885
Ernest Pillow . . . 1885-1889
John Ruhm 1889-1894
Tully Brown 1894-1898
Abram M. Tillman . 1898-1914
Lee Douglas 1914-1922
A. V. McLane . . . 1922-1933
Horace Frierson, Jr. 1933-1947
Ward Hudgins . . . 1947-1952
Dick L. Johnson . . 1952-1953
Armistead O. Denning 1953
Fred Elledge, Jr. . 1953-1961
Kenneth Horwell . . 1961-1964
James F. Neal . . . 1964-1966
Gilbert S. Merritt. Jr. 1966-1969
Charles H. Anderson 1969-1977
Harold D. Hardin . 1977-1981
Joe B. Brown . . . 1981-1991
Ernest W. Williams 1991-1994
John M. Roberts . . 1994-present

WESTERN DISTRICT OF TENNESSEE

Thomas Stuart . . . 1803-1810
John E. Beck . . . 1810-1818
Henry Crabb 1818-1827
Thomas H. Fletcher 1827-1829
James Collingsworth 1829-1835
William T. Brown . 1835-1836
James P. Grundy . . 1836-1838
Joseph H. Talbot . 1838-1838
Henry W. McCorry . 1838-1850
Charles N. Gibbs . 1850-1853
Richard J. Hays . . 1853-1856
Alexander W. McCampbell 1856-1861
John M. McCarmack . 1861-1877
W.W. Murray 1877-1882
William F. Poston . 1882-1885
Henry W. McCorry . 1885-1889
Samuel W. Hawkins . 1889-1894
Julius A. Taylor . 1894-1895
Charles B. Simonton 1895-1898
George Randolph . . 1898-1910
Casey Todd 1910-1914
Hubert F. Fisher . 1914-1917
William D. Kyser . 1917-1921
S.E. Murray 1921-1926
Tilmon A. Lancaster 1926
Nugent Dodds . . . 1926
Lindsay B. Phillips 1926-1931
Nelson H. Carver . 1931-1932
Dwayne D. Maddox . 1932-1933
William McClanahan 1933-1948
John Brown 1948-1953
Milsaps Fitzhugh . 1953-1960
Warner Hodges . . . 1960-1961
Thomas L. Robinson 1961-1969
Thomas F. Turley, Jr. 1969-1977
W.J. Michael Cody . 1977-1981
W. Hickman Ewing, Jr. 1981-1991
Edward G. Bryant . 1991-1993
Daniel A. Clancy . 1993
Veronica F. Coleman 1993-present

DISTRICT OF TEXAS

George W. Brown . . 1846-1848
Franklin H. Merriman 1848-1850
William P. Ballinger 1850-1853
Samuel D. Hay . . . 1853

EASTERN DISTRICT OF TEXAS

Samuel D. Hay . . . 1857-1858
George Mason . . . 1858-1876
D.J. Baldwin . . . 1876-1879
Andrew P. McCormick 1879
W.K. Homan 1879
Edward Guthridge . 1879-1883
George Paschal . . 1883-1884
Asa E. Stratton . . 1884-1885
John E. McComb . . 1885-1889
Joseph H. Wilson . 1889-1890
Robert E. Hannay . 1890-1895
Sinclair Taliaferro 1895-1899
Marcus C. McLemore 1899-1902
James W. Ownby . . 1902-1914
Clarence Merritt . 1914-1920
E.J. Smith 1920-1922
Randolph Bryant . . 1922-1931
Sterling Bennett . 1931-1936
Steve M. King . . . 1936-1949
Warren G. Moore . . 1949-1953
William M. Steger . 1953-1959
Paul N. Brown . . . 1959-1960
Joe Tunnell 1960-1961
William W. Justice 1961-1968
Richard B. Hardee . 1968-1970
Roby Hadden 1970-1978
John H. Hannah, Jr. 1978-1981
Robert J. Wortham . 1981-1993
Ruth Yeager 1993
J. Michael Bradford 1994-present

NORTHERN DISTRICT OF TEXAS

Fred W. Miner . . . 1879-1883
J. C. Bigger . . . 1883-1885
C. H. Pearce . . . 1885-1889
Eugene Marshall . . 1889-1894
W. Oscar Hamilton . 1894-1898
William H. Atwell . 1898-1913
James C. Wilson . . 1913-1917
William E. Allen . 1917
W. M. Odell 1917-1919
Jed Adams 1919
W. B. Harrell . . . 1920
R. E. Taylor . . . 1920-1921
Henry Zweifel . . . 1921-1927
Norman A. Dodge . . 1927-1932
C. W. Johnson, Jr. 1933
Clyde O. Eastus . . 1933-1945
Frank B. Potter . . 1945
Robert B. Young, Jr. 1945-1947
Frank B. Potter . . 1947-1953
Heard L. Floore . . 1953-1958
William B. West, III 1958-1961
H. Barefoot Sanders, Jr. 1961-1965
Melvin Diggs . . . 1965-1968
Eldon Mahon 1968-1972
Frank McCown . . . 1972-1976
Michael Carnes . . 1976-1977
Kenneth J. Mighell 1977-1981
James Rolfe 1981-1985

Marvin Collins . . 1985-1993
Richard H. Stephens 1993
Paul E. Coggins . . 1993-present

SOUTHERN DISTRICT OF TEXAS

Marcus C. McLeuone 1899-1906
Lodowick McDaniel . 1906-1914
John E. Green, Jr. 1914-1919
David E. Simmons . 1919-1922
Henry M. Holden . . 1922-1934
Douglas W. McGregor 1934-1944
Brian S. Odem . . . 1944-1954
Malcolm R. Wilkey . 1954-1957
William B. Butler . 1957-1961
Woodrow B. Seals . 1961-1966
Morton L. Susman . 1966-1969
Anthony J.P. Farris 1969-1974
Edward B. McDonough, Jr. 1974-1977
James R. Gough . . 1977
Jose A. Canales . . 1977-1980
Carl Walker, Jr. . 1980-1981
Daniel K. Hedges . 1981-1985
Henry K. Oncken . . 1985-1990
Stephen Morris . . 1990
Ronald G. Woods . . 1990-1993
Lawrence D. Finder 1993
Gaynelle Griffin Jones 1993-present

WESTERN DISTRICT OF TEXAS

Richard B. Hubbard 1857-1859
James F. Warren . . 1859
C.T. Garland . . . 1871-1871
Andrew J. Evans . . 1872-1885
Rudolph Kleberg . . 1885-1889
Andrew J. Evans . . 1889-1894
Robert U. Culberson 1894-1898
Henry Terrell . . . 1898-1906
Charles A. Boynton 1906-1913
Sigismund Eugelking 1913
J. L. Camp 1913-1918
Hugh R. Robertson . 1918-1921
John D. Hartman . . 1921-1933
William R. Smith, Jr. 1933-1941
Ben F. Foster . . 1941-1944
William R. Smith, Jr. 1944-1946
James McCollum Burnett 1946-1947
Henry W. Moursund . 1947-1951
Charles F. Herring 1951-1955
Russell B. Wine . . 1955-1961
Ernest Morgan . . . 1961-1969
Marvin T. Butler . 1969
Segal V. Wheatley . 1969-1971
William S. Sessions 1971-1974
Hugh P. Shovlin . . 1974-1975
John E. Clark . . . 1975-1977
Jamie C. Boyd . . . 1977-1981
Edward C. Prado . . 1981-1984
Helen M. Eversberg 1984-1989
Ronald F. Ederer . 1989-1993
James H. DeAtley . 1993-1996
James William Blagg 1996-present

DISTRICT OF UTAH

Seth Blair 1850-1854
Joseph Hosmer . . . 1854-1855
John L. Peyton . . 1855-1856
John M. Hockaday . 1856-1858
Alexander Wilson . 1858-1860
Thomas J. Kenny . . 1860-1862
Hosea Stout 1862
Charles H. Hempstead 1870-1871
George C. Bates . . 1871-1873
William Cary . . . 1873-1876
Summer Howard . . . 1876-1878
Philip T. Van Zile 1878-1884
William H. Dickson 1884-1887
George S. Peters . 1887-1889

DISTRICT OF UTAH - Cont'd

Charles S. Varian . 1889-1893
John W. Judd . . . 1893-1898
Charles O. Whittemore 1898-1902
Joseph Lippman . . 1902-1906
Hiram E. Booth . . 1906-1913
William W. Ray . . 1913-1919
Isaac B. Evans . . 1919-1921
Henry D. Moyle . . 1921
Charles M. Morris . 1921-1929
Charles R. Hollingsworth 1929-1933
Daniel B. Shields . 1933-1949
Scott M. Matheson . 1949-1953
A. Pratt Kesler . . 1953-1961
William T. Thurman 1961-1969
C. Nelson Day . . . 1969-1974
William J. Lockhart 1974-1975
Ramon M. Child . . 1975-1977
Ronald L. Rencher . 1977-1981
Frances Wikstrom . 1981
Brent D. Ward . . . 1981-1989
Stewart C. Walz . . 1989
Dee V. Benson . . . 1989-1991
David J. Jordan . . 1991-1993
Richard D. Parry . 1993
Scott M. Matheson, Jr 1993-present

DISTRICT OF VERMONT

Stephen Jacob . . . 1791-1797
Amos Marsh 1794-1797
Charles Marsh . . . 1797-1801
David Fay 1801-1809
Cornelius P. Van Ness 1810-1813
Titus Hutchinson . 1813-1827
William A. Griswold 1827-1829
Daniel Kellogg . . 1829-1841
Charles Davis . . . 1841-1845
Charles Linsley . . 1845-1849
Abel Underwood . . 1849-1853
Lucius B. Peck . . 1853-1857
Henry E. Stoughton 1857-1861
George Howe 1861-1864
Dudley C. Denison . 1864-1869
Benjamin F. Fifield 1869-1880
Kittredge Haskins . 1880-1887
Clarence H. Pitkin 1887-1889
Frank Plumley . . . 1889-1894
John H. Senter . . 1894-1898
James L. Martin . . 1898-1906
Alexander Dunnett . 1906-1915
Vernon A. Bullard . 1918-1923
Harry B. Amey . . . 1923-1932
Joseph A. McNamara 1932-1953
Louis G. Whitcomb . 1953-1961
Joseph F. Radigan . 1961-1969
George W.F. Cook . 1969-1977
William B. Gray . . 1977-1981
Jerome F. O'Neill . 1981
George W.F. Cook . 1981-1987
George J. Terwilliger, III 1987-1991
Charles A. Caruso . 1991-1993
Charles R. Tetzlaff 1993-present

DISTRICT OF VIRGIN ISLANDS

James A. Bough . . 1937-1946
Croxton Williams . 1946-1947
Francisco Corneiro 1947-1951
Cyril Michael . . . 1951-1954
Leon P. Miller . . 1954-1962
Almeric L. Christian 1962-1969
Vincent A. Colianni 1969
Robert M. Carney. . 1969-1971
Joel D. Sacks . . . 1971-1973
Julio A. Brady . . 1973-1978
Ishmael A. Meyers . 1978-1982
Hugh P. Mabe III . 1982-1983
James W. Diehm . . 1983-1987
Terry M. Halpern . 1987-1993
Hugh P. Mabe, III . 1993
W. Ronald Jennings 1994-1995
James A. Hurd, Jr. 1995-present

DISTRICT OF VIRGINIA

John Marshall . . . 1789
William Nelson . . 1789-1790
William Nelson, Jr. 1790-1791
Alexander Campbell 1791-1796
Thomas Nelson . . . 1796-1801
John Monroe 1801-1803
George Hay 1803-1816
William Wirt . . . 1816-1817
Robert Stanard . . 1817-1824

EASTERN DISTRICT OF VIRGINIA

Thomas E. Burfoot 1831-1833
Robert C. Nicholas 1833-1850
William T. Joynes . 1850-1853
John M. Gregory . . 1853-1860
Patrick H. Aylett . 1860-1861
A. Judson Crane . . 1861-1863
Lucius H. Chandler 1863-1878
H. H. Wells, Jr. . 1870-1874
Lunsford S. Lewis . 1874-1882
John S. Wise . . . 1882-1883
Edmund Waddill . . 1883-1885
John C. Gibson . . 1885-1889
Thomas R. Borland . 1889-1893
Francis R. Lassiter 1893-1896
William H. White . 1896-1898
Edgar Allan 1898-1902
Lunsford L. Lewis . 1902-1905
Robert H. Talley . 1905
Lunsford S. Lewis . 1905-1912
Laaawrence D. Groner 1912-1914
Richard H. Mann . . 1914-1919
Hiram M. Smith . . 1919-1920
D. Lawrence Groner 1920
Julien Gunn 1920-1921
D. Lawrence Groner 1921
Paul W. Kear . . . 1921-1931
Robert H. Talley . 1931-1932
Paul W. Kear . . . 1932-1933
Sterling Hutcheson 1933-1944
Henry Holt 1944-1947
George R. Humrickhouse 1947-1951
A. Carter Whitehead 1951-1953
Lester S. Parsons, Jr 1953-1957
John M. Hollis . . 1957-1959
Joseph S. Bambacus 1959-1961
Claude V. Spratley, Jr. 1961-1969
Brian P. Gettings . 1969-1974
David H. Hopkins . 1974-1975
William B. Cummings 1975-1979
Justin W. Williams 1979-1981
Elsie L. Munsell . 1981-1986
Justin W. Williams 1986
Henry E. Hudson . . 1986-1991
Kenneth E. Melson . 1991
Richard Cullen . . 1991-1993
Kenneth E. Melson . 1993
Helen F. Fahey . . 1993-present

WESTERN DISTRICT OF VIRGINIA

Edwin S. Duncan . . 1824-1829
William A. Harrison 1829-1834
Washington G. Singleton 1834-1842
William Kinney . . 1842-1843
Moses C. Good . . . 1843-1846

George H. Lee . . . 1846-1846
George W. Thompson 1848-1850
Benjamin H. Smith . 1850-1853
Fleming B. Miller . 1853-1861
Thomas W. Harrison 1861
Aquilla B. Caldwell 1861-1862
Benjamin H. Smith . 1862
Warren S. Lurty . . 1877-1882
D. S. Lewis 1882-1885
Henry C. Allen . . 1885-1889
William E. Craig . 1889-1893
A. J. Montague . . 1893-1898
Thomas M. Alderson 1898-1902
Thomas L. Moore . . 1902-1910
Barnes Gillespie . 1910-1914
Richard E. Byrd . . 1914-1920
Joseph J. Chitwood 1920-1921
Thomas J. Muncy . . 1921-1922
Lewis P. Summers . 1922-1924
Joseph C. Shaffer . 1924-1929
John Paul 1929-1932
Joseph C. Shaffer . 1932-1933
Joseph H. Chitwood 1933-1940
Frank S. Tavenner, Jr 1940-1948
Howard C. Gilmer, Jr. 1948-1953
John Strickler . . 1953-1961
Thomas B. Mason . . 1961-1969
Leigh B. Hanes, Jr. 1969-1975
Paul R. Thomson, Jr. 1975-1979
E. Montgomery Tucker 1979-1980
John S. Edwards . . 1980-1981
John P. Alderman . 1981-1990
E. Montgomery Tucker 1990-1993
Morgan E. Scott, Jr. 1993
Robert P. Crouch, Jr. 1993-present

DISTRICT OF WASHINGTON

John S. Clendenin . 1853-1855
B. F. Kendall . . . 1855-1857
Joseph S. Smith . . 1857-1859
J. S. M. Van Cleave 1859-1860
Butler G. Anderson 1860-1861
John J. McGilvra . 1 8 6 1
. . . . . .
Leander Holmes . . 1870
Samuel C. Wingard . 1872
John B. Allen . . . 1875-1885
William H. White . 1885-1890
Patrick H. Winston 1890
William H. Brinker 1893-1897
Wilson R. Gay . . . 1897-1898
Jesse A. Frye . . . 1902-1906

EASTERN DISTRICT OF WASHINGTON

George A. Avery . . 1905-1910
Joseph B. Lindsley 1910
Oscar Cain 1910-1914
Francis A. Garrecht 1914-1921
Frank R. Jeffrey . 1921-1925
Donald F. Kizer . . 1925-1926
Roy C. Fox 1926-1934
James M. Simpson . 1934-1937
Sam M. Driver . . . 1937-1940
Lyle D. Keith . . . 1940-1942
Edward M. Connelly 1942-1946
Harvey Erickson . . 1946-1953
William B. Bantz . 1953-1958
Ronald R. Hull . . 1958
Dale M. Green . . . 1958-1961

EASTERN DISTRICT OF WASHINGTON - Cont'd

Frank R. Freeman . 1961-1966
Smithmoore P. Myers 1966-1969
Dean C. Smith . . . 1969-1977
Robert S. Linnell . 1977
James J. Gillespie 1977-1981
John E. Lamp . . . 1981-1991
William D. Hyslop . 1991-1993
Carroll D. Gray . . 1993
James P. Connelly . 1993-present

WESTERN DISTRICT OF WASHINGTON

Peter C. Sullivan . 1906-1907
Elmer E. Todd . . . 1907-1912
W. G. McLaren . . . 1912
Beverly W. Coiner . 1912-1913
Charles F. Riddell 1913
Clay Allen 1913-1918
Ben L. Moore . . . 1918
Robert C. Saunders 1918-1921
Thomas P. Revelle . 1921-1928
Anthony Savage . . 1928-1934
J. Charles Dennis . 1934-1953
Charles P. Moriarty 1953-1961
Brockman Adams . . 1961-1964
William N. Goodwin 1964-1966
Robert C. Williams 1966
Eugene C. Cushing . 1966-1969
Stanley G. Pitkin . 1969-1976
J. Ronald Sim . . . 1976-1977
John C. Merkel, Jr. 1977-1981
Gene S. Anderson . 1981-1989
David E. Wilson . . 1988-1989
Michael D. McKay . 1989-1993
Susan L. Barnes . . 1993
Katrina C. Pflaumer 1994-present

DISTRICT OF WEST VIRGINIA

Nathan Goff, Jr. . 1876-1882
W. H. H. Flick . . 1882-1886
Corneilus C. Watts 1886-1889
George C. Sturgiss 1889-1893
Corneilus C. Watts 1893-1893
Stuart W. Walker . 1893-1897
Joseph H. Gaines . 1897-1901
Reese Blizzard . . 1901

NORTHERN DISTRICT OF WEST VIRGINIA

Reese Blizzard . . 1901-1910
Roy H. Waugh . . . 1910-1913
Stuart W. Walker . 1913-1921
Thomas A. Brown . . 1921-1926
Arthur Arnold . . . 1926-1934
Howard L. Robinson 1934-1938
Joe V. Gibson . . . 1938-1947
Wayne T. Brooks . . 1947
Charles L. Spillers 1947-1951
Howard Caplan . . . 1951-1954
John R. Morris . . 1954-1956
Albert M. Morgan . 1956-1961
Robert E. Maxwell . 1961-1964
John H. Kamlowsky . 1964-1969
Leslie D. Lucas, Jr. 1969
Paul C. Camilletti 1969-1973
James F. Companion 1973-1976
Stephen G. Jory . . 1976-1981
William A. Kolibash 1981-1993
William D. Wilmoth 1993-present

SOUTHERN DISTRICT OF WEST VIRGINIA

George W. Atkinson 1901-1905
Elliott Northcott . 1905-1909
Harold A. Ritz . . 1909-1913
William G. Barnhart 1913-1917
F. M. McCullough . 1917
Leonidas K. Kelly . 1917-1922
Elliott Northcott . 1922-1927
Bernard Pettigrew . 1927-1928
James Damron . . . 1928-1932
David D. Ashworth . 1932-1933
George I. Neal . . 1933-1938
Lemuel R. Via . . . 1938-1943
Leslie E. Given . . 1943-1950
A. Garnett Thompson 1950-1953
Duncan W. Dougherty 1953-1961
Harry G. Camper, Jr. 1961-1964
Carl W. Belcher . . 1964
Donald P. Moore . . 1964
George D. Beter . . 1964-1965
Milton J. Ferguson 1965-1969
Wade H. Ballard, III 1969-1970
Warren W. Upton . . 1970-1972
John A. Field, III 1972-1977
Robet B. King . . . 1977-1981
Wayne A. Rich, Jr. 1981
David A. Faber . . 1981-1986
Michael W. Carey . 1986-1993
Charles T. Miller . 1993
Rebecca A. Betts . 1994-present

DISTRICT OF WISCONSIN

W.W. Chapman . . . 1836-1838
Moses M. Strong . . 1838-1841
Thomas W. Sutherland 1841-1845
William P. Lynde . 1845-1848
Thoams W. Sutherland 1848-8149
A. Hyatt Smith . . 1849-1850
George W. Lakin . . 1850-1853
John R. Sharpstein 1853-1857
Don A.J. Upham . . 1857-1861
John R.D. Coggswell 1861

EASTERN DISTRICT OF WISCONSIN

Levi Hubbell . . . 1870-1875
Gerry W. Hazetton . 1876-1885
Arthur K. Delaney . 1885-1887
William A. Walker . 1887-1890
Elihu Colman . . . 1890-1893
John H. M. Wigman . 1893-1897
Milton E. Phillips 1897-1901
H. K. Butterfield . 1901-1910
E. J. Henning . . . 1910-1911
Guy D. Goff 1911-1915
H. A. Sawyer . . . 1915-1923
Edward W. Miller . 1923
William O. Meilahm 1923
Roy L. Morse . . . 1923-1927
Levi H. Bancroft . 1927-1932
Edward J. Gehl . . 1932-1933
Berthold J. Husting 1933-1944
Timothy T. Cronin . 1944-1955
Edward G. Minor . . 1955-1961
James B. Brennan . 1961-1968
Robert J. Lerner . 1968-1969
David J. Cannon . . 1969-1973
David B. Bukey . . 1973-1974
William J. Mulligan 1974-1978
Joan F. Kessler . . 1978-1981
Joseph P. Stadtmueller 1981-1987
Patricia J. Gorence 1987-1988
John E. Fryatt . . 1988-1993
Nathan A. Fischbach 1993
Thomas P. Schneider 1993-present

WESTERN DISTRICT OF WISCONSIN

W.W. Chapman . . . 1836-1838
Moses M. Strong . . 1838-1841
Thomas W. Sutherland 1841-1845
William P. Lynde . 1845-1848
Thoams W. Sutherland 1848-8149
A. Hyatt Smith . . 1849-1850
George W. Lakin . . 1850-1853
John R. Sharpstein 1853-1857
Charles M. Webb . . 1870-1878
H. M. Lewis 1878-1886
Allan R. Bushnell . 1886-1890
Samuel A. Harper . 1890-1894
Harry E. Briggs . . 1894-1898
David F. Jones . . 1898-1901

William G. Wheeler	1901-1909
George H. Gordon	1909-1913
John A. Aylward	1913-1916
Arthur Mulberger	1916
William F. Wolfe	1916-1917
Albert C. Wolfe	1917-1921
William H. Dougherty	1921-1927
Stanley M. Ryan	1927-1944
John T. Boyle	1935-1944
Francis A. Murphy	1944
Charles H. Cashin	1944-1951
Thomas E. Fairchild	1951-1952
Frank L. Nikolay	1953-1953
George E. Rapp	1953-1962
Nathan S. Heffernan	1962-1965
Michael J. Wyngaard	1965-1969
Edmond A. Nix	1969
John O. Olson	1969-1974
Steven C. Underwood	1974
David C. Mebane	1974-1977
Frank M. Tuerkheimer	1977-1981
John R. Byrnes	1981-1987
Patrick J. Fiedler	1987-1991
Grant C. Johnson	1991
Kevin C. Potter	1991-1993
Grant C. Johnson	1993
Peg Lautenschlager	1993-present

DISTRICT OF WYOMING

Joseph M. Carey	1869
Edward P. Johnson	1872-1876
John J. Jenkins	1876-1879
Lewis E. Payne	1879
Charles H. Seymore	1879-1880
Melville C. Brown	1880-1884
J. A. River	1884-1885
Anthony C. Campbell	1885-1890
Benjamin F. Fowler	1890-1894
Gibson Clark	1894-1898
Timothy F. Burke	1898-1907
Benjamin M. Ausherman	1907
Timothy F. Burke	1907-1911
Hillard S. Ridgely	1911-1914
Charles L. Rigdon	1914-1921
A. D. Walton	1921-1933
Carl L. Sackett	1933-1949
John C. Pickett	1949
John J. Hickey	1949-1953
John F. Roper, Jr.	1953-1961
Robert N. Chaffin	1961-1969
Richard V. Thomas	1969-1974
Clarence A. Brimmer	1974-1975
James P. Castberg	1975-1977
Toshiro Suyematsu	1977
Charles E. Graves	1977-1981
Toshiro Suyematsu	1981
Richard A. Stacy	1981-1994
David D. Freudenthal	1994-present

U. S. COURT FOR CHINA (SHANGHAI)

(No longer in existence)

George Sellett	1928-1934
Peltham Watson	1934-1936
Leighton Shields	1937

E-MAIL FROM H.E. CUMMINS TO FIVE OTHER U.S. ATTORNEYS REGARDING A PHONE CALL WITH MIKE ELSTON, SUBMITTED BY THE HONORABLE LINDA SÁNCHEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRWOMAN, SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

From: H.E. Cummins [mailto:bc_pers@yahoo.com]
Sent: Tue 2/20/2007 5:06 PM
To: Dan Bogden; Paul K. Charlton; David Iglesias; Carol Lam; McKay, John (Law Adjunct)
Subject: on another note

Mike Elston from the DAG's office called me today. The call was amiable enough, but clearly spurred by the Sunday Post article. The essence of his message was that they feel like they are taking unnecessary flak to avoid trashing each of us specifically or further, but if they feel like any of us intend to continue to offer quotes to the press, or organize behind the scenes congressional pressure, then they would feel forced to somehow pull their gloves off and offer public criticisms to defend their actions more fully. I can't offer any specific quotes, but that was clearly the message. I was tempted to challenge him and say something movie-like such as "are you threatening ME???", but instead I kind of shrugged it off and said I didn't sense that anyone was intending to perpetuate this. He mentioned my quote on Sunday and I didn't apologize for it, told him it was true and that everyone involved should agree with the truth of my statement, and pointed out to him that I stopped short of calling them liars and merely said that IF they were doing as alleged they should retract. I also made it a point to tell him that all of us have turned down multiple invitations to testify. He reacted quite a bit to the idea of anyone voluntarily testifying and it seemed clear that they would see that as a major escalation of the conflict meriting some kind of unspecified form of retaliation.

I don't personally see this as any big deal and it sounded like the threat of retaliation amounts to a threat that they would make their recent behind doors senate presentation public. I didn't tell him that I had heard about the details in that presentation and found it to be a pretty weak threat since everyone that heard it apparently thought it was weak

I don't want to stir you up conflict or overstate the threatening undercurrent in the call, but the message was clearly there and you should be aware before you speak to the press again if you choose to do that. I don't feel like I am betraying him by reporting this to you because I think that is probably what he wanted me to do. Of course, I would appreciate maximum opsec regarding this email and ask that you not forward it or let others read it.

Bud

COPY OF MEDAL OF MERIT PRESENTED TO DAVID C. IGLESIAS, SUBMITTED BY MR. DAVID C. IGLESIAS, FORMER UNITED STATES ATTORNEY FOR THE DISTRICT OF NEW MEXICO

RECOMMENDATION FOR AWARD
For use of this form, see AR 600-8-22; the proponent agency is ODCSPER

RCB-RO
20 MAY 2002

For valor/heroism/wartime and all awards higher than MSM, refer to special instructions in Chapter 3, AR 600-8-22.

1. TO	2. FROM	3. DATE
THE AD. UTANT GENERAL SANTA FE, NM	NATIONAL GUARD COUNTERDUG SUPPORT TASK FORCE	1 MAY 2003

PART I - SOLDIER DATA

4. NAME	5. RANK	6. SSN
IGLESIAS, DAVID C.	United States Attorney	
7. ORGANIZATION	**8. PREVIOUS AWARDS**	
United States Attorney's Office District of New Mexico		
9. BRANCH OF SERVICE	**10. RECOMMENDED AWARD**	**11. PERIOD OF AWARD**
Civilian	mom	a. FROM: 1 MAY 02 — b. TO: 1 MAY 03
12. REASON FOR AWARD		**13. POSTHUMOUS**
12a. INDICATE ACH, SVC, PCS, ETS, OR RET	**12b. INTERIM AWARD** YES [ ] NO [X]	YES [ ] NO [X]
SVC	IF YES, STATE AWARD GIVEN	

PART II - RECOMMENDER DATA

14. NAME	15. ADDRESS
ALEX R. GARCIA JR.	P.O. BOX 5610 ALBUQUERQUE, NM 87185-5610
16. TITLE/POSITION / **17. RANK**	
Drug Demand Reduction Administrator / SGM	
18. RELATIONSHIP TO AWARDEE	**19. SIGNATURE**

PART III - JUSTIFICATION AND CITATION DATA *(Use specific, bullet examples of meritorious acts or service)*

20. ACHIEVEMENTS

ACHIEVEMENT #1

- Under Mr. Iglesias' leadership, Project Safe Neighborhoods (PSN) has been nationally recognized for its innovative practice in the District of New Mexico.

ACHIEVEMENT #2

- As the Chairman for the Border and Immigration Subcommittee of the Attorney General's Advisory Committee (AGAC), Mr. Iglesias is instrumental in addressing New Mexico border issues related to terrorism, illicit drug-trafficking, illegal immigration, and homeland security.

ACHIEVEMENT #3

- Mr. Iglesias facilitated another two New Mexico "Weed and Seed" sites to receive federal funding in addition to the two existing sites. This strategy effectively utilizes law enforcement and community policing to "weed" out criminal activity and "seeds" it with Treatment, Intervention, and Prevention programs and economic restoration for the neighborhood.

ACHIEVEMENT #4

- Mr. Iglesias publicly supports the strict enforcement of the Uniformed Services Employment and Reemployment Rights Act (USERRA). He ensures uniformed service members are neither discriminated against nor suffer adverse employment action because of their service. This is of course important to New Mexico because there are many servicemen and servicewomen deployed in support of national and international missions.

21. PROPOSED CITATION

For Meritourious Service while assigned as the United States Attorney for the District of New Mexico. Mr. Iglesias has distinguished himself as an ardent supporter of the military and continues to champion New Mexico Natioanl Guard and Law Enforcement issues. Because of his sincere support, the National Guard is currently operational supporting law enforcement agencies on the border. He and his staff were very instrumental in securing additional Weed & Seed sites in Albuquerque and Espanola communities. Mr. Iglesias has intergrated National Guard Counterdrug Support efforts into the day to day opeartions of the District of New Mexico, U.S. Attorney's Office. He displays a high level of character and sheds bright light upon himself, the United States Attorney's Office, and the great state of New Mexico.

DA FORM 6: 8, NOV 94 — REPLACES DA FORM 638-1. PREVIOUS EDITIONS OF DA FORM 638 ARE OBSOLETE. — USAPPC V4.00

STATE OF NEW MEXICO

THIS IS TO CERTIFY THAT THE GOVERNOR OF NEW MEXICO HAS AWARDED

THE NEW MEXICO MEDAL OF MERIT

TO

MR. DAVID C. IGLESIAS
UNITED STATES ATTORNEY'S OFFICE
DISTRICT OF NEW MEXICO

FOR

MERITORIOUS SERVICE WHILE ASSIGNED AS THE UNITED STATES ATTORNEY FOR THE DISTRICT OF NEW MEXICO. MR. IGLESIAS HAS DISTINGUISHED HIMSELF AS AN ARDENT SUPPORTER OF THE MILITARY AND CONTINUES TO CHAMPION NEW MEXICO NATIONAL GUARD AND LAW ENFORCEMENT ISSUES. BECAUSE OF HIS SINCERE SUPPORT, THE NATIONAL GUARD IS CURRENTLY OPERATIONAL SUPPORTING LAW ENFORCEMENT AGENCIES ON THE BORDER. HE AND HIS STAFF WERE VERY INSTRUMENTAL IN SECURING ADDITIONAL WEED & SEED SITES IN ALBUQUERQUE AND ESPANOLA COMMUNITIES. MR. IGLESIAS HAS INTEGRATED NATIONAL GUARD COUNTERDRUG SUPPORT EFFORTS INTO THE DAY TO DAY OPERATIONS OF THE DISTRICT OF NEW MEXICO, U.S. ATTORNEY'S OFFICE. HE DISPLAYS A HIGH LEVEL OF CHARACTER AND SHEDS BRIGHT LIGHT UPON HIMSELF, THE UNITED STATES ATTORNEY'S OFFICE AND THE GREAT STATE OF NEW MEXICO.

KENNY C. MONTOYA
Brigadier General, NMANG
PERMANENT ORDER 140-004

GOVERNOR OF NEW MEXICO

LETTER FROM MICHAEL A. BATTLE TO DAVID C. IGLESIAS, SUBMITTED BY MR. DAVID C. IGLESIAS, FORMER UNITED STATES ATTORNEY FOR THE DISTRICT OF NEW MEXICO

U.S. Department of Justice

Executive Office for United States Attorneys
Office of the Director

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JAN 24 2006

Honorable David C. Iglesias
United States Attorney
District of New Mexico
201 Third Street, Suite 900
Albuquerque, New Mexico 87103

Dear Mr. Iglesias:

I understand that the recent evaluation of your office went well. I have reviewed the enclosed Significant Observations Memorandum that Team Leader Matt Cain submitted. The Memorandum reflects that, overall, the legal management of your office is very good and that your office is staffed with well prepared and motivated Assistant United States Attorneys and support personnel who are appropriately directing their efforts to accomplishing the goals of the Attorney General. I want to commend you for your exemplary leadership in the Department's priority programs, including Anti-terrorism, Weed and Seed, and the Law Enforcement Coordinating Committee.

Thank you and your staff for working hard to prepare for the evaluation and for using the evaluation process as a management tool. You will be receiving a draft legal management evaluation report in approximately 30 days that will provide more detailed information. At that time you will be asked to provide a written response to the draft report.

Thank you for all the assistance you and your staff provided to the evaluation team.

Sincerely,

Michael A. Battle
Director

Enclosure

LETTER SUBMITTED BY RICHARD L. DELONIS, PRESIDENT, NATIONAL ASSOCIATION OF ASSISTANT UNITED STATES ATTORNEYS

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March 14, 2007

The Honorable John Conyers
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington DC 20515

The Honorable Lamar Smith
Ranking Minority Member
Committee on the Judiciary
U.S. House of Representatives
Washington DC 20515

Re: Markup of H.R. 580, "Restoring Checks and Balances in the Confirmation Process of U.S. Attorneys"

Dear Mr. Chairman and Representative Smith:

I write on behalf of the National Association of Assistant United States Attorneys with regard to the Judiciary Committee's consideration of H.R. 580, legislation that would restore the pre-existing statutory framework for the appointment of an interim United States Attorney. Under the framework proposed by H.R. 580, the Attorney General would possess the prerogative to name an interim United States Attorney to a vacancy, but if the appointee was not confirmed within 120 days, the district court would share the authority to appoint that same or another person without time limitation, until the presidentially appointed nominee has been confirmed. As you know, this process was enshrined in law from 1986 until 2006, when it was superceded by the Patriot Act Reauthorization to permit the Attorney General's choice of interim United States Attorney to remain in office for an indefinite period until the President's nominee was confirmed.

As you know, the National Association of Assistant United States Attorneys represents the interests of the 5,400 career federal prosecutors within the 93 United States Attorney Offices across the country. Our foremost mission is to advance the mission of the Department of Justice through the assurance of the equitable treatment of Assistant United States Attorneys and the fair, responsible administration of justice. Since January when news reports first emerged about the dismissals of the eight United States Attorneys, our Association has purposely avoided comment or entanglement in the discussion of the merits and handling of the dismissals, principally because of the inherent political ramifications associated with comment. However, our Association does maintain a distinct set of views regarding the interim United States Attorney appointment process because of its relationship to the effectiveness and continuity of operations of United States Attorney Offices, and we take this opportunity to formally share our views on that matter with the Committee.

We generally favor the restoration of the interim United States Attorney appointment process, as proposed by H.R. 580, to the pre-Patriot Act framework, involving shared

appointment authority by the Attorney General and the district court. In most instances, the process has worked well and provided for sufficient continuity of management of United States Attorney Offices where vacancies have arisen. However, we believe the purposes underlying H.R. 580 would be strengthened further by the following two amendments:

1. Expand the interim appointment period of the United States Attorney, as appointed by the Attorney General, to 180 days (from 120 days, as proposed by H.R. 580).

We understand that the average appointment periods of interim United States Attorneys to be considerably greater than 120 days. Thus, we do not believe the 120-day period is an acceptable period of time in which to expect the necessary clearance steps between nomination and confirmation to reach fruition. We therefore favor the expansion of the period, by an additional 60 days, to establish a more reasonably sufficient period for the nomination, background investigation and Senate confirmation process to unfold and be successfully completed. In such cases where the process takes longer, the second-phase district court appointment process would of course still be triggered, although we believe the number of instances of this occurring will be diminished.

2. Require the interim United States Attorney, whether appointed by the Attorney General or the district court, to possess a national security clearance equivalent to that required of a permanently-appointed Assistant United States Attorney.

Secondly, we favor the express assurance under law that the interim United States Attorney, from the first day on the job, possesses all necessary and requisite national security clearances to assure the protection and confidentiality of sensitive national security information being handled within the respective United States Attorney's Office. We believe the security clearance requirements associated with a permanently-appointed Assistant United States Attorney represent a satisfactory threshold requirement. The increased involvement of United States Attorney Offices and their personnel in investigating and prosecuting terrorism and other national security-related matters demands this assurance. An interim appointee lacking such clearance will be unable to sufficiently fulfill the management responsibilities as United States Attorney.

We believe these two amendments represent appropriate revisions in assuring the best possible process in the appointment of interim United States Attorneys. Thank you for your consideration of these comments. Please call upon me whenever I may be of assistance in these and other matters.

Sincerely,

Richard L. Delonis

Richard L. Delonis
President

ANSWERS TO POST-HEARING QUESTIONS FROM JOHN A. SMIETANKA, FORMER UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF MICHIGAN

ANSWERS TO QUESTIONS
FROM SUBCOMMITTEE CHAIR LINDA SANCHEZ
FOR JOHN SMIETANKA

Overall

For many of the questions below, there is a predicate that the United States Attorney in the hypothetical question is "highly respected". Two initial points need to be made.

First, like many people in public and private life, a person can be "highly respected" or "not respected" depending on the group or individuals polled. And such a person can be at the same time worthy or unworthy of respect in different aspects of their work. For example, I have known US Attorneys who were wonderful motivators but abysmal trial lawyers and vice versa. The job of a United States Attorney (USA) is truly four jobs, all of which must be addressed in differing percentages of that person's time, depending on the needs of the moment. The four jobs are:

- Chief law enforcer of the district
- Chief office manager and motivator
- Lawyer, and occasionally, trial lawyer
- Member of a national Department of Justice

Second, I am not passing either a thumbs up or down on what has become known as "the Eight" or anyone of them. My comments are generic and not specific to all or any one of them.

Questions/Answers

1. ***Please explain what impact, if any, the abrupt, unexplained removal of a highly respected United States Attorney has on the career staff and other sin the United States attorney's office?***

All USAs come and go. H.M. Ray of the Northern District of Mississippi or Sid Lezak of the District of Oregon may have served through several presidents for more than 20 years, but even they moved on. That there has been a change in the political branches of the federal government, the Congress and/or the Presidency, is a reason validly affecting the choices of USA.

A new president has traditionally and appropriately meant change in the head of the United States Attorney's Office (USAO). Even there it is best for smooth transitions that the positions be vacated and filled in as close to seamlessly as possible. Whether it is a single office or all 93 offices, abrupt and unexplained transitions frazzle the nerves of the members of the USAO. The effects can be seen in different ways.

1. The natural and useful tension between USAOs, Main Justice and Departmental leadership (basically the Attorney General, Deputy Attorney General and Associate Attorney General, and their staffs) is exacerbated and can breed, in the worst case scenario, a form of guerilla warfare. This latter situation is never useful.

2. Within each office there are many different groups vis-à-vis the incumbent leadership. There are those who either self-identify with the incumbent and those who affirmatively do not. There are those in internal leadership roles, say First Assistant, Chiefs of the Criminal or Civil Divisions, or in the larger offices, various units and branches that rightly may feel their positions threatened by change. This is not uniformly good or bad.

3. All career people are ambitious to some extent. Within limits this is good; when unfettered or contrary to the good of the office it can be highly destructive. When there is no longer strong and clear leadership from above, especially when the gap is created by a sudden earthquake rather than the slow erosion in a rain, much mischief can occur.

4) Vacuums being naturally abhorred, often there is internal and external competition from current or former AUSAs or former AUSAs to become the new USA.

All of the above are inevitable distractions from the office achieving its basic goals of fair, honest and efficient administration of justice.

2. ***Does the abrupt, unexplained removal of a highly respected United States Attorney have an impact on the morale of the United States Attorney's Office?***

Whether the verdict is guilty or not guilty, there is an impact on the players in a trial.

If "a highly respected" USA abruptly and without explanation is removed, it would most likely become at least a temporary drag on the office's morale. This may be for a number of reasons, real or perceived.

First, it would be seen as a parental slap on the wrist to the incumbent's priorities. If these had been an emphasis on gun or drug cases, the people in leadership in the office would ask, "Should we abandon those and go for 'x'?" (whatever other cases seemed trendy.) When the office has been successful and then reprimanded by the removal of its head, it cannot help but shake morale.

Second, the inevitable niffnawing about the "whys" of the past and the "therefores" of the future depress the present mood of the office.

Third, the scurrying about brought on by this situation may heighten tensions that were suppressed by the dim drumming of normalcy. There are no greater gossips in the world than those in law enforcement and especially those who, through having to deal on a daily basis with scouring known facts to find hidden criminal conspiracies. So, give those with such a bent few facts ("unexplained"), they will often go helter-skelter into the murky world of "conspiracy theories" and "us v. them", whether deserved, supportable, real or no.

Fourth, sometimes, especially in complacent offices or individuals, "abrupt and unexplained" changes at the top will wake them up. This is not all bad.

3. ***What impact does the abrupt, unexplained removal of a highly respected United States Attorney have on ongoing investigations?***

Generally, this is also a mixed bag.

Depending on the investigation and the cognizant AUSA or AUSAs, the actual case work will often go on unabated. It is rare that a presidentially-appointed USA will be actively driving or supervising specific investigations. Thus an "abrupt" departure, save for the other effects described above, will not make much of a difference to a specific investigation. In fact, in the case of political corruption investigations, UNLESS THERE IS SPECIFIC, FORCEFUL AND OUTSIDE INTERVENTION, these will go on apace, and may even be accelerated due to an AUSA seeing an opportunity to move faster in the oversight vacuum.

4. ***When a highly respected United States Attorney is abruptly and without explanation removed, what impact does that have on other United States Attorneys?***

Obviously the "abrupt and unexplained" departure often will cause uncertainty among the other USAs. It may cause a circling of the wagons among the survivors. With some, but probably few, it would have the effect of "bringing them into line" with departmental leadership. The longer the USAs have had to form their unique bonds, the more likely it is that the circling of the wagons would take place and herding would be resisted.

It is this factor that I find so amazing in contemplating the whys of "the Eight". After 5 years in office, attending yearly US Attorney Conferences, working on subcommittees of the Attorney General's Advisory Committee of US Attorneys and cross-district cooperation on investigations, their loyalties when threatened will be to: a) the President who appointed them (as distinct from the Department leadership) and b) to each other. It makes no sense to me that savvy Justice leaders would think that anything else would happen.

5. **Why should United States Attorneys be able to exercise some degree of independent judgment?**

If a prosecutor's office, or the court system, was able to deal with every potential crime in the district (federal, state or local), then there would be no need for independence. But there is no system that I know of that comes even close to being able to deal with 10% of the potential criminal behavior by prosecuting it. The failure to use independent, but wise, discretion by prosecutors closest to the people who live in the jurisdiction means a total collapse of justice and thus organized society is threatened by the tsunami of anti-social acts.

I have seen some prosecutors' offices that attempt to "cookie cutter" their offices' work. I have known only one where it may be seen to have worked. Most others fail miserably.

Looked at on the macro-scale, the Department of Justice that demanded lock-step conformity of its local USAs would crumble faster than a cracker hit by a hammer.

6. ***Some have suggested that the Justice Department terminated these eight United States Attorneys because it needed to close ranks given the new political dynamics after the November elections. Is that a good reason to force out highly respected United States Attorneys?***

I guess that the events of the last 2 months prove that such a supposed strategy would not work. It is quite reasonable for the Department of Justice, under the direction of the Attorney General, to want to speak with one voice at the national level, whether it would be in answer to congressional, media or interested citizen groups. It is not of much real use to any of those groups to have a disorganized and fractious DoJ, though getting private feedback from confidential sources inside it can always provide great fun and some valuable information.

In short, however, it does not do much to accomplish the goal of providing a consistent approach to the world of justice to decapitate the best performers, which the Chair's question contains as its predicate.

7. ***Is it appropriate to remove a highly respected United States Attorney and replace that person with a political operative? If not, please explain.***

This is one of the most difficult questions to answer. It is unequivocally counter-productive and wrong to put someone in the position of USA who is unqualified. It is best that the person appointed to the office have basic experience and skills in the work of federal prosecution (and civil representation is also critical to the work of the USAO as well), or at least in somewhat parallel fields. To appoint a person whose ONLY qualifications for the position is that they are the friends, protégées, campaign contributors of political patrons, BE THEY PRESIDENTS, SENATORS, MEMBERS OF CONGRESS OR HANGERS-ON TO ONE OF THEM, would be absolutely foolish.

On the other hand, it would be hypocritical of the Congress today to complain that politics should not play a role in assessing the appropriate candidates for USA. From my experience, most appointers for USA or judicial positions are acutely aware that they will be judged by the quality of their appointments, most especially where those appointments are vested with enormous delegated power.

Since at least the beginning of the Reagan administration in 1981, and most likely before then, the White House and the Department of Justice has sent out criteria to Congress as to the qualifications that are essential for USAs. Those criteria are specific as to prosecutorial, judicial or legal practice experience, reputation, clean backgrounds etc. No administrations in the last 30 years to my knowledge have ever suggested that the doors are open to the lazy sons or daughters of politicians.

8. ***Is it appropriate to remove a United States Attorney because that person is opposed to the death penalty?***

Though I have been opposed to the death penalty, was so as a governmental prosecutor, and made no secret of that view to the 5 Attorneys General that I worked with, I was never harassed or marked down over it. I know of no USA who has been, including what I know of "the Eight". It is up to both the USA who is opposed to the death penalty and the departmental leadership to decide whether that opposition is a reason for the one to either not be appointed or not continue in office when faced with a question of conscience.

9. ***Some suggest that these United States Attorneys were terminated because the Justice Department wanted to tighten control over United States Attorneys generally and to curb their independence.***

Are those valid reasons to terminated a United States Attorney?

What is wrong about allowing the Justice Department to exert more centralized command and control over united States Attorneys"

Independence of USAs is an important value to be fostered. Lack of self-discipline or adherence to clear and important departmental standards of conduct is a valid reason to terminate the appointment of any USA.

However, the question as posed has two component sub-questions:

1) How much centralized control over the USAs is appropriate? And
2) Are periodic beheadings the way to achieve central control?

The first question has been played out on the national scene for more than 220 years. Consistency in the application of the tax laws has been a goal of the federal government for many decades, which is why the prosecution of criminal tax cases and civil enforcement of tax laws has been closely supervised by the Tax Division. We judge

that local control and discretion is not so important there as national consistency. On a parallel line, the enforcement of the constitutional and statutory protections of our citizens' civil rights are not to be completely delegated to local USA control.

I have already spoken about the importance of reasonable independence of USAs and in this question I must also support the appropriateness of some serious central control of USAs.

However, the method of enforcement of central control and consistency, IF THIS WERE TO BE THE ONLY REASON FOR TERMINATION OF USA APPOINTMENTS, should not be wholesale firings. First, it makes no sense from a theoretical perspective to fire large numbers of "highly respected" USAs to achieve departmental cohesion. Second the method would produce just the opposite effect, a sullen hostility to the departmental leadership.

10. Why should transitions in the office of the United States Attorney's leadership be, as you state in your prepared statement, "as smooth as possible"?

For all the reasons discussed above, a transition which is tortured, breeds disorder, even if changes in leadership in the USAOs are basically a good thing. One does not need to "chop heads" to achieve reinvigoration of USAOs, or bringing in leadership with different priorities.

11. You mention in your prepared statement that when a United States Attorney leaves office, there is a "profound uncertainty in the career staff of assistants and staff." Please elaborate.

The answer to this question lies in the answers to the questions above.

12. How would the abrupt, unexplained removal of a highly respected United States Attorney impact an ongoing sensitive public integrity investigation?

This is impossible to predict with universality, but the fact that these investigations are really being conducted by other federal or state agency personnel, working through and with AUSAs minimizes the overall effect of USAO leadership changes. There are internal vehicles to ameliorate any glitches here, especially the involvement of the Public Integrity Section of the Criminal Division in DC. They are often involved in such investigations either as supervisors, participants or monitors. And when they are not, the investigators, say the Federal Bureau of Investigation, can be counted on to put on either outside or national pressure to keep things on track.

13. What types of contacts between Congress and a United States Attorney are appropriate and what are not?

There are several clashing currents involved here.

It is unrealistic to believe that a person who walked and talked their way around the congressional offices to seek support for appointment as United States Attorney will never speak to a congressional person, member or staffer, again. Friendships which had perhaps grown over the years even before appointment are not going to go away afterwards.

It is, for example, perfectly appropriate for USAs to appear jointly with members of Congress at public events of a non-partisan nature, such as the opening of a neighborhood anti-crime office, or community forums on crime or law generally. It is also clearly inappropriate, and may be criminal, for a congress person (member or staffer) to attempt to influence the outcome of a specific case or investigation. Between those polar extremes, there are a number of situations approaching infinity in which cautious contact may be appropriate.

In the situation of the wisdom of a particular piece of legislation or administrative rule, it may be appropriate for a congressperson to ask her/his USA what the real-world impact of it would be. On the other hand, the Department of Justice and the administration have the right to expect that USAs would not torpedo its legitimate legislative goals by contrary statements, or worse, lobbying friendly congressional personnel. On the flip side, the department has the right to move the limited assets authorized by Congress where it sees fit, without the USAs independently grasping for a larger piece of the pie on their own by going to the Hill privately.

There are specific guidelines to be enforced by the Office of Legislative Affairs concerning appropriate and inappropriate contact between Congress and the USAs, and especially the reporting requirements for any inappropriate contact. These, along with the parallel rules of the House, Senate and the White House, provide, when enforced, great protection for all concerned from public concerns about corruption.

14. Please explain the difference between an "Interim" and "Acting" United States Attorney. Also, please explain the significance of an "authority gap."

Interim United States Attorneys are those appointed under 28 USC § 541; Acting United States Attorneys are those appointed under the general appointments power in 5 USC §§ 3345, *et seq.* In addition to the latter, by virtue of general rule, when the USA is absent from the district or ill, or at the direction of the USA, an assistant can be designated "acting USA" for all or specific purposes.

An authority gap might occur when a USA leaves office without designation of a successor, or when an Interim USA appointment would run out. It also could occur if there were requirements for a particular action, such as authorization of an indictment, information, search warrant, or the like to be approved by a person not so designated by the Attorney General or judicial officer.

15. Should the removal of a United States Attorney be made public with reasons given?

I would be opposed to any requirement of a public disclosure of the reasons for the departure of the USA. It is not necessary, and often is harmful to the future of the USA. This would not be the case where there was misconduct rising to the level of a crime by the USA. Then it should be publicized, if for nothing else deterrence.

16. Is it appropriate to ask career DOJ staff political litmus test questions like: "Who is your favorite President?" or "who is your favorite Supreme Court Justice?"

In general partisan litmus test questions should never be asked. "Who did you vote for last election?" "Who will you be supporting for the Senate next year?"

I am not opposed as to questions which are based on the staffer's ability to carry out a lawful directive of the departmental leadership. For example: "Would your opposition to the death penalty be an impediment to following legal departmental decisions to seek its imposition in a case in your district?"

The questions mentioned in the question are relatively innocuous in my view. If a Republican boss of mine would punish me for saying that I think Harry Truman was my favorite president, I would not worry about pleasing him or her.

QUESTIONS FOR THE HONORABLE JOHN A. SMIETANKA (DEMOCRATIC WITNESS):

1. ***A problem with the system for appointing interim U.S. Attorneys prior to the Patriot Act's reauthorization was that the 120 days allotted for the Attorney General's interim appointments was often too short for the President's nominees to be confirmed by the Senate. At the hearing, you suggested that this time period might reasonable be adjusted. Do you think that extending the time period to 180 days, 270 days, 365 days, or some other outer limit, might all reasonably be considered, given that the recent average time for confirming a U. S. Attorney nominee has been on the order of 331 days?***

As I testified, the time limit of the interim appointment is not so much the magic as having one. I do not have a policy objection to a period longer than 120 days. If there is to be a longer period, it still should be specifically decided by congressional Act.

2. ***Another possible adjustment to the interim appointment regime would be to provide that the time by which an interim Attorney General appointment would expire would be tolled by the nomination of a candidate to be permanent U. S. Attorney. Such an approach, for example, might reduce or eliminate the concern some express that the current provision for indefinite U. S. Attorney***

appointments provides an incentive for the president to skirt the process of Senate confirmation. Do you believe that such an approach might have merit?

3. ***You have stated that one of the dangers faced in the appointment of an interim U.S. Attorney is that the President and the Senate can delay the nomination and confirmation of a permanent replacement U. S. Attorney. The approach discussed in Question 2 would combat both of these possibilities, by providing the President with an incentive promptly to put forward a nominee for permanent U. S. Attorney, and by providing the Senate with an incentive promptly to confirm a permanent U. S. Attorney. Do you agree with that assessment?***

[Answer to both Questions 2 and 3:]

My concern in this whole issue of Interim appointments is not limited to abuse by the Executive Branch in making appointments that by pass Congress, but extends to the tedious and often unreasonable delays which occur in the Senate. I might possibly consider this sort of "tolling", but would rather see along with it a limit on the "hold" and "blue-slip" system in the Senate.

4. ***You note in your written testimony that one of the problems related to the judicial appointment of interim prosecutors is that the interim prosecutor could have – or e perceived to have – too close of a relationship with the appointing court. How would you address that concern, assuming that judicial appointments following expiration of interim appointments by the Attorney General were reinstituted in some fashion? For example, would it be effective to provide for automatic recusal by the appointing judge in any case in which the interim U.S. Attorney appeared before the judge who appointed him or her? Would such a proposal create problems in a district in which there are a small number of federal judges.***

The question is a valid one. I think that the follow-up to it correctly notes the danger of a blanket recusal policy. In over half of the USAOs and federal judicial districts there are a relatively small number of federal judges to go around. In the Western District of Michigan, for example, we have been operating with only 1 active judge, Robert Holmes Bell, for over two years, due to the delays in the confirmation process in the Senate. Our district has 4 district judgeships currently authorized. Three nominees have been awaiting Senate confirmation for years.

5. ***Another issue related to judicial appointment of interim U.S. Attorneys is that the judges themselves might not be aware of any issues related to a particular attorney. For example, a judge could appoint the first Assistant U.S. attorney in a district, thinking that he had found an appropriate substitute, but be wholly unaware that the first Assistant was, in fact, being investigated internally. What steps would you recommend for amending the proposed legislation to ensure***

that judges would always avoid this and other kinds of unknowingly infirm appointments?

The only way that is practical to solve this dilemma is for the Department to either disclose the matter under investigation to the judge, or, in the worst case scenario, remove, or restrict the authority of, that Interim USA by Attorney General directive. That latter is extremely clumsy, but in some situations I can conceive it the only alternative.

Respectfully submitted,

John A. Smietanka

Dated: April 16, 2007

ANSWERS TO POST-HEARING QUESTIONS FROM GEORGE J. TERWILLIGER, III, FORMER DEPUTY ATTORNEY GENERAL OF THE UNITED STATES

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May 10, 2007

VIA E-MAIL AND FEDEX

Mr. Elias Wolfberg
U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Commercial and Administrative Law
362 Ford House Office Building
Washington, DC 20515

Re: March 6, 2007, Hearing on H.R. 580, Restoring Checks and Balances in the Confirmation Process of U.S. Attorneys

Dear Mr. Wolfberg:

Please find below my responses to the questions from Chairwoman Linda Sánchez and other Subcommittee Members.

I. Questions From Subcommittee Chairwoman Linda Sánchez

Question 1: As a former Deputy Attorney General under President George H.W. Bush, did you at any time sanction the en masse dismissal of highly respected United States Attorneys, other than because of any political change in the Presidency?

During my tenure as Deputy Attorney General, no en masse changes of United States Attorneys occurred.

Question 2: Should the United States Attorneys be able to exercise some degree of independent judgment?

By tradition, United States Attorneys, and the Assistant United States Attorneys in their respective offices, handle the majority of their criminal cases independent of guidance or control by superiors at the Department of Justice in Washington. There are, however, numerous and significant exceptions to this general practice. In the first instance, the Attorney General retains the legal authority and responsibility to direct and control any criminal prosecution brought in the name of the United States. Second, there are numerous instances where certain types of

cases and/or the disposition of certain types of cases require either approval by or consultation with Department officials in Washington. Espionage and criminal tax matters are two examples of this type of circumstance. Third, all matters in which the United States is a party to an appeal and matters in which the United States is considering taking an affirmative appeal are subject to the supervision of the Solicitor General. Lastly, in matters involving national or other significant enforcement policy issues or considerations, decisions on whether to initiate a prosecution, how a particular case should be handled in court and/or what type of disposition would be appropriate in a particular matter may be subject to supervision and direction by officials at the Department in Washington. This can occur because a United States Attorney requests guidance in this regard, a third-party requests that the Department review the matter, or as a result of the Department affirmatively exercising authority in connection with the case.

Question 3: Please explain what impact, if any, the abrupt, unexplained removal of a highly respected United States Attorney has on the career staff and others in the United States Attorney's office?

It is not unusual for United States Attorneys to leave their positions during the course of a presidential administration. I can think of no instances in my experience where a United States Attorney leaving his or her position adversely affected the conduct of affairs on behalf of the government in a given office. Some United States Attorneys are more popular than others with their assistants and staffs, and certainly the departure of a popular United States Attorney may occasion temporary morale issues in an office. Likewise, the departure of inept or otherwise underperforming United States Attorneys may be a morale booster to an office.

Question 4: Does the abrupt, unexplained removal of a highly respected United States Attorney have an impact on the morale of a United States Attorney's office?

Please see answer to question number three.

Question 5: What impact does the abrupt, unexplained removal of a highly respected United States Attorney have on ongoing investigations?

In a well-run United States Attorney's office, in my experience, the departure of the United States Attorney, or of any given Assistant United States Attorney for that matter, will have no long-term impact on ongoing investigations. The Department of Justice is fortunate to enjoy the services of many capable and highly experienced prosecutors who are able to complete matters begun by others where the circumstances so require.

Question 6: When a highly respected United States Attorney is abruptly and without explanation removed, what impact does that have on other United States Attorneys?

Maintaining the morale and confidence of the United States Attorneys as a corps is important to the mission of the Department of Justice.

Question 7: Is it ever appropriate for a Member of Congress to contact a United States Attorney in order to influence the outcome of an ongoing investigation or prosecution?

In my experience and to my knowledge, it has long been a custom and practice that Members of Congress do not contact United States Attorneys, Assistant United States Attorneys or other prosecutors in the Department of Justice for the purpose of stating a view or otherwise attempting to influence the course, conduct or outcome of a criminal investigation or ongoing prosecution. I can recall general discussions to this effect (that is, that this was the practice) with Members of Congress on occasions while I was in public service. I have given clients advice against soliciting Members of Congress to communicate with the prosecutors about cases. That is not to say that it is inappropriate for a Member to make basic inquiries about the status of a case, particularly where it is a prosecution in court as opposed to an ongoing investigation. I can recall occasions when I was in public service where Members of Congress initiated discussion of cases with me and, for the most part, the nature and tenor of the discussions seemed to me to be proper and not run afoul of the custom and practice outlined above.

Question 8: Is there a difference between a Member of Congress contacting the Attorney General to complain about a specific case and contacting the United States Attorney who is prosecuting that case?

In general, I believe the better practice regarding communications, beyond mere status inquiries, by Members of Congress about a specific case with the Department of Justice, whether a communication with the United States Attorney or with a Department official, is that such communications not occur. However, there may be circumstances where a Member of Congress, in the execution of his or her duties, may find it either necessary or appropriate to register a view on the conduct of a case or a certain class or type of cases. Certainly, in the conduct of its general oversight function, Congress has not been shy about reviewing the work of the Justice Department, including how it prioritizes and handles criminal matters. To the extent that a Member believes it may be more effective or appropriate to so communicate privately rather than through a hearing or some other more formal communication, that seems to me to be a matter of the exercise of judgment and discretion by individual Members of Congress.

I would note, however, that I think that calling Assistant United States Attorneys or career prosecutors to testify in congressional hearings regarding the handling of specific cases is a very ill-advised practice that could have very negative effects on the free and unfettered exercise of good judgment and discretion by prosecutors.

Question 9: Is it appropriate to ask career Justice Department staff political litmus test questions like: "Who is your favorite President?" or "Who is your favorite Supreme Court Justice?"

Making some assumption about the subtext of the question, I think it is critically important that partisan political leanings or affiliations, or the lack thereof, should have nothing to do with assessing the qualifications of individuals to be hired for career prosecutor and Assistant United States Attorney positions. However, I think it entirely appropriate to assess a candidate's fitness for the job in question, including his or her views about matters such as law enforcement practices, the exclusionary rule and other similar philosophic issues that may affect how one performs in the job. Assistant United States Attorneys and other career Justice Department lawyers are the front-line protectors of America's safety and its citizens' civil rights. A searching examination among the large pool of qualified candidates to determine those best

suited for a particular job is not simply an option, but a responsibility of those charged with hiring for these important offices.

II. Anonymous "Questions for George Terwilliger, Esq."

Question 1: Is it your understanding that U.S. Attorneys serve at the pleasure of the President?

Yes.

Question 2: Did you understand that you served at the will of the President when you were a U.S. Attorney?

Yes.

Question 3: To the extent you have not already done so, please discuss your views of why it is beneficial to our justice system and our society for U.S. Attorneys to be accountable to the President in this way.

Please see my prepared statement provided at the hearing. In addition, because the Justice Department, particularly in its prosecutorial role, must carry out the policies and priorities of a Presidential administration, it is critically important that United States Attorneys be part of that administration and view themselves as accountable to the President and his direct subordinate, the Attorney General.

Question 4: In your experience, do U.S. Attorneys typically understand that they serve at the will of the President?

Clearly yes.

Question 5: In your view, is the Department of Justice entirely within its rights when it determines to change leadership in a U.S. Attorney's office because it believes the U.S. Attorney is not doing enough to carry out the President's policies or priorities on enforcement issues? To the extent not already done so, please explain whether you believe this is a healthy aspect of our justice system, and, if so, why?

As a practical matter, sometimes less than desirable choices are made for United States Attorney positions. At other times, perfectly appropriate choices become less than stellar performers in the position. In some instances, United States Attorneys may actively resist carrying out an administration's policies and priorities. In all circumstances, it is the responsibility of the Attorney General to make a judgment and a recommendation as to whether a United States Attorney needs to be counseled, directed in his or her activities or, in appropriate instances, removed.

Question 6: In your view, is the Department of Justice entirely within its rights when it determines to change leadership in a U.S. Attorney's office because it believes that a U.S. Attorney has departed from the President's policies or priorities, pursued or promoted options for

policies or decisions that the President or Department leadership has rejected, exhibited poor judgment, exercised insufficient leadership or management, and/or lost the confidence of the Attorney General? To the extent not already done so, please explain whether you believe this is a healthy aspect of our justice system, and, if so, why?

Please see answer to question number five.

Question 7: In your view, is the Department of Justice entirely within its rights to do that, even if a U.S. Attorney may be perceived to be performing adequately in other areas of his or her duties? To the extent not already done so, please explain whether you believe this is a healthy aspect of our justice system, and, if so, why?

Please see answer to question number five. In addition, some aspects of a United States Attorney's performance may be more important and critical to the Justice Department securing its responsibilities to both the President and the people than others. United States Attorneys should be neither selected nor immune from removal because they are generally doing a good job but their performance is poor in areas judged to be important or critical to the nation's well-being.

Question 8: In your view, is the Department entirely within its rights to dismiss a U.S. Attorney for the simple reason that it would like to give another promising candidate an opportunity to serve in the position, after an incumbent has completed his four-year term? To the extent not already done so, please explain whether you believe this is a healthy aspect of our justice system and our public life, and, if so, why?

The administration has the right to replace any United States Attorney for any reason, including to give someone else an opportunity to serve in the position. United States Attorney candidates are traditionally recommended by the senior senator of the President's party or the senior political officeholder of the President's party in a state. It is not unusual for persons making recommendations for United States Attorney positions, including senators and representatives, to suggest to the Department that a United States Attorney be asked to move on so that another candidate favored by those making recommendations might have an opportunity to serve. That being said, I believe that the role and responsibility of the United States Attorney position has changed significantly in the last several decades. Having United States Attorney candidates and incumbents who have the right mix of professional background, experience, and personal and professional character, to perform the great responsibilities of the office is or should be an important objective in both filling vacant positions and considering removals of incumbents.

Question 9: Based on your experience as a former U.S. Attorney and Deputy Attorney General, can you explain, to the extent you did not already do so at the hearing, how transitions operate in a U.S. Attorneys office, following the departure of a U.S. Attorney? For example, when a U.S. Attorney leaves an office, do all pending cases and investigations stop, or do staff members working on those cases and investigations continue their work without significant interruption? If the latter, please explain whether that is in whole or in part because U.S. Attorneys generally do not manage every case on a day-to-day basis, but instead leave that to other managers in the office.

For the most part cases and investigations proceed unabated with the change in leadership in United States Attorneys offices. The exception to this may be cases where particularly difficult or controversial decisions are pending. In those matters, a decision may be postponed until a new United States Attorney is able to consult with his or her assistants and make the necessary decision.

Question 10: Based on your experience as a former U.S. Attorney and Deputy Attorney General, please discuss the degree to which U.S. Attorneys in all of the federal judicial districts typically have some type or types of politically sensitive case or cases underway.

Almost every district will from time to time have cases of some partisan political sensitivity. These considerations are, of course, particularly acute in cases involving corruption by elected or appointed officials. United States Attorneys offices typically consult and work with the Public Integrity Section of the Criminal Division in Washington in regard to such matters.

Question 11: To the extent not already done so at the hearing, and based on your experience as a former U.S. Attorney and Deputy Attorney General, can you describe the nature of the dialogue that typically goes on between Department of Justice headquarters and the U.S. Attorneys offices in assuring enforcement of the law (for example, in determining the implementation of policies and priorities in each district).

In general, the Attorney General, the Deputy Attorney General and other senior officials of the Department should be making themselves aware of the performance of United States Attorneys offices and insuring that these offices adhere to the policies and priorities of an administration. I would note that this function is quite distinct from the performance evaluations undertaken of United States Attorneys offices by the Executive Office for United States Attorneys. The latter, known EARS evaluations, were not, in my experience at least, designed nor useful for this purpose.

Question 12: At the hearing, you suggested that it is open to question whether the Constitution and case law support the idea that district judges may constitutionally appoint interim U.S. Attorneys. Please explain your concerns in further detail, including an identification and discussion of judicial precedents supporting your position. Please also offer any additional views on points raised by other witnesses at the hearing in this regard.

The Supreme Court characterized U.S. Attorneys as "inferior officers" in the 1988 case of Morrison v. Olsen; this case is often cited as settling the issue, even though the question of U.S. Attorneys' classification was not the issue in the case or controversy before the Court in Morrison. However, merely classifying an officer as "inferior" does not give Congress unbridled discretion in determining the manner in which the officer is appointed.

Judges may refuse a congressional grant of appointment power if such a grant would be incongruous with judicial power. See Ex parte Siebold, 100 U.S. (10 Otto) 371, 398 (1879). In Ex parte Siebold, the issue was whether a congressional delegation of the appointment of federal election supervisors to the federal judiciary was proper. The Supreme Court held that the delegation was proper. Id. The Court noted that "[n]either the President, nor any head of

department, could have been equally competent to the task [of making such appointments]," and that nothing in the delegation to the judicial branch presented an incongruity such "as to excuse the courts from its performance . . . ." Id.

Morrison also assessed the potential incongruity of the delegation to the judiciary of the power to appoint persons to the office of independent counsel, holding that any such incongruity was insufficient to invalidate the delegation by Congress of such appointment authority. See Morrison at 677 ("If [Congress] were to remove the appointing authority from the Executive Branch, the most logical place to put it was in the Judicial Branch."). Importantly, the Court determined that vesting the appointment of the independent counsel with a special court created to hear matters brought by the independent counsel was not "incongruous" because of "the Act's provision making the judges of the Special Division ineligible to participate in any matters relating to an independent counsel they have appointed . . . ." Id.

Such recusal is not a meaningful alternative in the case of a district court judge appointing an interim U.S. Attorney. As the U.S. Attorney is responsible for all federal prosecutions and litigation in each district, the appointing judge may have to recuse her- or himself from all matters involving the United States in the particular district for the duration of the interim appointment, placing a significant burden on the remaining judges and the judicial system. Were the interim U.S. Attorney appointed by the judge to be formally nominated by the President and consented-to by the Senate, the relationship between the judge and the U.S. Attorney evidenced by the interim appointment could continue to be the subject of motions for recusal.

While this significant incongruity counsels against the vesting of the appointment of interim U.S. Attorneys within the judiciary, such incongruity does not mean that U.S. Attorneys cannot still be defined as "inferior officers"; this incongruity merely means that vesting the appointment of interim U.S. Attorneys with the judiciary would be inappropriate. Interim appointments made by the executive branch would be proper, because – unlike the appointment of federal election supervisors in Ex parte Siebold – the Chief Executive, who is charged with enforcement of federal law, is uniquely competent to the task of appointing interim U.S. Attorneys.

Question 13: To the extent not already done so at the hearing, please explain in detail whether the judicial appointment of interim U.S. Attorneys may raise practical difficulties in the administration of the justice system. Please be sure to discuss any examples of such problems addressed by other witnesses at the hearing, to the extent you have not already done so.

I expressed the view at the hearing which I think should control this question. In short, the Attorney General is absolutely dependent on each United States Attorney for the proper execution of the Attorney General's responsibilities and those of the Justice Department generally entrusted to each United States Attorneys office. It makes no sense to me that the Attorney General should not have control over the appointment of the interim United States Attorneys for that reason. Any danger that interim appointments could be utilized to circumvent the advise and consent process for presidential appointees of the Senate can be mitigated by limiting the terms of interim appointees to a specified time period unless a nomination has been submitted to the Senate.

Question 14: It appears that the true problem concerning the use of interim U.S. attorneys may be the amount of time it takes for the President to nominate and the Senate to confirm permanent U.S. Attorneys. Since 1993, that process has taken, on average, 331 days. The President typically finds it useful to consult with home state Senators, and his eventual nominee must be the subject of a background investigation. Against this background, what suggestions might you offer concerning how to expedite the process of nominating and confirming permanent U.S. Attorneys?

I do not have sufficient information to offer a suggestion on this issue.

Question 15: At the hearing, the option of returning to the old system of interim Attorney General appointments, followed by judicial appointments, was discussed. Among the variants of this option was that of changing the maximum length of interim Attorney General Appointments. Do you think that following this approach, for example, extending that maximum length to 180, 270, or 365 days, would be preferable to the older approach?

I think that an approach that has a time limit that mirrors a realistic time in which nominees can be selected and confirmed for United States Attorney positions would be appropriate.

Question 16: Assuming you might support such an approach, would that support be strengthened or weakened if the time by which an interim Attorney General appointment would expire would be tolled by the nomination of a candidate to be permanent U.S. Attorney? Such an approach, for example, might reduce or eliminate the concern some express over the current law over the possibility that the provision for indefinite U.S. Attorney appointments provides an incentive for the Administration to skirt the process of Senate confirmation.

Strengthened.

Question 17: If the President's or the Attorney General's authority to appoint interim U.S. Attorneys were to be changed from that currently available to them in the law, do you believe that there would be any disadvantage to eliminating any of the authority available to them under the Vacancy Reform Act, such that the pool of available candidates were reduced?

I do not have a view on this issue.

Question 18: To the extent not already done so at the hearing, please discuss whether anything in H.R. 580 would prevent the President from exercising his constitutional authority to dismiss a permanent or interim U.S. Attorney at any time, including a judicially appointed interim U.S. Attorney. Please include a discussion of any relevant legal authorities.

The President certainly has the authority to fire interim appointees who are appointed by the Attorney General, as the power to appoint generally conveys the power to remove, subject to a different determination by Congress. See Myers v. United States, 272 U.S. 52, 119 (1926).

A memorandum prepared by the Office of Legal Counsel for President Carter summarizes the reasons why the President may also remove even court-appointed interim U.S. Attorneys. See

"U.S. Attorneys--Removal of Court-Appointed U.S. Attorney," 3 U.S. Op. OLC 448, 450 (Nov. 26, 1979). This opinion concludes that because Congress has vested with the President the power to remove Senate-confirmed U.S. Attorneys, so to does the President have the power to remove interim U.S. Attorneys. Id. The Office of Legal Counsel noted that "the President is responsible for the conduct of a U.S. Attorney's Office and therefore must have the power to remove one he believes is an unsuitable incumbent, regardless of who appointed him," and in this respect the President's power of removal "may be even more important to the President than the power of appointment . . . it is the power to remove, and not the power to appoint, which gives rise to the power to control." Id. (citing Myers, 272 U.S. at 119-22 (1926)). The Office of Legal Counsel also pointed out that judicial power to remove a U.S. Attorney would create serious due process concerns. Id. (citing United States v. Solomon, 216 F. Supp. 835, 843 (S.D.N.Y. 1963)).

I again thank the Chairwoman and the Subcommittee for allowing me to be heard on this important issue.

Sincerely yours,

George J. Terwilliger III/arc

George J. Terwilliger III

ANSWER TO POST-HEARING QUESTIONS FROM ATLEE W. WAMPLER, III, PRESIDENT, NATIONAL ASSOCIATION OF FORMER UNITED STATES ATTORNEYS

QUESTIONS FROM SUBCOMMITTEE CHAIR LINDA SÁNCHEZ
FOR ATLEE WAMPLER III

1. Is appropriate to fire a United States Attorney because that person is opposed to the death penalty?

ANSWER TO #1:

The answer depends on whether the United States Attorney refuses, because of his or her own personal beliefs, to institute an Attorney General's directive that the death penalty be argued for in all cases, or whether the United States Attorney holds a personal belief against the death penalty, but advocates a President's directive for an application of the death penalty in specific cases where the facts and circumstances are appropriate and, in a particular case where it is not appropriate, does not advocate the death penalty. If a United States Attorney argues for a reasoned position in a particular case not to use the death penalty when the United States Attorney applies the general policy, the United States Attorney should not be inhibited in arguing what is fair and appropriate in a particular case because of a fear of being fired. An Attorney General should defend a United States Attorney making a reasoned argument against the application of a general policy in a particular case from requests for adverse political action by a President. A President, in any case, should have the right to fire the United States Attorney for any reason. However, the President should be counseled by an Attorney General not to terminate a United States Attorney for making a reasoned argument in a particular case in disagreement with a general policy.

2. Why should a United States Attorney be somewhat independent of the Justice Department?

ANSWER TO #2:

The United States Attorney by history and tradition is the representative not of an ordinary party to a controversy, but of a sovereign nation governed by the United States Constitution. It is the United States Attorney's obligation to exercise his duties impartially and follow the dictates of the United States Constitution and laws, even if they diverge from directives from an Attorney General or President. Therefore, a United States Attorney must be somewhat independent of the United States Justice Department. The United States Attorney's interest is not that the United States should win a case, but that justice be done. Once sworn into office, the United States Attorney must leave behind partisan politics and become a servant of the law with a twofold aim that guilt shall not escape, nor innocence suffer. It is as much the duty of the United States Attorney to refrain from improper methods calculated to produce a wrongful conviction, as it is to use every legitimate means to bring about a just conviction. Historically and traditionally, United States Attorneys are charged with the execution of their duties in a politically neutral and nonpartisan manner as a cornerstone of their actions. They are not charged with the duty of being a political team player and, therefore, must have a substantial independence from the United States Justice Department.

3. What is the impact of removing a United States Attorney as a result of political displeasure or to provide a political reward to another individual?

ANSWER TO #3:

Such a removal injures the public's confidence in a historically nonpartisan, evenhanded administration of justice by the United States Justice Department. It damages the reputation for impartial administration of justice by United States Attorneys who are the chief Federal law enforcement officers in their judicial districts. The United States Attorneys not removed are tainted by the innuendo that they are partisan team players, rather than nonpartisan Federal law enforcement officers. Career prosecutor Assistant United States Attorneys are tainted by the suggestion that their United States Attorney's Office is led by partisan team players rather than nonpartisan law enforcement officials.

4. You state that a United States Attorney should not be perceived to be biased toward nor influenced by the political party in power nor by politically prominent people, nor people of great wealth. What is the basis for your statement?

ANSWER TO #4:

The basis for my statement is the history and tradition of the men and women who have held the Office of United States Attorney who are charged with the duty of loyalty to the United States Constitution and laws, not to being a team player slavishly carrying out the directives of the President and the Attorney General. Also, the Department of Justice and United States Attorneys have embraced the description of their role by Justice Southerland for a unanimous Supreme Court in *Berger v. United States*, 295 US 78, 88 (1935) of integrity, impartiality and independence to follow the United States Constitution, even where its directives conflict with those of the United States Department of Justice and the President.

5. The Joint Statement by the United States Attorneys notes that "[t]he prosecution of individual cases must be based on justice, fairness, and compassion - not political ideology or partisan politics." Do you concur with this statement? Please explain.

ANSWER TO #5:

Yes. The Joint Statement synthesizes Mr. Justice Southerland's description of the United States Attorneys' independent role in the public prosecution function in *Berger v. United States*, 295 US 78, 88 (1935) where the unanimous Supreme Court expounded on the United States Attorneys' oath to bear true faith and allegiance to the United States Constitution which United States Attorneys swear to support and defend against all enemies, foreign and domestic. Prosecutions not on the bases set out in the Joint Statement are against the principles found in the United States Constitution and laws.

6. Please explain what impact, if any, the abrupt, unexplained removal of a highly respected United States Attorney has on the career staff and others in the United States Attorneys' office?

ANSWER TO #6:

It damages the general moral of the career staff who truly embrace their role in the impartial administration of justice and fear that their careers may be in jeopardy by being given partisan directives and being required to carry them out or to loose their jobs.

7. Does the abrupt, unexplained removal of a highly respected United States Attorney have an impact on the morale of the United States Attorney's office?

ANSWER TO #7:

Yes. Career staff are buoyed by being lead by a leader administrating justice impartially and are deflated by the termination of an experienced leader who was operating in an appropriate, politically neutral, nonpartisan manner.

8. What impact does the abrupt, unexplained removal of a highly respected United States Attorney have on ongoing investigations?

ANSWER TO #8:

A significant adverse impact. United States Attorney is the chief Federal law enforcement officer in the District, who, among other duties in managing the office: (1) establishes and maintains working and trusting relationships with key federal, state and local law enforcement agencies; (2) gains confidential and sensitive intelligence information from federal, state and local law enforcement agencies in conducting investigations to use in the gathering of evidence for prosecutions and violations of federal law; and (3) decides what violations should be investigated and prosecuted, against whom indictments are presented and who will be witnesses; determines what sentences for which to advocate and who should get immunity, reduction in sentences and fines due to cooperation with the Government. In four to six years of managing the United States Attorney's Office, a United States Attorney becomes well experienced and trusted by investigative agencies in presenting and handling the prosecutions of their cases. Loss of such an experienced and respected executive will have an adverse impact in ongoing investigations. Rightly or wrongly, it gives rise to media and public speculation of the use of undue influence, that retribution is for sale and that the dogs of justice can be called off.

9. When a highly respected United States Attorney is abruptly and without explanation removed, what impact does that have on other United States Attorneys?

ANSWER TO #9:

An adverse impact. Other United States Attorneys may become hesitant to take positions adverse to positions being dictated by United States Justice Department supervisors for fear of being terminated also. Further, they are tainted by the innuendos that, because they were not terminated also, they must be partisan team players rather than nonpartisan law enforcement officers. Finally, the United States Attorneys have worked in cooperation with each other, gone to conferences and training sessions with each other, know the fired United States Attorneys as good leaders, and are hurt by the loss of trusted and respected comrades in Federal law enforcement.

10. Why should United States Attorneys be able to exercise some degree of independent judgment?

ANSWER TO #10:

The Oath of Office of the United States Attorney requires the United States Attorney to bear true faith and allegiance to the United States Constitution, not to the President, the Attorney General and their political appointees. The United States Attorneys' Manual Section 3-2.140, sets out the duties and authority of the United States Attorney in his/her district as those enumerated in 28 U.S.C. Section 547 and then states the following: "By virtue of this granting of statutory authority and of the practical realities of representing the United States throughout the country, the United States Attorneys conduct most of the trial work in which the United States is a party. They are the principle Federal law enforcement officers in their judicial districts; and through the exercise of their prosecutorial discretion, United States Attorneys construe and implement the policy of the Department of Justice. Their professional abilities and the need for their impartiality in administering justice directly affect the public's perception of federal law enforcement." To exercise the discretion with which they are charged, United States Attorneys must exercise a substantial degree of independent judgment regarding facts and the law applicable to each case in the United States Attorney's district.

11. Some have suggested that the Justice Department terminated these eight United States Attorneys because it needed to close ranks given the new political dynamics after the November elections. Is that a good reason to force United States Attorneys out?

ANSWER TO #11:

No. United States Attorneys must, pursuant to their oath to adhere to the United States Constitution and laws of the United States, be impartial and politically neutral. The removal of a well performing United States Attorney without cause unnecessarily disrupts the continuity of the federal investigations and prosecutions, gives rise to speculations of undue influence and wastes valuable Government resources. The removal of a United States Attorney without cause undermines the confidence of the Federal Judiciary, Federal and state law enforcement authorities, Assistant United States Attorneys, Federal Public Defenders and the body public in the integrity of the Federal system of justice. Although a President has the right to remove a United States Attorney for any reason, the general policy of the United States Justice Department should be not to remove a well performing United States Attorney appointed by that President and confirmed by the United States Senate without cause until the end of an administration's term(s).

Questions for Atlee Wampler III, President of the National Association of Former United States Attorneys (Democratic Witness):

1. You stated in your testimony that you "vigorously oppose any effort by any Attorney General to remove a United States Attorney as a result of political displeasure or for political reward." Please explain whether and how you can reconcile that view with the long established practice of Presidents replacing all - or nearly all - of the United States Attorneys at the start of their terms. Please also explain how you can reconcile that view with the practice of accounting for political considerations that informs decisions over [who] U.S. Attorney nominees will be.

When a new President is elected for a four year term, that President can and traditionally does replace most, if not all, United States Attorneys with individuals the new President believes, with the advise and consent of the United States Senate, will best carry out the United States Attorney's duties in the new President's administration. United States Attorneys from the previous administration are (unless they are summarily terminated by the new President which occurred in the incoming Clinton Administration and which was an inappropriate way to handle a transition that caused administrative disruptions) obliged to remain in office until their successor is nominated and confirmed. However, if that same incoming President is reelected for a successive term, it is that President's appointees who are the United States Attorneys in that President's second administration. These United States Attorneys have in excess of four years of education, training, and experience and gaining trusting relationships with the Federal Judiciary, key federal, state and local law enforcement agencies, as well as the Federal Public Defenders and the defense bar. That United States Attorney has received and is working with confidential and sensitive intelligence information from federal, state and local law enforcement agencies

conducting investigations for use as evidence for prosecutions of Federal law. That United States Attorney has gained valuable education, training, and experience over the four or more years in managing the office to carry out the public law prosecution function. A United States Attorney is not an executive widget, nor a fungible executive commodity. My point was merely that presidents serving a second term have extremely valuable executive assets in the well performing United States Attorneys that they appointed in their first term. Discretion should be exercised in order to keep these highly experienced men and women in office, rather than having them depart to lucrative positions in private law firms. Firing performing United States Attorneys does not foster the tradition of public service of executives to the end of an administration and until being relieved by a confirmed nominee from the following administration.

In regard to the second part of your Question #1:

The President has all the input for the initial appointment of his or her United States Attorneys in the first term. Once those United States Attorneys are appointed and examined and confirmed by the United States Senate, they must, by their oath of office and the United States Attorneys' Manual, conduct impartial, nonpolitical operations of their office by strictly adhering to the United States Constitution and laws of the United States. Political actions by the individuals who are nominated by the President and confirmed by the United States Senate as United States Attorneys end when they are sworn into office under the United States Attorney's oath.

2. Your written statement includes the statement that "We understand that there is a historical unwritten and necessary tradition to maintain a United States Attorney . . . until the end of an administration's term unless the United States Attorney is found to be in dereliction of his or her duties. We believe that this tradition must be memorialized in legislative history." Please explain how you reconcile that view of tradition with the fact that the statutory regime for U.S. Attorneys has long established only four-year terms for U.S. Attorney appointments. Please also explain who you believe would be suited to make a determination that a U.S. Attorney is in dereliction of duty, and whether you believe that it would be sufficient for the President to make that finding and then terminate a U.S. Attorney, or whether additional procedures would be required.

In Part 1of your Question #2:

A United States Attorney receives a four year appointment, but is charged with serving until his or her successor is confirmed. After four years, that President is looking at his own well vetted appointee, who, if well performing: has an over four year body of experience in managing a major law enforcement office in carrying out the Federal public law prosecution function; has intricate knowledge and gives direction to complex federal civil litigation; has confidential and sensitive intelligence information in working with federal, state and local law enforcement agencies to use in prosecutions of federal law; and has established and maintained working and trusting relationships with the Federal Judiciary, key Federal, state and local enforcement personnel, the Public Defender's Office, the Federal Bar practitioners, and civic leaders. Replacing experienced executives that a President has initially appointed with someone new to the job in such a delicate, sensitive and demanding position as a United States Attorney, unless there is dereliction of duty, is not a good exercise administrative discretion and shows that the President has been poorly counseled on the demanding roles of a United States Attorney and the need to keep

experienced executive officers continuing in that office. The better executive decision would be to encourage these experienced chief Federal law enforcement officer executives to stay on until the end of the President's term(s). Firing performing United States Attorneys does not foster the tradition of public service to the end of an administration.

In regard to Part 2 of Question #2:

The United States Attorneys are periodically evaluated pursuant to a thorough standardized process from the Executive Office of United States Attorneys and the Department of Justice. United States Attorneys who are advised of deficiencies in their performance and are unable or unwilling to correct the deficiencies in a reasonable time period, depending on the seriousness of the deficiencies and derelictions, could be recommended to the President for removal from office at any time during or after the United States Attorney's four year term. No additional procedures should be required other than a fair, overall, independent, written evaluation of the United States Attorney's performance and his or her ability to respond in writing to adverse written criticisms. Due to the separation of powers doctrine, the President should have a very wide latitude to make decisions to terminate the service of senior executives in President's administration.

ANSWERS TO POST-HEARING QUESTIONS FROM DANIEL BOGDEN, FORMER UNITED STATES ATTORNEY FOR THE DISTRICT OF NEVADA

QUESTIONS FROM SUBCOMMITTEE CHAIR LINDA SANCHEZ
FOR DANIEL BOGDEN

1. Please describe any conversations you had with officials at the Department of Justice relating to your termination as U.S. Attorney that occurred after the notification you received on December 7, 2006. Your description of each conversation should include, but is not limited to, who initiated each call, who participated, and what was said by whom. In addition, if you discussed any of these calls with any of the other former U.S. Attorneys who testified at the hearing, please describe any of these conversations.

I received a telephone call from EOUSA Director Michael Battle on Thursday morning, December 7, 2006. The call from Director Battle was fairly brief and in that telephone call Director Battle informed me that I served as a Presidential appointee and that it was time for me to step down. The only participant in the telephone call was Director Battle. He had few other details about the reason for the call other then to note that we all serve at the pleasure of the President. When pressed on the decision, he alluded to the fact that the decision had been made by "higher ups" and that he had not been privy to the reason for the request. When I pressed him on the decision, he stated that they wanted my office to move in another direction but could give few details as to what that direction was, who or why. I asked him who I could talk to about the request and to learn more about why the decision had been made concerning me and he stated, he had thought about who he would speak to if he had received such a call and told me he would try calling the Deputy Attorney General (DAG), Paul McNulty.

I attempted to contact the DAG's office but was unable to reach DAG McNulty that day but left a message that I would like to speak with him. Later that day (December 7, 2006), I reached out to and attempted to contact acting Associate Attorney General (AAG) William Mercer. AAG Mercer, like DAG McNulty and I, had all served as United States Attorneys under Attorney General John Ashcroft and had been part of the group of United States Attorneys sworn in as USAs in 2001. I called acting Associate Attorney General Mercer and had a lengthy conversation with him. The only participant in the telephone call was AAG Mercer. I told him that I did not know any reason for the decision, why it had occurred to me and felt it was a disappointing and bad decision. I told him that our office had made great strides from where we were when I took over the office as United States Attorney and where, due to our management and leadership, our office now was in terms of work, case productivity, effectiveness, office morale and many of the topics that were necessary in considering a well-run, effective and efficient office. I told him that I, and my management staff, had "righted the ship" after the previous administration's management concerns and issues that I had inherited and was moving the office forward effectively and in a positive manner despite severe budget and manning shortages. I detailed for him a number of major problems in our office that I had inherited and was able to successfully work through. AAG Mercer explained to me words to the effect that the administration had a short two-year window of opportunity to put an individual into my United States Attorney's position in order to have the experience of serving as United States Attorney, have that title and experience on his or her resume so the Republican party would have more future candidates for the Federal bench and future political positions. Serving as a Presidential appointee, I knew the prospects that I could be replaced and that replacement could be done for

no reason whatsoever or for such a reason. I had come to accept that and could accept the fact that after 5 ½ years of outstanding service I was being replaced solely to open up my position for another individual without any cause for my removal. I was very disappointed by the decision though and did not understand why I had been chosen. At that point, I did not know there were others who had received the same telephone call and initially thought I was the only person that had received such a call to step down. In speaking further with AAG Mercer, he seemed to distance himself from the decision process and stated that he had been outside the loop in the decision process and reasons for it. AAG Mercer asked if I had reached out to and spoken with DAG McNulty about what had occurred. I told AAG Mercer I had called DAG McNulty's office but had not yet spoken with him. He recommended that I do so.

I ended up speaking with Deputy Attorney General Paul McNulty concerning this matter. I am uncertain as to who initiated that particular telephone call, although I had attempted previously to contact DAG McNulty about this matter. The only participant in the telephone call was DAG McNulty. Our telephone conversation was relatively short as DAG McNulty had to attend a recital or some family event that evening with one of his children. In the telephone conversation, he alluded to the fact that the decision had come from "higher up"and he made reference to the fact that although he had some input as DAG in the decision process, it seemed to me from his comments that the ultimate decision did not come from him. He stated words to the effect that although he was present during the decision process, he only had "limited input" in the final decision process. I did specifically ask DAG McNulty during that telephone conversation if the call requesting me to step down had ". . . anything to do with my performance or the performance of my office." His response to me was — ". . . that did not enter into the equation." I was given no more specifics, details or information from DAG McNulty as to the reasons for the decision. Due to his having to be somewhere that evening, we ended the conversation. It was a cordial conversation and he stated that he had no problem with me calling him back to discuss the matter further. I have had no further conversations with DAG McNulty on this matter but did speak further with his chief of staff, Michael Elston, EOUSA Director Michael Battle and acting Associate Attorney General William Mercer about this matter.

I had a couple more conversations with EOUSA Director Battle following our initial conversation. I initially spoke with him about the January 31, 2007 resignation date as we had a number of pressing matters coming up in the office such as our 2007 EARS evaluation and I requested additional time before stepping down so I could attempt to smoothly transition our office. In addition to the upcoming EARS evaluation, we had a number of important cases, trials, personnel and budget issues pending that needed management decisions and attention. I requested additional time and consideration before stepping down to address these critical issues. I attempted to address these issues in telephone conversations with Director Battle, AAG Mercer and later with Michael Elston. I remember calling on one occasion and making inquiry of Director Battle as to whether my performance, any issues involving my office or anything my USAO was doing caused any problems or concerns at EOUSA or with the Department. Director Battle informed me that he – often hears issues about various districts or offices – but that he had not received any negative comments, complaints or concerns about me, my performance or my office and had only heard positive information about my office. I remember being called by Director Battle on another occasion and him making inquiry of me of my interest in taking a

position as an Immigration Law Judge. That telephone call was from Director Battle and he was the only participant in the telephone call. After a short discussion with Director Battle, I informed him that I was not interested in such a position.

I had further conversations with AAG Mercer about the January 31, 2007 resignation date as we had a number of matters coming up in the office such as our 2007 EARS evaluation and I requested additional time so I could attempt a smooth transition of our office. AAG Mercer addressed the possibility of other positions for me in the Department of Justice and also addressed the prospects and potential of my being an Immigration Law Judge. Since we were moving toward the Christmas holiday, ultimately AAG Mercer recommended that I consider my future plans over the Christmas holiday and then discuss the matter further with him after the first of the year. I spoke again with AAG Mercer after the Christmas holiday about an extension of the initially requested resignation date of January 31, 2007, our office's upcoming EARS evaluation and future employment prospects. At that point, I was referred to the DAG's chief of staff, Michael Elston, for any further conversations. From that point on, my contacts with the Department of Justice concerning this matter went through, almost exclusively, Mr. Elston. I had a number of telephone conversations with Mr. Elston. They consisted mostly of my attempts to get an extension of the date to announce my resignation and when that date would become effective, i.e. getting an extension beyond the original January 31, 2007 date. We also had conversations addressing public disclosures concerning my resignation, press articles and responses and my frustration with release of information concerning my departure which prompted me to prematurely announce and submit my resignation on January 17, 2007.

As to the above conversations, I recall having limited conversations with some of the other United States Attorneys who testified at the hearing concerning the above information.

2. Outside of the Evaluation and Review Staff reports, please describe any awards, commendations, or other performance-related assessments that you received during your tenure as United States Attorney for the District of Nevada.

The major performance-related assessment for the United States Attorney for the District of Nevada is the Evaluation and Review Staff (EARS) report. During my tenure as United States Attorney, our initial EARS evaluation was conducted March 3-7, 2003 with the on-site legal management and administrative evaluation of the United States Attorney's Office for the District of Nevada. The completion of the evaluation process is noted in a August 4, 2004 correspondence from EOUSA Assistant Director Christopher K. Barnes. That correspondence included the Final Report of the Evaluation of our United States Attorney's Office and incorporates the United States Attorney's response to the draft evaluation reports and all actions taken by our office through the time of the follow-up visit, which occurred on October 28, 2003. It should be noted that the USAO, District of Nevada had been set for its next EARS evaluation on March 12-March 16, 2007. We had already begun putting together our written submissions and reviews and making preparations for that upcoming EARS evaluation. Due to the resignation request on December 7, 2006, I sought a continuation of the dates of that EARS evaluation. Since it appeared likely after that telephone call that a new management team/staff

would be put in my place, the continuance of the EARS evaluation would allow whoever was named as my replacement an opportunity to review matters prior to the EARS evaluation. During my tenure as United States Attorney, we had numerous reporting requirements concerning a number of priorities and programs. During the administration of AG John Ashcroft for instance, we had a specific performance report that we had to complete and submit to EOUSA concerning the work accomplished and priorities addressed in the previous calendar year. As I recall, that yearly office performance report process ceased and was not a requirement of the USAOs after calendar year 2004. Unfortunately, I currently do not have access to all letters, awards and commendations received by my office during my tenure as United States Attorney. I would note I did receive and have retained other correspondence from EOUSA concerning performance-related assessments of my office. On June 6, 2005, I received a 2-page letter dated and signed June 3, 2005, from then EOUSA Director Mary Beth Buchanan concerning the performance of my office. The letter is quite favorable and indicates, among other favorable comments, that ". . the District of Nevada has effectively dedicated its resources to advocate and implement the Department's National Priorities." The letter pretty much speaks for itself about our efforts, high quality of work from our personnel, dedication and outstanding accomplishments. On February 9, 2007, I also received a 1-page letter dated and signed February 6, 2007, from EOUSA Director Michael Battle, in appreciation for my efforts and devotion to duty in applauding those offices who implemented cost savings measures despite the acute ". . . hardships that these reductions imposed on you and your staff given how difficult things were last year."

3. An e-mail exchange from Brent Ward, Director of the Department of Justice Obscenity Prosecution Task Force, to Kyle Sampson, Attorney General Chief of Staff, on September 20, 2006 references your "unwillingness" to prosecute obscenity cases. Please respond to this.

That simply was not the case. I was never unwilling to prosecute obscenity cases or unwilling to implement any Department of Justice priorities. Rather, we simply did not have available attorney resources at that time to drop other priorities and pending cases to pursue a single, seemingly non-significant target in a matter that was still in the early investigatory stages, had not been fully investigated and still needed substantial work. As for our "willingness" to prosecute obscenity cases, on July 8, 2005, our office submitted its Child Exploitation and Obscenity Initiative for the United States Attorney's Office for the District of Nevada to EOUSA. That eleven page submission addressed in detail our Child Exploitation and Obscenity Initiative and gave specific details concerning our implementation of the initiative, case prosecution numbers, significant prosecutions, current USAO case numbers, previous historical obscenity prosecutions in the District of Nevada, challenges facing the district in investigating and prosecuting obscenity and steps taken to overcome those challenges. Despite manning and budget shortages, our prosecution statistics showed a substantial increase in the prosecution of child exploitation/obscenity cases from 3 cases in calendar year 2000 to 31 prosecutions in 2003, 35 prosecutions in 2004 and 33 prosecutions in 2005.

As to Mr. Ward's e-mails, it is interesting to note the timing and language in those particular e-mails. Concerning this issue, I would direct your attention to a good investigative report concerning the adult obscenity issue, the released Ward e-mails and the prosecution of such cases in the Districts of Arizona and Nevada. That article can be found at: http://www.salon.com/news/feature/2007/04/19/DOJ_obscenity/

The facts show that Brent Ward made an appointment with me to discuss the first and only adult obscenity case in my district that he wanted us to consider for possible prosecution. It should be noted that this was the only investigation of adult obscenity being worked in my district. The case involved a single, seemingly non-significant target. That meeting was scheduled for September 6, 2006. On August 28, 2006, prior to that meeting and even before I had met Mr. Ward or been presented his case, it appears from the e-mails that he had sent an e-mail to DOJ complaining that I would be "providing lame excuses" for not doing the case and was a "defiant USA . ." (bate stamp DAG 000507-000509). The e-mails released by DOJ include an e-mail from me to Mr. Ward dated August 29, 2006 (bate stamp DAG 000508) which notes the time for the meeting and addresses our office manning concerns. The meeting occurred on September 6, 2006 and included a number of individuals in attendance as noted in the e-mails. Prior to the meeting, I briefed Mr. Ward on our difficult manning situation – being down 8 criminal AUSAs and our noteworthy upcoming trials, i.e. Hells Angels I, II, III, IV, V and possibly VI; USA v. Lance Malone; Doctors/Lawyers case and our 2 upcoming, statewide initiative conferences – our Statewide Terrorism conference and our Statewide Gang Summit/PSN conference, all 3 DOJ priorities, as well as the take-down of criminal cases from our Katrina Task Force, another DOJ priority. We then met with members of the task force concerning the adult obscenity case that was being investigated by Ward's obscenity prosecution task force. It was obvious from the presentation that the case still needed much work. It was not by any means -- "a good, adult obscenity case" at that point. We agreed after the September 6, 2006 meeting to discuss the matter further. I did not decline to prosecute the case at that point. Since I had a prosecutor scheduled to attend the national obscenity conference at the NAC, I agreed to address the matter further with Mr. Ward following that conference and my discussions with my attorney who would be attending the conference. Mr. Ward agreed. I felt that additional time would give me an opportunity to attempt to further juggle our resources and attempt to find some resources to assign to the case. The obscenity conference was set for early October, 2006. It appears, however, that despite assurances from Mr. Ward to discuss the matter further, on September 20, 2006, he sent the e-mail to Kyle Sampson. I was not aware that such an e-mail had been sent. The first I saw and became aware of the e-mail or any of the alleged concerns of Mr. Ward was when I reviewed the e-mail as part of the DOJ document release pursuant to the request for documents by this House Judiciary committee.

I did end up discussing the adult obscenity matter further with Mr. Ward following the national obscenity conference. I had been briefed on that conference by my Reno Deputy Chief who had attended the conference as our Nevada representative. In October, 2006, Mr. Ward contacted me about the one adult obscenity case that we had discussed at the September 6, 2006 meeting. Since we still had a number of critical manning issues in our office, I addressed a number of alternatives with Mr. Ward concerning the prosecution of that obscenity case. I offered him and any of his obscenity task force attorneys space in my office, grand jury time and our assistance so

that his task force prosecutors could bring the case in my district. Mr. Ward rejected that alternative as well as my suggestion to seek another location for the prosecution of the case. Ultimately, Mr. Ward agreed to allow me until after the first of the year to address the case. Our office had hired two new AUSAs - Jeffrey Tao and Michael Chu - who we hoped to have both cleared and on-board in our Las Vegas office after the first of the year. With the hiring of those two individuals, the return of one AUSA who was on an overseas detail and the resolution of a matter involving another of our criminal AUSAs, it was my hope that I would have more resources available to attempt to address the matter after the first of the year. Mr. Ward agreed to that as a good resolution of this matter. As the above illustrates, I was not "unwilling" to prosecute obscenity cases. I attempted to work with Mr. Ward and his obscenity prosecution task force to address the one obscenity case that they were working in my district. Our resources were way down in that September - October time frame and we had an extraordinary number of major prosecutions, projects and DOJ priority initiatives being worked at that time. I was neither defiant nor offering lousy excuses, just managing my office as best as possible through some very challenging times due to our recurrent budget and manning shortfalls.

4. Are you aware of any efforts to politicize the Department of Justice with respect to its personnel decisions? If so, please explain.

To my personal knowledge, I was not made aware of any efforts to politicize the Department of Justice with respect to its personnel decisions. However, as events unfold, as testimony is given and more documentation and information is released concerning the firing of the eight United States Attorneys, I am at a loss as to why I, as well as several of the others, were asked to resign our positions as United States Attorney. In reviewing the information, I am unable to determine any clear justification or reason for the request that I step down as United States Attorney. Further, the testimony of Attorney General Alberto Gonzales and some of the disclosed information from the interviews of several Justice Department officials, including the testimony of Kyle Sampson before the Senate Judiciary committee, have offered no reasonable, believable explanation for the request and only offered a number of contradictions. As such, I am unable to rule out the possibility that the telephone call I received on December 7, 2006 asking for my resignation may have been due, in part, to an effort to politicize the Department of Justice.

5. Do you know if any representative of any target of your office's investigations or prosecutions complained to either main Justice or the White House?

Not that I have any direct knowledge of, have been told about or have been so informed. Personally, I know of no such complaints nor have I been informed of any such complaints being made to either main Justice or the White House. In the past few months, however, as this investigation has unfolded, there has been growing speculation in that regard. My review of DOJ e-mails, correspondence and other information as well as viewing the testimony of Attorney General Alberto Gonzales and Kyle Sampson before the Senate Judiciary committee has not afforded me any plausible explanation or justification for the telephone call I received on December 7, 2006 seeking my resignation. There have been a number of articles, theories and

speculation advanced in the media concerning the USA firings. One of the noteworthy articles of interest pertaining to my situation was an article that recently appeared in the Las Vegas Review Journal on April 1, 2007 written by political analyst Erin Neff. The article is entitled "ERIN NEFF: For it's one, two, three strikes you're out at the Rove ball game". Without any comment on the accuracy of the article and solely for purposes of completeness, I have included the entirety of that article below.

ERIN NEFF: For It's One, Two, Three Strikes You're Out At The Rove Ball Game".
Las Vegas Review Journal, April 1, 2007

Most of the eight U.S. attorneys fired by the Bush administration had a history of either not doing what the GOP wanted or going after a Republican too hard. So far, the only evidence to emerge from Justice Department e-mails is the suggestion that Nevada's Daniel Bogden didn't take a porn case seriously enough. Not only do the e-mails suggest a frantic attempt to justify his firing, they open the door for speculation that Bogden was in the cross hairs for political reasons.

Three cases Bogden's office handled in 2006 -- during the heart of the election cycle -- likely landed on Karl Rove's desk in the White House as the administration closely followed any potential swing in congressional races. And Bogden's firing wouldn't just serve as a vengeful postscript. It would also set the stage for what we have already seen to be Rove's next mission -- securing the presidency and protecting targeted Republican House members in 2008.

Nevada's Jon Porter is one of those targets. That's why he received a seat on the budget-writing Ways and Means Committee, and that's why Rove has already put him on the "priority defense" list. In 2006, Porter had the toughest of his three successful 3rd Congressional District campaigns, narrowly defeating Democrat Tessa Hafen. In late October, just days before the general election, Nevada Democratic Party Chairman Tom Collins wrote to Bogden, asking him to open an investigation into Porter's alleged use of office phones to make campaign fundraising calls. Bogden could have sat on it until after the election. Instead, the Bush appointee promptly forwarded the letter to the FBI to investigate the claims. Local media focused on the case as voters were already casting early ballots. It wasn't until after the election that the FBI decided not to proceed with the investigation.

Call this case strike one against Bogden.

In February 2006, Bogden's office indicted a Reno radio talk show host on charges he conspired with his son to grow and distribute thousands of pounds of marijuana and launder the sales money through his business. The case against Walter "Eddie" Floyd had an unusual political connection. One of the cars seized in the case belonged to Nevada Secretary of State Dean Heller, a Republican who was running for the state's open 2nd Congressional District seat. Heller had appeared frequently on Floyd's show, "Nevada and America Matters," and considered him a friend. It didn't help matters that Floyd was a convicted sex offender, who -- it later turned out -- had failed to register in Nevada.

When news of Floyd's indictment reached Washington, the Democratic Congressional Campaign Committee seized upon it as a chance for Nevada Regent Jill Derby to make up ground on Heller in the heavily Republican district. "The company you keep says a lot about a person, and Heller's ties to a convicted sex offender and drug trafficker speaks volumes," DCCC spokesman Bill Burton said at the time. Derby really had no business thinking she could win the 2nd District because registered Republicans outnumbered Democrats by 49,000. But she still came within spitting range -- Heller won by 5 percentage points -- and won some Republican strongholds in the process. It should be noted that both Heller's and Porter's campaigns were run by November Inc., a firm founded by consultant Mike Slanker, who chaired Bush's 2004 re-election campaign in Nevada. Slanker also earned "Pioneer" status, raising at least $100,000 for the campaign. He is now political director of the National Republican Senate Committee, which is chaired by Nevada Sen. John Ensign. On Friday, Floyd was sentenced to four years in prison and three years of supervised release.

Call the Floyd case strike two.

In September 2006, Bogden's office indicted a Reno doctor on charges that he distributed smuggled and unapproved human growth hormone from Israel to an undercover agent who claimed he wanted to look younger. The details of the case are pretty juicy in the medical community, because Dr. James Forsythe was called "one of the five most serious physician offenders known in the state of Nevada" by a state medical board investigator. But the political details are even juicier as they apply to Bogden's firing. Forsythe is the husband of Earlene Forsythe, who chaired the Nevada Republican Party during Bush's 2004 election. He is also the father of Lisa Marie Wark, wife of Republican political consultant Steve Wark.

Earlene Forsythe was well-known to Rove. Back in May 2005 when Sen. Harry Reid called Bush a "loser," she went on the offensive, saying Reid's comments had "stirred the anger of Republicans across the country and here in Nevada." But the anti-Reid bona fides don't end there. Steve Wark managed Richard Ziser's campaign against Reid in 2004, when the White House had hoped a top-tier Republican candidate could "Daschle" Reid's career. Wark also has Bush credentials. In 2004, he established Choices for America, which solicited cash from Republicans to help third-party candidate Ralph Nader qualify for the ballot in states nationwide. His e-mail solicitations suggested he needed to raise $30,000 to qualify Nader for Nevada's ballot. Wark had said in previous interviews that he thought Nader would make the difference for Bush in Nevada. "I didn't do it for my own health," Wark said at the time.

The Forsythe case, scheduled for an April trial, just might have been strike three.

Bogden is searching his mind to figure out what did him in. He thinks being asked to step down for no reason so Bush could install a new Nevada prosecutor is "political." "I'm not going to speculate," Bogden said of the Floyd, Forsythe and Porter cases. "There's lots of different things mulling through my mind. I really can't venture a guess." When I asked him about Floyd and Forsythe, Bogden mentioned the Collins letter about Porter. "I've got some others, too, but I'm not going to speculate," Bogden said. Ensign believes the obscenity case, which Bogden said he didn't have the resources to pursue, is the reason for Bogden's firing. And while the senator has

been critical of the Justice Department, he hasn't called for Attorney General Alberto Gonzales to resign. Ensign has met with Gonzales and Bush about the Bogden firing and said that while he had hoped Bogden could be reinstated, he is pleased the administration is working to find Bogden a new job. Additionally, Ensign said he's been promised more resources for the Nevada office and said Justice officials have pledged to change the system used to evaluate U.S. attorneys. Ensign doesn't buy my three-strikes theory. "It's just a conspiracy, that's all it is -- a fantasy," he said. "I'm in the high 90s that this was just gross incompetence." Stranger fantasies have occurred in this political league. Although Ensign is using an approval rating barometer, Bogden may well have been sunk by his political batting average.

6. During your tenure, were you ever contacted by the Administration, a member of Congress, or congressional staff about any of your office's investigations or prosecutions? If so, please describe those contacts.

None that I am currently aware of or have been made aware of by others. Personally, I was not contacted by the Administration, a member of Congress, or congressional staff about any of my office's investigations or prosecutions.

7. Why should United States Attorneys be able to exercise some degree of independent judgment with regard to particular prosecutions or priorities?

Realistically, each district has its own set of priorities, issues and challenges. One size definitely does not fit all when it comes to priorities and effectively managing a United States Attorneys Office in addressing all the critical law enforcement issues confronting any specific district and that particular United States Attorneys Office. The United States Attorney in each district is the one individual who is most aware of what is going on in his or her district, what needs to be done in that district, best knows his or her district, all available resources and what it takes to be effective in that particular district – be it prosecutions or priorities. Independent judgment is essential to ensure that the United States Attorney and his or her office is best able to do its job and do that job most effectively. That is due to the fact that of all individuals, the United States Attorney in a district knows that district best. Available resources and manning are definitely limited while crime and hot button community issues are not limited. What may be the most important issue in Washington D.C. may not be the most important issue in the district. Therefore, although each United States Attorney has a set of national priorities that need to be followed, in order to maximize effectiveness, needs independence to establish the priorities for that particular district based upon his or her knowledge of that district, the office, its law enforcement partners and all other issues confronting the district. That independent judgment and ability to set appropriate priorities is critical. No one knows better what is going on in a district than the United States Attorney, the needs of that district and its priorities. As to independent judgment with regards to particular prosecutions, although United States Attorneys are political appointees, as are federal judges, once in office they must have an overriding responsibility to justice in individual cases and need to pursue justice without fear of retribution

from political operatives of any administration. Such independent judgment is a necessity to the ultimate working and fairness of our justice system.

8. When a highly respected United States Attorney is abruptly and without explanation removed, what impact does that have on other United States Attorneys and the Assistant U.S. Attorneys in that office?

I think the impact on the offices should be obvious. However, right now I would think the investigation of this matter would be the best vehicle to address the impact of such abrupt and unjustified removals. Other United States Attorneys and Assistant United States Attorneys could best address the impact these removals have had on their offices. I am not sure if senior officials at the Department of Justice would have an accurate feel or be able to give an accurate assessment of what is occurring in the USAOs in such locations as Arizona, Southern District of California, Northern District of California, Western District of Washington, Nevada, New Mexico, Arkansas and Western District of Michigan. Such an abrupt removal without explanation can have a chilling effect on prosecutions and the work of other United States Attorneys. If each believe their positions may be at risk due solely to the types of cases they are pursuing or the perceived results, the removals may have a chilling effect on cases being emphasized and prosecuted in any district. As for the Assistant U.S. Attorneys in such an office, it undoubtedly has to have an impact on the morale in the office and quite possibly the productivity of such an office. When I was an AUSA, our district went through four consecutive acting United States Attorneys before we finally had a full-time, confirmed United States Attorney serving our district. I know first-hand from that lengthy experience the major effect and negative impact that not having a confirmed USA in our district had on our office. The impact and effects were extremely negative and long-term.

9. Did you ever receive a warning from the Justice Department that your office's priorities would result in you being asked to resign?

No. I never received any such warning nor was I ever given any indication whatsoever that I was not following all Department of Justice priorities. In fact, I thought I had effectively addressed all stated Department of Justice priorities and still believe that I was following all Department of Justice priorities in our programs and office work. That is why the December 7, 2006 telephone call came as such a shock to me. I, as well as my office, were following all of the Department of Justice's priorities and excelled at doing so. As noted below, our terrorism, violent crime, PSN, PSC, gang and drug programs were outstanding, highly regarded and effective initiatives in our district and throughout our district communities. Despite the manning and budget shortages, we still were able to find a way to follow all the many Department priorities and effectively get the job done in our office on behalf of the Department of Justice.

This was best illustrated in a letter that I sent out to my office as well as all of our Nevada law enforcement partners. The letter was sent after I announced my resignation and points out some

significant cases and numbers concerning our national and district priorities. The letter was sent out February 26, 2007 and states the following:

I wanted to take a moment to thank you and your agency for all the assistance, cooperation and the partnership we have enjoyed over the last 5 1/2 years. It has been my honor to serve as United States Attorney and my pleasure to have had the opportunity to work with you and your agency in keeping our citizens safe and making a difference in our communities and throughout the state. I have always felt that we work best when we all work together and you and your agency have exemplified that spirit of cooperation and teamwork. For that, the employees of my office and I will always be grateful.

We have achieved much and I owe a great deal of gratitude to you and your agency for all the things that have been done to allow us to achieve. During the past 5 ½ years, your agency and our office have much to be proud of. Despite a rapidly growing population, budget cuts and manning shortages — what we have done together and been able to achieve together is truly remarkable and a tribute to all for everyone's commitment, dedication and work ethic. First and foremost, we have kept our nation, state and communities safe from terrorist attack – # 1 on the list of national and district priorities. As for guns, violent crime and gangs, our PSN program has consistently been deemed one of the very best in the nation as we have arrested and prosecuted a record number of defendants for gun crimes and gun-related offenses. We have taken firearms out of the hands of felons and put those recidivist offenders behind bars. Our dogged pursuit, investigation and prosecution of violent gang members has made our streets safer. In the area of drug offenses, in that 5+ year period, our office has prosecuted more drug offenders and cases than ever before. Likewise for child exploitation cases/sexual predators – more sexual predators have been prosecuted and imprisoned by our office than in any previous 5-year period. The prosecution of crimes in Indian Country as well as our prosecution of identity theft crimes has also reached a high during that 5-year period. The list of crimes goes on that we have successfully targeted with investigations and prosecutions concerning crime problems and challenges facing our communities.

Our pursuit of public corruption has been extremely effective, had a lasting impact, and best of all – is ongoing. We have effectively, efficiently and successfully covered all of our national and district priorities despite being understaffed and under-budgeted. More notable highlights include our successful prosecutions of several Clark County Commissioners, Rolling 60's and other gang members, several of the Hells Angels, the owner and employees of the Crazy Horse Too, Armstrong, et.al., Wilkie et al., Harley Harmon, Irwin Schiff, Eddie Floyd, Michael Kranovich, Michael Burns, David Whittemore, Heather Tallchief, Gary Wexler, Dr. Nick Nguyen, Greg Carter, Reverend Willie Davis and many more defendants and criminal organizations. We prosecuted and convicted over 50 defendants for identity theft in Operation Speed Trap, and our OCDETF and HIDTA programs have resulted in the successful prosecution of hundreds of individuals for drug offenses. Most importantly, we have numerous significant prosecutions in the works. A visit to the U.S. Attorney's website www.usdoj.gov/usao/nv/ demonstrates the many high-level cases and defendants we have successfully prosecuted over the past 5 1/2 years.

Since our mission is multi-faceted, our work does not just include cases successfully prosecuted by our Criminal Division. Consider the outstanding work of our Civil Division, Appellate Division, Asset Forfeiture Sections and Financial Litigation Unit. The AUSAs in the Civil Division have successfully defended the United States and its agencies in hundreds of cases, to include DOT's efforts to widen U.S. Highway 95, defense verdicts in a multi-million dollar malpractice actions, successful defense of several Title 7 employment litigation cases and the successful resolution of the Elko County/Jarbidge dispute. The Civil Division has increased its filing of affirmative civil cases recovering substantial sums of money. The Civil Division's health care fraud enforcement unit is in the final stage of negotiating multi-million dollar settlements. As for the Asset Forfeiture Unit, from 2002 thru 2006, the unit forfeited and collected more than $35 million. Similarly, the FLU collected more than $ 22 million and opened more than 4,600 debts in the past 5 years. In 2006 alone, our office brought over 200 appellate cases to conclusion with a success rate of 84%. All numbers that we, as an office, have worked hard to achieve and are very proud of. I know as United States Attorney I was, am and always will be extremely proud of the many successes and achievements throughout our office.

As a law enforcement partner, you and your agency share in and are a major part of this success. It has been a wonderful ride and with you and your agency's assistance, it has been an extremely successful one. It has been my honor and pleasure to serve as United States Attorney and the time spent has given me a lasting list of memories, friends and colleagues. I wish you and your agency continued success and the very best in the future.

10. When you were notified by EOUSA Director Michael Battle that you were being asked to resign, did he give you any explanation why this was being done?

I received the telephone call from EOUSA Director Michael Battle on Thursday morning, December 7, 2006. The telephone conversation was fairly brief and in that telephone call, Director Battle informed me that I served as a Presidential appointee and that it was time for me to step down. He had few details about the reason for the call other than to note that we all serve at the pleasure of the President. When pressed on the decision, he stated that the decision had been made by others and that he had not been part of the decision-making process. When I pressed him further on the decision, he stated that they wanted my office to "move in another direction" but could not give details as to what that direction was or why. I asked him who I could talk to about the decision to learn more about why the decision had been made concerning me and he stated, he had thought about who he would speak to if he had received such a call and he would try calling the Deputy Attorney General Paul McNulty.

11. What effect, if any, did the Administration's annual budget cuts have on your office?

The annual budget cuts had a major negative impact and effect on our office. The budget cuts were a constant concern in the office and a major management challenge to our office being able to effectively do our mission. Despite an increasing office caseload and workload, the annual

budget cuts forced us to not fill personnel vacancies in order to make budget. Less manning in the office forces the staff to constantly and consistently attempt to do more with less. There is a limit to always functioning at that do more with less level. That may be a do-able task in the short term, however, attempting to continue to do more with less year after year has an impact and takes its toll not only on what the office is able to accomplish but also on morale, longevity and the ability to retain top performing employees. Also, as the case complexity level and prominence of prosecution targets increases, the cost of doing complex litigation also increases substantially. These are all issues that had to be constantly considered and addressed due to budget/manning challenges and annual budget cuts which had a negative impact and effect upon not only our office and staff but also on our law enforcement partners.

12. Did these budget cuts have a disproportionate effect on your office? If so, please explain why.

Yes, especially in Nevada. The population growth and statistics concerning the District of Nevada are astounding and ever increasing. For reference see the state demographer's website at http://www.nsbdc.org/what/data_statistics/demographer/. That is where official demographic statistics for the State of Nevada can be located. Further, some of the below statistics also come from the Las Vegas Convention and Visitor's Bureau site located at: http://www.lvcva.com/press/statistics-facts/index.jsp.

Some of these factors include the fact that Nevada is the fastest growing state or 2nd fastest growing state in the United States for the last 20 years. The current population is 2.6 million (as of end of calendar year 2006) - and is expected to grow to 4.4 million in next 20 years. Approximately 43 million tourists visit the State of Nevada per year including approximately 38 million tourists per year in Las Vegas, including 6 million convention delegates. Approximately 70 percent of the population of the state resides in the Clark County/Las Vegas area. The city of North Las Vegas is the second fastest growing city in the nation while the cities of Henderson, Las Vegas, and Reno are in top 50 fastest growing cities in the country. From a land mass perspective, Nevada is the 7th largest geographically sized state in the United States with 87% of the state being federally-managed which creates a number of land management and other enforcement issues to be addressed by the United States Attorneys Office. There also are 31 Indian tribes/reservations/colonies located in the state which creates a great number of Indian Country issues and enforcement challenges. Further, Nevada's Hispanic population grew by 44 percent from 2000 to 2005 and now makes up nearly a quarter of the state populace. These are just some of the unique issues faced by our United States Attorneys Office in the State of Nevada. All these factors and other factors considered, our district was budget short and down approximately 15 % of our staff due to being forced to maintain vacancies due to budget shortfalls and constraints. We were supposed to have 45 AUSA Full Time Equivalent (FTE) and only had about 39 AUSAs thereby being forced to keep 6 positions vacant to continue operating our budget in the black. Due to the size and workload of the district, we maintained and fully staffed two offices – one in Las Vegas and one in Reno – in order to cover all our federal courts in Las Vegas and Reno and to effectively address the criminal, civil, administrative and appellate workload throughout the State of Nevada.

13. What effect did these budget cuts and lack of personnel have on the ability of your office to meet the Justice Department's myriad priorities?

It continually created management challenges for an understaffed and undermanned office attempting to address increasing crime problems and issues throughout a very large district with an exploding population growth. As noted above (question 9), we felt we were meeting the Justice Department's myriad priorities but it was with great difficulty, capable management and much work effort.

14. Did your office request additional resources from the Attorney General? If yes, were your requests granted or denied? If denied, were you told why?

Yes, we consistently requested additional resources from EOUSA and the Attorney General. Due, however, to the budget difficulties experienced throughout the Department of Justice, we were well aware of the limitations on our receiving any additional manning, budget or resources. We were denied increases and additional resources due to the budget predicament being confronted throughout the Department of Justice and United States Attorneys community. We knew in FY 2005 and FY 2006, that we were going to have to "beg, borrow and steal" just to be able to make budget. When vacancies occurred, due to budget shortages and constraints, we were not able to fill positions. On March 31, 2006, when Attorney General Gonzales personally visited our Las Vegas office, he was specifically asked about our allotted FTE manning, vacancies and actual filled positions and our prospects of filling our vacancies. AG Gonzales let me know that due to our budget concerns, we would not be getting any additional resources or be given additional budget to fill our vacant FTE positions.

15. Did your office experience any hiring freezes during your tenure?

Not per se hiring freezes. Basically we did not have the appropriate budget to fill the needed positions so we were unable to hire. In the USAO, in order to hire a position, an office needs FTE (Full Time Equivalent) plus the necessary budget availability before a position can be hired and filled. In the case of the USAO, District of Nevada, we had justified and earned the FTE for our district but we did not have available budget in order to fill positions. Therefore, in calendar years 2005 and 2006, we were forced to maintain vacancies in order to make budget. For instance, for those calendar years, our FTE allowed us approximately 45 attorneys, however, due to the budget crisis, for most of that time period, we could only fill 39 attorney positions. In February 2007, our organizational chart for the USAO for the District of Nevada showed we had a total of 38 Assistant United States Attorneys in the office while our Full-Time Equivalent (FTE) should have been 45 Assistant United States Attorneys in the office.

16. How many Assistant United States Attorneys did your office have when you started and completed your tenure as United States Attorney?

In December 2001, our organizational chart for the USAO for the District of Nevada, showed we had 34 Assistant United States Attorneys in the office. In February 2007, our organizational chart for the USAO for the District of Nevada showed we had a total of 38 Assistant United States Attorneys in the office while our Full-Time Equivalent (FTE) should have been 45 Assistant United States Attorneys in the office. To be exact, our official FTE in February 2007 showed our district FTE allotment was 44.8 FTE plus 1 USA for a total of 45.8 FTE attorneys (rounded up to 46 FTE attorneys) and 43.72 FTE support staff (rounded up to 44 FTE support staff).

Questions for Daniel Bogden, Esq.

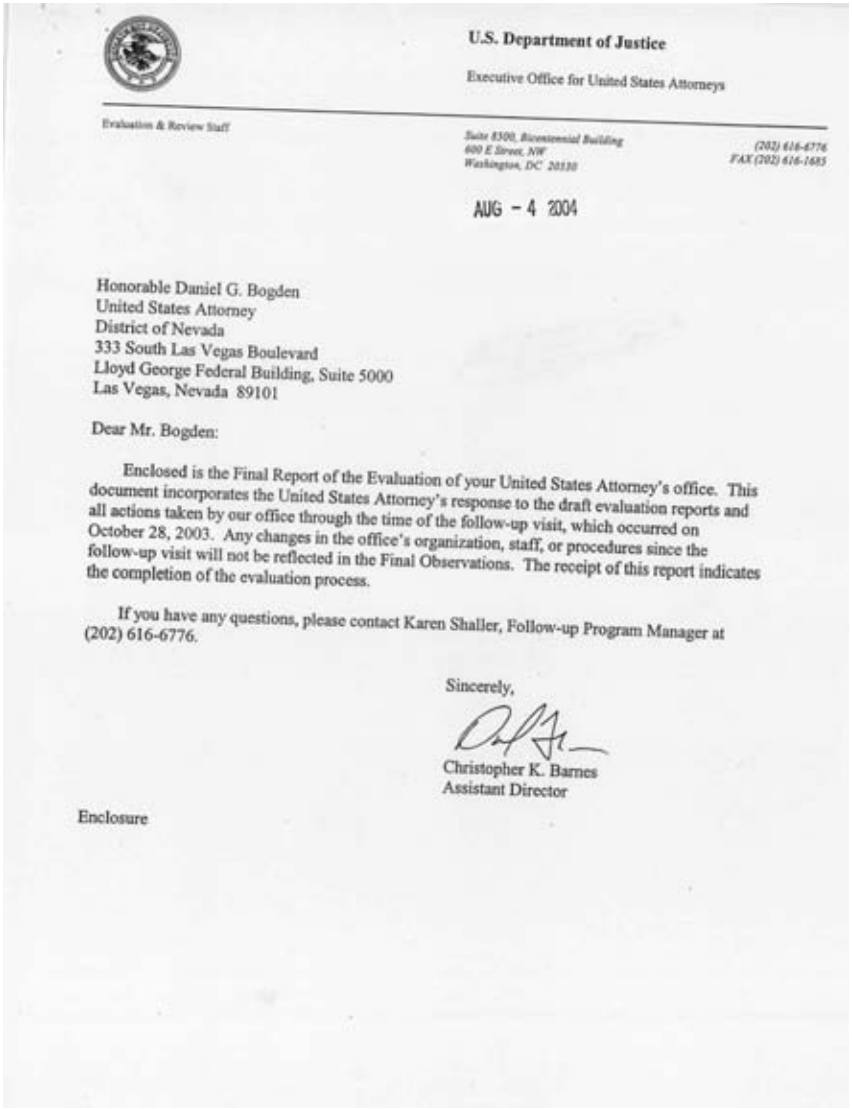
1. When you were a U.S. Attorney, did you understand that you served at the will of the President?

Yes.

2. Did you serve out the full, four year term of your appointment?

Yes.

LETTER FROM CHRISTOPHER K. BARNES TO DANIEL BOGDEN TRANSMITTING THE 2003 E.A.R. REPORT, SUBMITTED BY DANIEL BOGDEN, FORMER UNITED STATES ATTORNEY FOR THE DISTRICT OF NEVADA



U.S. Department of Justice

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AUG - 4 2004

Honorable Daniel G. Bogden
United States Attorney
District of Nevada
333 South Las Vegas Boulevard
Lloyd George Federal Building, Suite 5000
Las Vegas, Nevada 89101

Dear Mr. Bogden:

Enclosed is the Final Report of the Evaluation of your United States Attorney's office. This document incorporates the United States Attorney's response to the draft evaluation reports and all actions taken by our office through the time of the follow-up visit, which occurred on October 28, 2003. Any changes in the office's organization, staff, or procedures since the follow-up visit will not be reflected in the Final Observations. The receipt of this report indicates the completion of the evaluation process.

If you have any questions, please contact Karen Shaller, Follow-up Program Manager at (202) 616-6776.

Sincerely,

Christopher K. Barnes
Assistant Director

Enclosure

FINAL REPORT
DISTRICT OF NEVADA

Evaluation Conducted March 3-7, 2003

1.0 Introduction

During the week of March 3-7, 2003, an evaluation team conducted an on-site legal management and administrative evaluation of the United States Attorney's Office (USAO) for the District of Nevada. The Honorable Daniel G. Bogden was the United States Attorney at the time of the evaluation. The overall evaluation was very positive. The USAO was very responsive to the recommendations made in the evaluation draft reports. United States Attorney Bogden and his staff took the evaluation process very seriously and several improvements were made to the operations of the office.

United States Attorney Bogden and his supervisory Assistant United States Attorneys (AUSAs) were well respected by the USAO staff, the investigative and client agencies, and the judiciary. Relations with those agencies were excellent. The USAO enjoyed an excellent reputation and excellent relations with all levels of the judiciary. The senior management team appropriately managed the Department's criminal and civil priority programs and initiatives. The USAO's policies and practices were well suited to meet the District's crime problems. The Criminal and Civil Divisions were managed by experienced and well regarded supervisory AUSAs. The USAO's Criminal and Civil Divisions were staffed with a number of very competent and experienced AUSA and support staff personnel. The quantity of the USAO's workload was manageable and the quality of its workload was appropriate. The USAO's security practices were good overall.

The USAO's organizational structure, instituted in January 2003, appeared to be appropriate and effective.

2.0 United States Attorney and Management Team

United States Attorney Bogden was highly regarded by the federal judiciary, the law enforcement and civil client agencies, and the staff of the USAO. He was a capable leader of the USAO. He was actively involved in the day-to-day management of the USAO, had established an excellent management team, and had established appropriate USAO priority programs that support Department initiatives.

First AUSA Steven Myhre was an experienced attorney and was a highly regarded executive level supervisor. The USAO had an experienced senior management team that was dedicated to the effective management of the USAO.

The senior management team had established an appropriate Strategic Plan that ensured that Department initiatives are given priority within the USAO. The Strategic Plan had been fully implemented in the District. It outlined the mission, core values, strategic goals, and objectives of the USAO.

3.0 Case Management System and USA-5 Systems

The accuracy of the USAO case management system was continuing to improve. The criminal and civil supervisory AUSAs used LIONS and ALCATRAZ in varying degrees to monitor and manage caseloads. Centralized criminal intake, as well as the quarterly file reviews, had improved the accuracy of the LIONS and ALCATRAZ databases. The USA-5/5A information reported was generally accurate. A review indicated that not all firearms case work was fully captured, that child pornography/exploitation cases were often entered in the wrong category, and that some USA-5A subcategory casework was under reported. It was recommended that the USAO continue its efforts to fully utilize the USA-5/5A reporting system to ensure accurate reporting. This has been done. The information is now considered more accurate. More training has helped.

4.0 Management of Criminal Cases and Personnel

The Criminal Division had an effective management structure.

The supervisory AUSAs in the Criminal Division were well respected both inside and outside the office. They were experienced trial attorneys and competent managers, who worked well with the judiciary, the law enforcement agencies, and USAO personnel. They had extensive experience as criminal AUSAs and enjoyed an excellent reputation within the local legal community. The law enforcement representatives, judges, and the AUSAs they supervised, reported that the supervisory AUSAs are capable, motivated managers and good trial lawyers.

There were good lines of communication between all the supervisors, including upper management, as well as good communication by the Division and with the staff personnel in their respective units. The line AUSAs, with a few exceptions, reported that their supervisory AUSAs are supportive and helpful. They viewed their supervisors as significant resources. However, all of the Criminal Division supervisory AUSAs and the branch office managing AUSA carry full caseloads. As a result, the deputy chiefs were not sufficiently proactive with their mentoring and supervisory responsibilities. The less experienced AUSAs stressed their desire for more affirmative supervision and, in particular, mentoring. It was recommended that the USAO consider reducing the caseloads of the Deputy Chiefs thereby permitting more proactive supervision. This has been done. The caseloads for the Deputy Chiefs have been reduced. They are no longer assigned new cases unless the cases fall within the individual specialty area of the Deputy Chief. This reduction in caseload and the small group size allows the Deputy Chiefs to provide adequate supervision.

The Criminal Division AUSAs were experienced, professional, well motivated, and competent. All AUSAs were highly motivated and dedicated professionals. The law enforcement agencies, the defense bar, and the judiciary spoke very highly of the professionalism, competence, and hard work of the line AUSAs. With a couple of exceptions, morale among the Criminal Division AUSAs appeared to be very good. The Criminal Division support staff personnel were competent and professional. The morale among the Criminal Division support personnel in both the Las Vegas and Reno offices was very good.

With regard to the management of the USAO's criminal cases, it was recommended that the USAO update its Criminal Division Manual and prosecution guidelines. At the time of the follow-up evaluation, that was in the process of being done. A central intake system was adopted so the Criminal Chief could get a better idea of what cases were coming into the office. This centralized intake system has given management enhanced information about case generation by agencies, as well as a good running assessment of case assignment within the USAO. Case reviews were performed quarterly. The frequency and nature of these reviews were appropriate. The AUSAs appeared to be managing their caseloads effectively, most using the ALCATRAZ system. Supervisors used the ALCATRAZ system as part of their monitoring of the cases assigned to AUSAs under their supervision. Adequate procedures are in place to identify cases with asset forfeiture potential.

The USAO's non-grand jury investigative practices were efficient and well managed. The Criminal Division Manual contained a section on grand jury practice and procedure which was being updated. All cases received appropriate supervisory review before indictment. The USAO advised that every § 924(c) case was reviewed on a case-by-case basis to ensure compliance with Department policy concerning the filing or dismissal of such a charge. Overall, the USAO effectively managed its plea agreement, sentencing, and post-conviction practice.

The AUSAs' written work product is very good. A brief bank had recently been created that allows the AUSAs to obtain, by index and/or word search, briefs filed by this USAO and the filed briefs by the Southern District of California USAO. The Criminal Division supervisory AUSAs generally supervised the trial work of the newer AUSAs. Overall, the judiciary was very complimentary of the professionalism, courtroom demeanor, and skill exhibited by AUSAs.

Overall, the quantity, quality, and distribution of the USAO's criminal caseload appeared to be appropriate. The USAO's criminal caseload had continued to grow as the USAO had increased its emphasis on firearms and immigration cases. The substantial increase in firearms cases was a direct result of the USAO's revised Project Safe Neighborhoods (PSN) program, which had expanded the number of firearms cases considered and accepted by the office. This program is an undeniable success and has made a significant impact on violent crime in the District. The USAO reported that it was also continuing to cultivate complex cases. While there had been an increase in the number of less complex cases, such as immigration matters, those cases were being handled in a fashion that still permits attention to the more complex matters.

The USAO had made great efforts to establish an effective Anti-Terrorism Task Force), now called the Anti-Terrorism Advisory Council (ATAC), based on the unique characteristics, geographic and otherwise, of the District. The USAO's ATAC coordinator was a conduit for information sharing, training, and coordination between and among the federal, state, and local law enforcement agencies throughout the District. It was recommended that the USAO consider expanding its ATAC by incorporating other non-law enforcement constituencies into its ATAC. This has been done. The USAO advised that since the evaluation, it has improved its contacts with local non-law enforcement agencies and that its ATAC network of information now includes first responders, hospitals and emergency personnel, and utilities. The USAO had an extremely effective firearms initiative and had developed excellent partnerships with the federal, state, and local law enforcement agencies to advance this initiative. Although the number of Organized Crime Drug Enforcement Task Force (OCDETF) approved investigations had declined, the total number of drug prosecutions had remained relatively static over the past several years. It was also anticipated that the number of OCDETF cases would increase. The USAO's newly appointed OCDETF coordinator was a highly motivated and well-respected narcotics prosecutor who had quickly assumed a leadership role in this area. United States Attorney Bogden had recently assumed the chairmanship of the District's High Intensity Drug Trafficking Area (HIDTA) Executive Committee which breathed new life and direction into the HIDTA. The HIDTA Executive Committee meets more frequently now and it receives initiation briefings and regular statistical reports showing cases handled federally and those referred to local agencies. These efforts have resulted in greater coordination and focus, making both HIDTA and OCDETF more effective.

The USAO was properly addressing civil rights matters arising in the District and was appropriately addressing cybercrime and crimes against children. The USAO was also handling the increase of immigration and Southwest Border Initiative cases effectively.

Although the USAO was making a concerted effort to enhance its emphasis on Health Care Fraud (HCF), the criminal HCF initiative had not yet achieved its full potential. It was recommended that the USAO more actively assess the occurrence of criminal HCF violations in the District and then address the under-allocation of its specially allocated HCF assets. This was being addressed. The USAO's new HCF AUSA was growing into the position and the Health and Human Services Office of Inspector General was adding investigative resources to the District. It was also anticipated that the USAO's recent filling of its civil HCF AUSA position would bolster the USAO's criminal enforcement efforts.

The USAO's Law Enforcement Coordinating Committee (LECC) was functioning well. The USAO had conducted training in various areas in the last several years, including training in Anti-Terrorism, PSN, Public Lands, Asset Forfeiture, Public Corruption, and other substantive areas. The USAO was also very active in coordinating activities with several tribes through the Victim-Witness (VW) coordinators and the USAO's Indian Country Liaison. The USAO had also improved communication and coordination with the ATAC. This has helped build relationships and information sharing opportunities that have made a positive impact on the

LECC. There were four designated Weed and Seed sites in the District, located in Las Vegas and Reno. The USAO's LECC coordinator, who also served as the USAO's Public Affairs Officer (PAO), coordinated the USAO's involvement in the District's Weed and Seed program. Because of the multiple duties assigned to these jobs, the USAO reported that it plans to conduct an audit of the LECC/PAO's duties and responsibilities to determine whether reassignment of some of those responsibilities is necessary.

The USAO's VW Program was working effectively with the exception that the Reno branch office was not using the Victim Notification System (VNS). It was recommended that the USAO designate and train a person to use the VNS in the Reno office. The USAO reported that this has been done.

The USAO enjoyed excellent relations with federal, state, and local law enforcement agencies throughout the District.

5.0 Management of Civil Cases and Personnel

The management structure of the Civil Division was appropriate. The Civil Division had excellent relationships and communications with its client agencies. The First AUSA/Civil Chief was an experienced and capable manager who was well regarded by his staff. However, it was recommended that the USAO hire a full-time Civil Division Chief. It was felt that one person should not serve as both the First AUSA and the Civil Chief. The USAO advised at the time of the follow-up visit that it was in the process of trying to select a new full-time Civil Chief. The Civil Division AUSAs, as a group, were experienced civil litigators. They each had 12 or more years experience and demonstrated competency in handling the cases they are assigned. The Internal Revenue Service Special AUSA program for handling bankruptcy cases was successfully operating; however, it was recommended that the Civil Division Chief/First AUSA monitor the Special AUSA program to ensure compliance with Department and USAO policies and procedures in a manner that does not curtail its efficiency. This is being done. The Civil Division support staff, as a group, are experienced and competent.

The Civil Division AUSAs had access to and were aware of the various Department resources available to them such as the USAM, the Civil Resource Manual, USABook, and Westlaw. The Civil Division Manual was up-to-date. However, it was recommended that the Civil Division provide additional training for its AUSAs and support staff on the availability and use of all resources. This has been done. Generally, the methods of managing civil cases were appropriate and effective. The practice of the Civil Chief reviewing all written work product, after filing, and occasionally observing Civil Division AUSAs in court was appropriate, considering the level of experience and competency of the AUSAs. The quality of the civil work product was reported by the judiciary and client agencies as good.

The quality and quantity of the civil caseload was typical for a District of this size. However, the Civil Division workload was not equitably distributed and, consequently, the Civil Division AUSAs' productivity was not optimum. It was recommended that the First

AUSA/Civil Chief review his system of assigning cases to ensure an equitable distribution of cases among the Civil Division AUSAs. There were two Civil Division AUSA vacancies at the time of the evaluation: the Civil Chief position, and a civil HCF AUSA position. When these two vacancies are filled, the Civil Division will have an adequate number of AUSAs to support its mission.

The USAO's Affirmative Civil Enforcement (ACE) and civil HCF programs had not reached their full potential due to key personnel vacancies. Despite these vacancies, the Civil Division had a variety of high quality ACE investigations and cases in litigation. At the time of the follow-up visit, the USAO advised that the civil HCF position had been filled in early September 2003.

The USAO's Financial Litigation Unit (FLU) functioned well as a team. It appeared that the FLU needed more direction in prioritizing cases and managing high dollar debts and that the FLU paralegal should provide more day-to-day supervision. In response, the USAO advised that the FLU sets priorities in the management of its caseload, uses several methods of enforcing collection actions, and that the FLU paralegal regularly monitors and assigns work to the debt collection agents. Also, the FLU was not always notified of the entry of asset forfeiture payments. The Financial Litigation Program Manager conducted telephonic follow-up to this issue and was told that the FLU no longer experiences a problem with the receipt of sufficient documentation to reconcile forfeiture payments.

The USAO did not have a separate Appellate Section and the duties of the USAO's Appellate coordinator had not been clearly defined or communicated. The USAO's decentralization of appellate responsibility and supervision had resulted in inconsistent oversight of the appellate process, especially in the Criminal Division. Although the USAO had not experienced any adverse consequences to date as a result, it was recommended that the USAO consider centralizing its appellate supervision especially in light of the USAO's increased appellate caseload. The USAO advised at the time of the follow-up visit that it has taken steps to enhance and improve its appellate procedures and capabilities and to clarify the responsibilities of its appellate coordinator.

Overall, the USAO's asset forfeiture program was well managed and productive. The USAO had doubled its deposits to the asset forfeiture fund over the prior five years.

The USAO's hiring practices comply with Department hiring policies. Overall, communications within the office were good; however, some AUSAs felt that more frequent meetings at all levels would be useful. The USAO reported that it considers communication to be a top priority of the office and has made extensive efforts to improve and enhance communications in the office. The follow-up evaluator found that the USAO uses an impressive array of methods to keep communication flowing throughout the office. While the USAO's in-house training program was generally effective for more experienced AUSAs, its training program had not addressed the needs of new, less experienced AUSAs and it did not have an effective mentoring and training program for newly hired AUSAs. It was recommended that the

USAO expand upon the training program developed by its former Senior Litigation Counsel to address the specific training needs of newly hired AUSAs. This is being done. Specifically, the USAO's enhanced mentoring program appears to be working well. The USAO reported that it is continuing its efforts to ensure fairness in the rating of employees and in the granting of awards, promotions, and bonuses. The USAO has had regular annual training on ethics; however, it had not conducted recent training on professional responsibility issues on 28 U.S.C. § 530B and Brady/Giglio issues and procedures. That training has since taken place. Freedom of Information Act requests are closely monitored by the point of contact and are responded to in a timely manner.

The USAO generally had acceptable security practices and procedures. The security concerns identified during the evaluation have been resolved or are in the process of being resolved.

7.0 Administrative Operations

The Administrative Division had a competent and knowledgeable Administrative Officer (AO) who had been with the office for approximately one year. The Division was adequately staffed to maintain management controls and to provide quality service to the USAO. However, the evaluators did identify three Red Flags: 1) Some employees were keying their own personnel actions; 2) Not all of the required back-up tapes were being stored off-site for the Las Vegas office; and, 3) The Reno branch office back-up tapes were not stored at least five miles from office. The USAO immediately implemented the appropriate corrective actions and properly self-certified compliance with the Operations Staff, the Executive Office for United States Attorneys.

The Division had a dedicated staff; however, an assistance review on alignment of functions was recommended by the evaluators to facilitate work flow through the Division. Since the evaluation, the AO submitted a plan for reorganization of the Division to the United States Attorney. Several of the proposed changes have been made, including the realignment of procurement functions and hiring a contract employee to handle reception duties. Additional changes are planned in the future.

In an effort to improve communications, the AO has issued many new policies and procedures since the evaluation was conducted. These are sent by E-mail to the staff and posted in a shared directory (S drive) established for staff to access the policies and procedures, similar to an office intranet. Additionally, the AO meets with the administrative staff on a monthly basis and the support staff on a quarterly basis. Staff are given the opportunity to submit agenda items for the meetings.

LETTER FROM MARY BETH BUCHANAN TO DANIEL BOGDEN, SUBMITTED BY DANIEL BOGDEN, FORMER UNITED STATES ATTORNEY FOR THE DISTRICT OF NEVADA

U.S. Department of Justice

Executive Office for United States Attorneys
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LAS VEGAS, NEVADA

JUN -3 2005

The Honorable Daniel G. Bogden
United States Attorney
District of Nevada
Lloyd George Federal Building
333 South Las Vegas Boulevard, Suite 5000
Las Vegas, Nevada 89101

Dear Mr. Bogden: Dan

Thank you for the time and effort your District spent in completing the 2003 District Performance Report. The information you provided will assist the Executive Office for United States Attorneys (EOUSA) and the Office of the Deputy Attorney General in assessing the outstanding work that you and the other United States Attorneys' Offices are doing, and will help us to better serve your needs. Your Performance Report has been thoroughly reviewed. Any issues you may have identified have been or will be referred to the appropriate EOUSA component for follow-up action. Your Report will also be forwarded to the Evaluation and Review Staff for its use in preparing for your office's next evaluation. Overall the 2003 District Performance Reports were excellent, and demonstrate a firm commitment by United States Attorneys to achieve the Department's National Priorities, as well as a wide variety of District priorities and sound management practices.

As evidenced in your Report, the District of Nevada has effectively dedicated its resources to advocate and implement the Department's National Priorities. Despite a large and predominantly rural District, the Anti-Terrorism Advisory Council (ATAC) and Joint Terrorism Task Force (JTTF) effectively coordinated federal, state, and local law enforcement agencies to assess and respond to risks of terrorism. Additionally, to facilitate information sharing, your ATAC joined with the JTTF to create the Nevada Emergency Operations and Notification Network web site. Because Las Vegas is replete with high interest targets, your District had to work very hard to overcome the transfer of investigative resources away from white collar crime. As a result, your District continues to bring many significant white collar prosecutions, sending the clear message that economic crimes will not escape detection and punishment. The efforts of your narcotics prosecution strategy have also been outstanding, as evidenced by the 100 percent increase in OCDETF cases from 2002. Your serious approach to gun violence reduction is

reflected in your Project Effect/Project Safe Neighborhoods initiatives. Programs such as yours which combine strategic planning, research, innovation, training, and aggressive prosecution greatly further the cause of the reduction of gun crime.

In addition to pursuing National Priorities, the District Priorities you have set illustrates your District's firm grasp on its unique issues and crime problems. Your District has excelled in presenting the message of zero tolerance of official corruption, as evidenced by your prosecution of officials from Lander and Clark Counties and the Nevada Department of Motor Vehicles. Additionally, your office worked diligently with the Federal Bureau of Investigation and the Internal Revenue Service to disrupt operations of the many La Cosa Nostra crime families in Las Vegas, through operations such as Matchbox and the Crazy Horse Too investigation. The complex issues arising from the Indian Country in your District present challenges which you have met with vigor, as demonstrated in your aggressive prosecution strategy and the work of your Tribal Liaison/Indian Country Prosecutor to reach out to all 26 tribes.

The management principles applied in your District promote a high quality of work from your personnel. Your hiring procedures ensure that only the best qualified candidates are selected. The use of National Advocacy Center training and mentors for new attorney personnel are excellent tools for ensuring a knowledgeable and capable work force. Your system of case reviews and review of LIONS and Alcatraz information, combined with an open door management policy, encourage excellence and direct employees to achieve greater productivity. Further, the relationships your District has carefully developed with client agencies plays an important role in your success.

We are aware of the time-consuming nature of the District Performance Report and greatly appreciate the time your office spent on completing it. In an effort to decrease future reporting burdens on your office, we are carefully reviewing all feedback we received regarding this reporting process, and will incorporate the same in order to improve and streamline reporting requirements in the future.

Again, thank you for your hard work on your Report, which makes clear the emphasis you have put on carrying out Departmental priorities and maintaining a solid management practice. If you have any questions, please call me or Dan Villegas, Counsel, Office of Legal Programs and Policy, at (202) 616-6444.

Sincerely,

Mary Beth Buchanan
Director

LETTER FROM MICHAEL A. BATTLE TO DANIEL BOGDEN, SUBMITTED BY DANIEL BOGDEN, FORMER UNITED STATES ATTORNEY FOR THE DISTRICT OF NEVADA

U.S. Department of Justice

Executive Office for United States Attorneys
Office of the Director

Main Justice Building, Room 2244A (202) 514-2121
950 Pennsylvania Avenue, N. W.
Washington, D.C. 20530

FEB 6 2007

Honorable Daniel G. Bogden
United States Attorney
District Nevada
333 South Las Vegas Blvd, Suite 5000
Lloyd George Federal Building
Las Vegas, NV 89101

Dear Mr. Bogden:

As we close out fiscal year 2006, I would like to take this opportunity to thank you and your staff and acknowledge the sacrifices they made to help the United States Attorney community not only eliminate the shortfall projected at the beginning of the year, but create a small carryover balance to better our fiscal health in the out years. I feel it is important that we applaud those offices who implemented cost savings measures that allowed us to achieve this success.

In addition to the cutbacks practiced across your district, your office took an additional step and voluntarily returned $100,000 to EOUSA. I am acutely aware of the hardships that these reductions imposed on you and your staff given how difficult things were last year. I greatly appreciate your efforts and devotion to duty, and ask for your continued support as we carry on in meeting the mission of the United States Attorneys.

Sincerely,

Michael A. Battle
Director

ANSWERS TO POST-HEARING QUESTIONS FROM CAROL C. LAM, FORMER UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CAROL LAM'S RESPONSES TO QUESTIONS FROM SUBCOMMITTEE CHAIR LINDA SANCHEZ:

1. Why should United States Attorneys be able to exercise some degree of independent judgment with respect to particular prosecutions and prosecutorial priorities?

As I indicated in my opening statement, each of the United States Attorneys who was asked to resign in December was a long-time resident of his or her district, and many of us had been prosecutors in our districts for years. We knew our communities, our offices, and our courts better than those who resided in Washington D.C. Additionally, differences in prosecutorial discretion among judicial districts reflects the diversity of our nation in terms of geography, counties, population, and other demographics. A "one size fits all" approach to prosecution priorities is a naïve and simplistic view of our country's crime problems.

2. When a highly respected United States Attorney is abruptly and without explanation removed, what impact does that have on other United States Attorneys and Assistant United States Attorneys in her office?

The result is predictable. United States Attorneys must have credibility, and they must never be afraid that their good-faith prosecution decisions will imperil their jobs. Unexpected removal without explanation damages the delicate balance that has been reached over many years, whereby U.S. Attorneys, barring misconduct, were afforded job security until the end of the President's term. It was that job security that permitted U.S. Attorneys the freedom to say what they thought and do what they believed was right. Because that balance has now been upset, a new atmosphere of second-guessing has descended on the U.S. Attorney community. The public and the press are second-guessing the difficult decisions that all U.S. Attorneys must make. This, of course, creates a chilling effect on the entire U.S. Attorney community.

3. Are you aware of any efforts to politicize the Justice Department with respect to its personnel decisions? If so, please explain.

I do not have direct evidence of the politicization of the Justice Department's personnel decisions.

4. Do you know if any representatives of any target of your office's investigations or prosecutions complained to either main Justice or the White House?

I assume this question refers to contacts outside the normal and accepted course of targets requesting a hearing or review by the Department of Justice; I am not aware of any such occurrences.

5. During your tenure, were you ever contacted by the Administration, Members of Congress, or Congressional staff about any of your office's investigations or prosecutions?

During my 4-1/2 years as United States Attorney, I received occasional inquiries about my office's work from Congressional staffers or Congressmen. As required by DOJ policy, I referred all such inquiries to the Department of Justice.

6. With respect to the Justice Department's decision to terminate you, Mr. Moschella at the March 6, 2007 hearing before the Subcommittee on Commercial and Administrative Law of the House Committee on the Judiciary ("hearing") explained that "there were two basic issues" concerning your office's pursuit of violent crime and illegal immigration cases.

(a) With regard to the former, he stated, "[Q]uite frankly, her gun prosecution numbers are at the bottom of the list. She only beat out Guam and the Virgin Islands in that area."

Mr. Moschella's use of the phrase "She only beat out Guam and the Virgin Islands" reflects the unfortunate bean-counting approach to effective gun prosecution strategy that the Department came to employ.

According to the Project Safe Neighborhoods ("PSN") website, "Project Safe Neighborhoods (PSN) is a nationwide commitment to reduce gun crime in America. The effectiveness of PSN is based on the ability of local, state, and federal agencies to cooperate in a unified offensive led by the U.S. Attorney (USA) in each of the 94 federal judicial districts across the United States. Through collaboration with federal, state, and local law enforcement, each USA will implement the five core elements of Project Safe Neighborhoods—partnerships, strategic planning, training, outreach, and accountability—in a manner that is contoured to fit the specific gun crime problems in that district. The goal is to create safer neighborhoods by reducing gun violence and sustaining that reduction."

My office led, and continues to lead, partnerships with state and local law enforcement and community groups to educate the public about gun crimes and to further efforts to improve firearms prosecutions. However, our survey of gun prosecutions in the Southern District of California led to the inescapable conclusion that the District Attorney's Office was doing a very good job prosecuting gun offenses, using the myriad of effective gun laws available under California state law. The San Diego Police Chief and San Diego Sheriff informed me personally that they were greatly satisfied with the job the District Attorney was doing prosecuting gun crimes. We designed and implemented a protocol whereby gun cases would be prosecuted federally if a substantially higher sentence would be available, but relatively few cases were referred to my office under the protocol.

In 2004, I explained to then-Deputy Attorney General James Comey that we would continue to pursue any firearms cases that were not being handled effectively by the State, and that we would continue to work with ATF in investigating firearms traffickers through the use of undercover investigations. Deputy Attorney General Comey understood and agreed with this approach. The fact that in 2005 the city of

San Diego reached its lowest level of violent crime in 25 years demonstrates that our work with the District Attorney on gun prosecutions was both intelligent and effective.

(a) With respect to immigration, Mr. Moschella said that your "numbers for a border district just didn't stack up...." He noted that "this Administration has made immigration reform a priority and those on the border...have a responsibility there to the rest of the country to vigorously enforce those laws."

Mr. Moschella's comments reflect an unfortunate emphasis on mere statistics to the exclusion of important considerations such as the quality of the prosecutions and the lengths of sentences achieved. More than 170,000 individuals are currently arrested along the California border with Mexico – the border that lies within the Southern District of California. Outside of the Southwest Border, no U.S. Attorney's Office similar in size to the Southern District of California prosecutes more than 1500 cases a year; SDCA prosecuted between 2700 and 3700 cases each year that I was U.S. Attorney. It was evident to me, however, that we needed to critically assess the lengths of sentences we were obtaining and the types of cases we were prosecuting rather than simply pursue statistics, as we were neglecting many important large smuggling investigations in order to meet the demands of handling numerous smaller reactive cases. This reassessment also mirrored the clear mandate we were given by the Department of Justice not to unduly reduce sentences simply for the purpose of obtaining guilty pleas. Therefore, after two years of study, we implemented new guidelines focused on investigations and prosecutions of alien smuggling organizations, corrupt border law enforcement agents, and immigration defendants with prior convictions for violent crimes.

The results were tangible in many respects. *In 2005, the violent crime rate in San Diego fell to its lowest point in 25 years.* Following labor-intensive wiretap investigations, *seven* Border Patrol agents and Customs and Border Protection inspectors were convicted of corruptly aiding alien smuggling organizations. The two owners of one of California's largest fence companies were convicted of felonies for knowingly employing illegal aliens, and the company paid $5 million in forfeitures. In another case, the leader of an alien smuggling organization was sentenced to 188 months in custody. These huge cases, which yielded only a few "stats" but dismantled criminal organizations, would not have been possible if the attorneys who worked on them had instead been assigned dozens of small cases involving lower-level criminals.

7. With regard to your office's gun violence prosecutions, Mr. Moschella, at the hearing, referred to a conversation that former Deputy Attorney General Jim Comey had with you. Please provide your recollection of that conversation.

I recall two conversations with then-Deputy Attorney General Comey, both in 2004. One was in person, during a visit he made to the office. We discussed Project Safe

Neighborhoods, and I informed him of the facts I listed in my answer to 6(a) above. He listened carefully when I explained that if we were to pursue hundreds of gun cases that were already being handled well by the District Attorney, it would have to come at the expense of some border cases that the D.A. could not handle. He responded that he understood that I was "starting from a different baseline," indicating to me that he accepted my approach as a reasonable one.

A second conversation occurred a few months later, when Mr. Comey called me as part of his review of PSN. I believe a representative of ATF was also on the conference call. Mr. Comey stated that he was "not looking for gun cases for the sake of doing gun cases," but wanted to know if there were any issues that DOJ could do to help regarding our gun prosecutions. We had a constructive conversation about our office's work with ATF on undercover investigations and our implementation of a protocol to take referrals of cases where we could achieve a substantially higher sentence in federal court than state court.

8. Please describe how your office coordinated with the state and local district attorney offices with respect to prosecuting gun crimes.

The Southern District of California is unique among extra-large U.S. Attorneys Offices in that it is comprised of only 2 counties, and 95% of the population resides in one of those counties. As a result, there is good consistency and uniformity in the enforcement of gun laws, which are quite strict in California. As stated above, local law enforcement has been very satisfied with the San Diego District Attorney's handling of gun crimes, and the U.S. Attorney's Office has a protocol in place with that office whereby gun cases are referred to the U.S. Attorney's office if a substantially higher sentence could be achieved in federal court.

9. Please describe how your office coordinated with Project Safe Neighborhoods.

Our office has an attorney coordinator for PSN who chairs monthly meetings of the PSN Task Force. The PSN Task Force brings together representatives of local and state law enforcement, members of the community, and federal and state prosecutors to oversee PSN grant administration and discuss policies relating to reduction in gun crimes. Our office issued reports to the Department of Justice on the progress of PSN at regular intervals, and participated in the PSN training sessions and conferences sponsored by the Department of Justice.

10. With respect to prosecutions of people smuggling illegal aliens or drugs across the border, Mr. Moschella observed at the hearing that at about the 2004-05 time frame, the numbers in your district "dropped precipitously." This occurred, according to Mr. Moschella, because of a policy your office instituted to focus on "higher priority prosecutions." What is your response?

Mr. Moschella's reference to "higher priority prosecutions" is misleading because it implies that we reduced immigration prosecutions in favor of pursuing prosecutions

in some other area. To the contrary, we put our resources to work pursuing more serious immigration crimes, which may have yielded fewer statistics, but put behind bars more serious criminals for longer periods of time. Additionally, our alien smuggling statistics since 2005 have been rising steadily, as have our reactive border drug cases.

11. At the hearing, Mr. Moschella said that Senator Dianne Feinstein "wrote specifically" about her concern that the San Diego area not become a "magnet" for illegal border crossings. Has the San Diego area become a magnet for illegal border crossings?

The Southern District of California has not become any more a "magnet" for illegal border crossings than any other Southwest Border district. Ten years ago, it was estimated that 500,000 people crossed the border illegally from Mexico into California each year, while 100,000 people crossed the border illegally from Mexico into Arizona. Today, those proportions have reversed, with 600,000 crossing into Arizona every year, and 170,000 crossing into California.

Senator Feinstein has also stated publicly that she was satisfied by the written response she received from Mr. Moschella that immigration enforcement was being appropriately handled in the Southern District of California.

12. Mr. Moschella made the following statement at the hearing, "Well, I know that the border patrol and others in that area were very concerned about the numbers of apprehensions made and the number of prosecutions that were declined....When you lower the prosecutions, the deterrence level certainly will go down." What's your response?

What Mr. Moschella said is true in every area of law enforcement, which is why it is important that a U.S. Attorney's Office strike a balance among its various responsibilities and not focus simply on one area. Our experience has been that public corruption, for example, also flourishes if there are no prosecutions to deter it. In the area of immigration, we promised Border Patrol that we would revisit the guidelines after a few months to measure their effect. We followed through on that promise, and in consultation with Border Patrol made adjustments to address their concerns by agreeing to prosecute additional categories of smugglers.

13. Did your office prepare a memorandum in response to Representative Darrell Issa's concerns about the need for prosecution thresholds regarding illegal immigration prosecutions.

(a) Do you know if this memorandum was provided to Representative Issa?

(b) Could you please provide us with a copy of that memorandum for inclusion in the hearing record?

I did not prepare a specific memorandum in response to Representative Darrell Issa's concerns. However, in May of 2006 I sent an Urgent Report to the Department of Justice regarding criticisms leveled at my office by Representative Issa that were based on a report purported generated by a substation of the Border Patrol in my district. I stated in the Urgent Report that I had responded to the allegations by pointing out that Representative Issa had apparently been misled, because the so-called Border Patrol report was actually a false and altered version of an internal Border Patrol report. Additionally, I wrote a memorandum to Bill Mercer and Michael Elston dated July 10, 2006, regarding our approach to immigration and gun crimes in the Southern District of California. That memorandum is contained in the documents released by the House Judiciary Committee at ASG0000295. I do not believe that either document was provided to Representative Issa.

14. Please describe any awards, commendations, or other performance-related assessments that you received during your tenure as United States Attorney for the Southern District of California. Were you asked to serve on the Attorney General's Advisory Committee?

2003 – San Diego Press Club Top Headliner of the Year (Federal Law Enforcement)

2005 – Los Angeles Daily Journal "Top 100 Lawyers"

2007 – U.S. Health & Human Services Inspector General's Award

2007 – Los Angeles Daily Journal "Top 75 Women Litigators"

2007 – San Diego County Bar Association Outstanding Lawyer of the Year

15. Did you receive a letter from Customs and Border Protection regarding your office's illegal immigration enforcement efforts? If so, please provide a copy of that letter for inclusion in the hearing record.

Will provide.

16. Were you ever told by anyone in the Justice Department that your job performace was inadequate in any respect prior to your being asked to resign?

No.

17. At the hearing, Mr. Moschella cited two issues (pertaining to violent crime and illegal immigration prosecutions) that the Justice Department determined warranted your dismissal. Until the hearing, were you aware that the Justice Department had these "two basic issues" with your office thereby warranting your dismissal?

No.

18. Did you ever receive a warning from the Justice Department that your office's priorities would result in your being asked to resign?

No.

(a) Do you know if any of the federal investigative agencies with which you worked were consulted about your termination or the impact your termination would have on investigations pending in your jurisdiction?

I do not believe they were.

19. When you were notified by Executive Office for United States Attorneys Director Michael Battle that you were being asked to resign, did he give you any explanation why this was being done?

No.

20. After you were so notified by Mr. Battle, did you have any conversations with either DAG Paul McNulty or DAG Chief of Staff Michael Elston about the reasons why you were being asked to resign? If so, please describe your recollection of those conversations.

Following the call from Michael Battle informing me I was to resign effective January 31, 2007, I called DAG McNulty to inquire why I was being asked to resign. He responded that he wanted some time to think about how to answer that question because he didn't want to give me an answer "that would lead" me down the wrong route. He added that he knew I had personally taken on a long trial and he had great respect for me. Mr. McNulty never responded to my question.

After a follow-up call with Mike Battle a few days later, I requested additional time to ensure an orderly transition in the office, especially regarding pending investigations and several significant cases that were set to begin trial in the next few months. On January 5, 2007, I received a call from Michael Elston informing me that my request for more time based on case-related considerations was "not being received positively," and that I should "stop thinking in terms of the cases in the office." He insisted that I had to depart in a matter of weeks, not months, and that these instructions were "coming from the very highest levels of the government." In this and subsequent calls, Mike Elston told me that (1) he "suspected" and "had a feeling" that the interim U.S. Attorney who would succeed me would not be someone from within my office, but rather would be someone who was a DOJ employee not currently working in my office, (2) there would be "no overlap" between my departure and the start date of the interim U.S. Attorney, and (3) the person picked to serve as interim U.S. Attorney would not have to be vetted by the committee process used in California for the selection of U.S. Attorneys.

I submitted my resignation on January 16, 2007, effective February 15, 2007.

(a) Were you given any instructions or directions regarding your public statements? Were you given any instructions or directions regarding your statements to Congress about your termination?

When Mr. Battle called me on December 7, 2006, he advised me to simply say publicly that I had decided to pursue other opportunities. During one phone call, Michael Elston erroneously accused me of "leaking" my dismissal to the press, and criticized me for talking to other dismissed U.S. Attorneys.

21. Mr. Moschella stated at the hearing that the Justice Department expects U.S. Attorneys to adhere to the Department's priorities. He said that every U.S. Attorney will say that his or her office has "resource strains." With respect to your district, however, he said that it had "significant resources." What is your response to these statements?

While I no longer have access to official records at the U.S. Attorney's Office, my recollection is that during my tenure as United States Attorney, our resources decreased significantly. While the number of FTE's (Full Time Equivalents) for attorneys increased from 119 to 125 from 2002 to 2006, many of the positions could not be filled due to budget shortages (the number of FTEs that can be filled is entirely dependent on the office budget). DOJ has publicly said that our offices budgets have increased by 29% since 2000. However, this figure is misleading. Mandatory cost-of-living increases and pay raises quickly consumed any budget increases we might see on paper. In reality, our budgets shrank. Most attorneys and office staff across the nation received no or minimal discretionary pay raises for at least 2 years. The situation reached a peak in early 2006, when all U.S. Attorneys Offices were informed that their office staffs would have to decrease in size by at least 10%, with the extra-large offices (including the Southern District of California and the District of Arizona) assuming larger shares of the cuts.

22. How many positions did your office have for each year of your tenure?

When I took office in 2002, SDCA was allotted 119 FTEs for attorneys, but the common practice was to leave at least two positions unfilled for budget reasons. As explained above, we received 6 more authorized positions over the next 4 years, but not enough money to fill them.

23. What effect, if any, did the Administration's annual budget cuts have on your office?

For my entire tenure as U.S. Attorney, it was a constant struggle to keep fully staffed on the attorney side. Because of the dire budget situation, we were told to avoid hiring experienced attorneys because they were more expensive. This meant that we had to hire attorneys with minimal experience, which required us to expend more resources on supervision and training. Ultimately, we were forced to leave between 12-15 attorney positions vacant.

24. Did these budget cuts have a disproportionate effect on your office? If so, please explain why.

Large and extra-large U.S. Attorneys Offices were expected to shoulder a larger percentage of the budget cuts because larger offices have more attrition and more opportunities to save money by leaving positions unfilled. When Congress passed a bill for fiscal year 2006 imposing a 1% rescission on all federal government agencies, for example, extra-large offices such as SDCA and D.AZ were told that our actual budget reduction would be between 3 and 4 percent.

25. What effect did these budget cuts and lack of personnel have on the ability of your office to meet the Justice Department's myriad priorities?

Obviously, fewer attorneys and staff makes it more difficult to cover the wide spectrum of cases we thought we should prosecute.

26. Were there competing Justice Department priorities that conflicted with your office's ability to prosecute high-volume immigration cases?

During my tenure as U.S. Attorney, we were told to pursue many different priorities. Early in my tenure, my office in particular was told to bring more corporate fraud cases, more computer crime cases, more medical marijuana cases. We did that, and more. By the time I left the office, our office ranked #1 in the country for computer intrusion and hacking cases, and we have the leading office in the country in terms of large-scale narcotics investigations and prosecutions. At the same time, we devoted more attorney time to higher-level alien smuggling organizations as well as prosecutions of individuals with significant criminal histories. We made a real difference by attacking the crime problem at its source, not its symptoms.

27. Did your office request additional resources from the Attorney General? If yes, were your requests granted or denied? If denied, were you told why?

In February or March of 2006, the Southwest Border U.S. Attorneys requested additional resources from the Deputy Attorney General to enable us to keep pace with our immigration prosecution demands. Every U.S. Attorney's Office had just received the unwelcome news that office staffs would have to decrease by 10-15%. The Southwest Border U.S. Attorneys were alarmed that with this kind of decrease, it would be difficult – if not impossible – to further the President's agenda of strengthening immigration enforcement. Our request was denied. Finally, in August of 2006, we were informed that each Southwest border office would receive funding to hire 3-4 attorneys to prosecute immigration cases. However, that money simply funded four of the 12 positions my office had already had to leave vacant due to the budget decrease.

28. Did your office experience any hiring freezes during your tenure?

As described above, although there was no official hiring freeze imposed, there was a de facto hiring freeze for many U.S. Attorneys Offices that began in 2005. SDCA was able to hire new attorneys only after we had reduced our staff by approximately 12 attorneys.

29. How many AUSAs did your office have when you started and completed your tenure as USA?

While I do not have access to official records, my recollection is that our official attorney FTE was 119 when I started and was 125 when I left. However, the office actually had 111 attorneys on board when I started and 106 on board when I left, due primarily to budget restrictions.

30. Please describe the challenges of managing an office in a district where you have a limited number of attorneys, many illegal aliens, and many competing priorities.

When I left the office, there were approximately 106 attorneys on board. Our civil divison, which represents the United States in civil lawsuits, was staffed with approximately 18 of those attorneys. Financial litigation attorneys, appellate attorneys, and non-litigating supervisors accounted for approximately another 15 attorneys. This left approximately 73 attorneys to handle the day-to-day criminal caseload in the Southern District of California.

In recent years, the Department of Justice has funded several positions in U.S. Attorneys' Offices with instructions on the condition that those positions be used to prosecute only certain types of cases. Thus 18 of our criminal attorneys are required to work on only large-scale narcotics cases under the Organized Crime Drug Enforcement Task Force program (OCDETF). Additionally, the office has 2 positions designated for Cybercrimes, 2 for health care fraud, 1 for corporate fraud, and 1 for juvenile gun crimes. This left approximately 50 attorneys available to handle the remaining criminal caseload, including immigration cases, smaller narcotics crimes, and fraud cases.

Ideally, every prosecutor's office should be able to prosecute every federal crime committed in the district. With 170,000 arrests of illegal aliens every year, and thousands of mail thefts, tax cheats, passport frauds, drug sales, and other crimes committed in the district, difficult decisions must be made. I chose to prosecute larger cases instead of smaller ones, believing – as I still do – that the true measure of success comes from the impact those prosecutions have on crime in the district, not from simply counting statistics. By that measure, we were very successful.

31. Did the Justice Department's recognition of your district's special challenges change over the course of your tenure as U.S. Attorney. If so, please explain.

Yes. For the first two years (2003 and 2004), there was recognition and appreciation by the Department of Justice of the special challenges faced by the Southwest

Border U.S. Attorneys Offices. Since that time, however, there has been increasing impatience and intolerance expressed at these districts, despite the fact that they carry the highest caseloads in the nation.

32. At the hearing, Darrell Issa concluded his opening statement with the following comments about you: "She was repeatedly asked by this committee and by our Senator to do better on the prosecutions of those who traffic in human beings. She didn't do so and my only question for this committee is not why was she let go, but why did she last that long?"

(a) What is your response?

Those are harsh words, and I'm sorry he feels that way. But I've prosecuted cases on the border for 17 years, and I firmly believe we did the right thing by spending our resources on prosecuting the most serious criminals. And, as evidenced by DOJ's response to Representative Issa's letter, the Department of Justice apparently agreed with me.

Responses to Questions for Carol Lam, Esq.

1. **When you were a U.S. Attorney, did you understand that you served as U.S. Attorney at the will of the President?**

A: Yes, although I understood from history and tradition that, barring misconduct, I would be allowed to serve until the end of the President's administration.

2. **Did you serve out the full, four-year term of your appointment as U.S. Attorney?**

A: I served a four-year term. However, I understood from history and tradition that, barring misconduct, I would be allowed to serve until the end of the President's administration.

3. **Do you understand that the Department of Justice has to set enforcement priorities for the nation?**

A: I understand that sometimes centrally-coordinated "enforcement priorities" can be useful and efficient. As I stated in my interviews during the selection process for U.S Attorneys, however, I think it is a responsibility of a U.S. Attorney to effect the Attorney General's guidelines in a way that makes sense in the district.

4. **Do you understand that immigration and border enforcement are priorities of the President and Department of Justice headquarters?**

A: Yes. However, immigration did not receive a great deal of attention as a law enforcement priority at the Department of Justice until 2006.

5. **To the extent not already done so at the hearing, please identify any letters from Congressmen, Senators or other officials expressing concern over your level of activity in this priority area?**

A: None.

6. **Do you understand that gun enforcement is a priority of the President's and Department of Justice headquarters, including through Project Safe Neighborhoods?**

A: Yes. In the Southern District of California, gun crimes are well handled by the District Attorney, and many local law enforcement efforts to tackle illegal firearms are supported by our work through the PSN Task Force, which we chair.

7. **Did you attend U.S. Attorney Conferences on Project Safe Neighborhoods and U.S. Attorney Conferences where the priority of gun prosecutions was discussed?**

A. I attended many U.S. Attorney conferences, and at some of them PSN was discussed.

8. Do you recall seeing at such a conference a video in which the President of the United States himself talked about the priority of gun prosecutions?

A: Although I have seen several video and live presentations by the President, I do not recall seeing this particular video. As I was one of the last U.S. Attorneys to take office, it is possible that this video was played prior to my entrance on duty.

9. Did former Deputy Attorney General James B. Comey ever talk to you about your low gun or immigration case numbers?

A: I recall two conversations with then-Deputy Attorney General Comey, both in 2004. One was in person, during a visit he made to the office. We discussed Project Safe Neighborhoods, and I informed him of the facts I listed in my answer to 6(a) above. He listened carefully when I explained that if we were to pursue hundreds of gun cases that were already being handled well by the District Attorney, it would have to come at the expense of some border cases that the D.A. could not handle. He responded that he understood that I was "starting from a different baseline," indicating to me that he accepted my approach as a reasonable one.

A second conversation occurred a few months later, when Mr. Comey called me as part of his review of PSN. I believe a representative of ATF was also on the conference call. Mr. Comey stated that he was "not looking for gun cases for the sake of doing gun cases," but wanted to know if there were any issues that DOJ could do to help regarding our gun prosecutions. We had a constructive conversation about our office's work with ATF on undercover investigations and our implementation of a protocol to take referrals of cases where we could achieve a substantially higher sentence in federal court than state court.

LETTER FROM ADELE J. FASANO, DIRECTOR, FIELD OPERATIONS, U.S. CUSTOMS AND BORDER PROTECTION, SUBMITTED BY CAROL C. LAM, FORMER UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA

610 W Ash Street, Suite 1200
San Diego, CA 92101

FEB 15 2007

U.S. Customs and Border Protection

Ms. Carol C. Lam
United States Attorney
Southern District of California
880 Front Street, Room 6293
San Diego, California

Dear Ms. Lam:

On behalf of the San Diego Field Office (CBP), I would like to thank you for your support and commitment to the mission of U.S. Customs and Border Protection as the United States Attorney for the Southern District of California.

Under your leadership many initiatives have been undertaken that have strengthened the efforts of CBP to combat migrant smuggling.

To enhance communication, you encouraged your supervisory AUSA to meet with CBP management in an ongoing monthly forum in which "hot topic" CBP issues of interest are raised and discussed.

To address the alien enforcement issue, your office supported the implementation of the Alien Smuggling (1324) Fast Track Program and has demonstrated a commitment to aggressively address the alien smuggling recidivism rate.

In support of CBP referrals for prosecution, your office maintains a 100% acceptance rate of criminal cases, while staunchly refusing to reduce felony charges to misdemeanors and maintaining a minimal dismissal rate, and supporting special prosecution operations

In validation of CBP enforcement initiatives, your staff aggressively prosecuted enrollees in the SENTRI program who engaged in smuggling to support a zero tolerance posture. They have focused on cases of fraud, special interest aliens, the prosecution of criminal aliens, and supported our sustained disrupt operations.

To further officer effectiveness with your staff, you endorsed the CBP Enforcement Officer liaison program that provides periodic training to enhance the performance and development of CBP Enforcement Officers.

I would like to expand on our joint accomplishments for fiscal year 2006 that support our mission and furthered the goals of the San Diego Office of Field Operations.

- CBP-Prosecutions Unit presented four hundred sixteen (416) alien smuggling cases, which represents a thirty-three percent (33%) increase over the three hundred fourteen (314) cases presented in 2005.

- CBP-Prosecutions Unit identified and pursued the prosecution of several recidivist alien smugglers and presented thirty (30) non-threshold alien smuggling cases for prosecution, resulting in a one hundred percent (100%) conviction rate. This represents a three hundred twenty nine percent (329%) increase over the seven (7) non-threshold cases presented in 2005.

- CBP-Prosecutions Unit conducted four (4) short-term Disrupt Operations in coordination with the USAO San Diego that focused on combating active human smuggling cells. These operations have led to the prosecution of an additional sixteen (16) non-threshold alien smuggling cases.

- The CBP-OFO Prosecutions Unit worked jointly with ICE HTIII and the United States Attorney's Office in the arrest and successful prosecution of two active duty U.S. Navy men engaged in the smuggling of undocumented aliens through the San Ysidro Port of Entry.

- The CBP-OFO Prosecutions Unit worked collaboratively with the Office of Border Patrol (OBP) and the USAO to engage in the investigation of marine interdiction alien smuggling cases. In 2006 the CBP-OFO Prosecutions Unit presented for prosecution two (2) cases involving aliens being smuggled on private sailing vessels.

- The United States Attorney's Office approved a CBP Prosecutions Unit investigative proposal to develop proactive alien smuggling cases.

The aforementioned 2006 enforcement successes have directly contributed to the reduction by at least fifty percent (50%) the number of smuggled aliens encountered at the San Diego ports of entry.

I speak for my entire staff when I say that we are honored to have had the privilege of working with you and your staff for the past four years. I am sure we

will use what we learned from our collaborative efforts to advance our enforcement efforts.

Again, thank you for your support; you will be missed. I wish you continued success in your future endeavors.

Adele J. Fasano
Director, Field Operations

ANSWERS TO POST-HEARING QUESTIONS FROM DAVID C. IGLESIAS, FORMER UNITED STATES ATTORNEY FOR THE DISTRICT OF NEW MEXICO

QUESTIONS FROM SUBCOMMITTEE CHAIR LINDA SÁNCHEZ
FOR DAVID IGLESIAS

1. Have you been publicly recognized for your work on immigration or border security-related issues?

   Yes, I have received two "New Mexico Medal of Merit" awards from the New Mexico National Guard, one in 2003 and one in 2007. I have been advised it is the highest honor the New Mexico National Guard awards to civilians. The pertinent language in the 2007 citation reads, "*Mr. Iglesias has distinguished himself as a great supporter of the military and continues to champion New Mexico National Guard efforts in support of federal, state and local law enforcement agencies along the United States and Mexican border.*" The 2003 citation is very similar in language. Both were publicly awarded, one in front of a convention of approximately 1,500 persons.

2. The New York Times reported that the Justice Department review of your job performance was very positive and that you were praised because you were "respected by the judiciary, agencies and staff" and had a strategic plan that "complied with the department's priorities." Is that a correct description of your evaluation by the Justice Department?

   Yes, the first quote is from the 2006 EARS evaluation. As to priorities, I will quote from a Jan 24, 2006, letter from Mike Battle, former Director of the Executive Office of United States Attorneys, to me; "*I want to commend you for your exemplary leadership in the Department's priority programs, including Anti-terrorism, Weed and Seed, and the Law Enforcement Coordinating Committee.*"

3. Were you ever told by anyone at DOJ that you were not complying with the policy or other priorities of the Administration or that there was any problem relating to alleged absences from the office?

   No.

4. Some reports suggest that your alleged failure to pursue allegations of voter fraud contributed to your dismissal. Please state your response to such claims.

   While I was never advised by anyone in the Administration that they were dissatisfied with my Election Fraud Task Force, which I established in 2004, I have learned since my March 6, 2007 testimony, that local Republican officials complained in 2005 and 2006 to Senator Pete Domenici, Karl Rove and President Bush that they were unhappy with my lack of voter fraud prosecutions.

5. Please describe any awards, commendations, or other performance-related assessments

that you received during your tenure as United States Attorney for New Mexico.

I refer you to my positive EARS evaluations from 2003 and 2006. I will supplement this answer as to awards as my office did receive awards. I will need time to track this down.

6. Did you ever receive a warning from the Justice Department that your office's priorities would result in you being asked to resign?
No.

7. When you were notified by Executive Office for United States Attorneys Director Michael Battle that you were being asked to resign, did he give you any explanation why this was being done?

No, in fact he said, "*I don't know and I don't want to know*" the reasons behind the firings.

8. Please describe any conversations you had with officials at the Department of Justice relating to your termination as U.S. Attorney that occurred after the notification you received on December 7, 2006. Your description of each conversation should include, but is not limited to, who initiated each call, who participated, and what was said by whom. In addition, if you discussed any of these calls with any of the other former U.S. Attorneys who testified at the hearing, please describe any of these conversations.

The only conversation I had was with Deputy Attorney General Paul McNulty in January 2007. I asked him to extend my termination date from January 31, 2007 to the end of February 2007. It was a short, cordial conversation. I told him I needed time to find a job and that seven weeks over the Holidays was not enough time to find a good job in New Mexico. I believe I told most of my other former US Attorney colleagues of the phone call.

9. What effect, if any, did the Administration's annual budget cuts have on your office?

We have had to prosecute more cases with fewer people, especially administrative support personnel.

10. Did these budget cuts have a disproportionate effect on your office? If so, please explain why.

I don't understand this question.

ANSWERS TO POST-HEARING QUESTIONS FROM H.E. (BUD) CUMMINS, FORMER UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF ARKANSAS

1. **During your tenure as USA, did DOJ officials ever discuss with you or cite you for performance problems**? Answer: No, save for any minor observations or recommendations that might appear in either of the EARS evaluotions conducted during my tenure.
2. **When a highly respected USA is removed abruptly and without explanation, what impact does that have on other USAs and the AUSAs in your office**? Answer: Normal changes in leadership occur when a presidential administration is changed over and also when USAs move on to other careers as judges, or back to the private sector. These changes are tolerated by the career people in the office and are often softened by the elevation of the First Assistant to serve in the interim who knows the office and can provide continuity. It would be detrimental to an office to absorb these changes too often. In the recent cases, where it may appear that USAs were forced out, in some cases in response to outside political pressure, there is clearly a negative impact on the morale of the USAOs across the country because suddenly it appears that DOJ is not willing to insulate the offices from such pressure. Where once the prosecutor thought that pursuing a powerful local politician or politically connected businessman might only expose him or her to some local and outside criticism/pressure, now the prosecutor must also contemplate that the subject or target of the investigation may actually be able to obtain the removal of the prosecutor. This is not a healthy environment for prosecutors who must make hard decisions based solely on the facts and the law, and not on the political implications. Such decisions smell unfair, and will have a predictable impact on the attitude and morale of everyone in the system. Firing a prosecutor for prosecuting the wrong person, or not prosecuting someone in the other political party, or for not timing an indictment around an election destroys the credibility that should be enjoyed by the department as a whole. It is difficult to regain that credibility. The professionals in the department are going to resent that because they earned that credibility. Finally, USAs do not make these decisions about cases and policy in a vacuum. Any successful USA is relying on the advice and counsel of as many of the career people in the office as is possible. While you can have a good USAO with a bad USA, and vice versa, it is fairly impossible to make public statements about the "performance" of a particular USA without implicating the performance of some or all of the career staff in the USAO who participated in the decision making and policy development within the office. The resentment will obviously be compounded where it is apparent that those criticisms have been fabricated to protect the true agenda and agenda makers behind the removals.
3. **Are you aware of any efforts to politicize the Department of Justice with respect to its personnel decisions**? Answer: I do not have any unique knowledge in this area. In other words, I only know what I have read in the newspaper.

4. **At the hearing, you mentioned that you had several telephone conversations with Michael Elston (DOJ) around the time that you were asked to resign.**

   (a) **How many conversations did you have**? Answer: I think we had at least four.

   (1) ***First Call.*** I called the DAG on or about January 19 after the AG testified in the Senate and left a message. He called back and left a message. I called back, the DAG was unavailable, and Mike Elston took the call saying the DAG asked him to see what I needed. I was calling to bring three things to their attention that I thought were all probably inadvertent misrepresentations that should and likely woud be corrected. The first concerned a DOJ spokesman's statement to the press on or about December 26 stating that one reason Tim Griffin had been named as interim USA was because the First Assistant was on maternity leave. I told Elston that most people in our relatively small legal community had instantly mocked that statement because it was obvious Tim Griffin had been here for months for the purpose of taking over on my departure, because no person was aware of any conversations or other communications that might demonstrate that appointing the First Assistant was EVER a consideration, and because even though she actually had left the office a week before (on or about December 14) to give birth to twins, her due date was much later in early February and until she went out for an emergency delivery the week before she had been widely expected to continue to work in the office until February, so she actually could have been available for six weeks or more to serve as an interim had anybody ever considered that option. Nobody had and that was obvious. I told them it was a ridiculous thing to say in light of what many people here knew and that they shouldn't repeat it. Second, I told him that the AG had made two statements to the Senate Judiciary Committee that I thought were inconsistent with the facts. First, the AG had said that every change in USA spots had been made to improve the management in those districts. I knew or thought I knew that improving management had nothing to do with the change in my district, and I not only thought the statement was unfair to me, but also that it was going to be challenged because Senator Pryor knew better. I thought they might want to supplement the AG's testimony in a way to except my district. At that time I neither knew who else had been fired or why. Elston agreed with me that I had been fired simply to allow Tim Griffin to have the job. He assured me that the other cases were different and that if I knew the reasons behind those firings I would agree that "they had to go." He didn't know if they would ever be able to fix the record in regard to me, but he said he would see if they could avoid repeating similar statements in the future. Finally, I

expressed concern that the AG's statement that DOJ would seek a presidential nomination for the USA in every district was going to cause trouble here in Arkansas because it appeared to me that there was no intention to put Tim Griffin through a nomination. Elston rejected that notion and assured me that every replacement would have to be confirmed by the Senate. I told him if that was the case, then he had better gag Tim Griffin because Griffin was telling many people, including me, that officials in Washington had assured him he could stay in as USA pursuant to an interim appointment whether he was ever nominated or not. Elston denied knowing anything about anyone's intention to circumvent Senate confirmation in Griffin's case. He said that might have been the White House's plan, but they "never read DOJ into that plan" and DOJ would never go along with it. This indicated to me that my removal had been dictated entirely by the White House. He said Griffin would be confirmed or have to resign. I remember that part of the conversation well because I then said to Elston that it looked to me that if Tim Griffin couldn't get confirmed and had to then resign, then I would have resigned for nothing, and to that, after a brief pause Elston replied, "yes, that's right." [UPDATE: I saw in some of the documents that I may have placed a call to the DAG immediately before the AG testified in January. I frankly don't remember it that way, but it is possible that I was calling even then to express concerns based on the reporting I was seeing at the time on the issues described above.]

(2) ***Second Call.*** I believe the second time I talked to Mike Elston was after the DAG testified in the Senate Judiciary Committee. The DAG testified that other USAs had been removed due to "performance" but he specifically admitted that had not been the case in Arkansas. Because Elston was skeptical in the first call that such a public statement would ever be made, I was pleased that the DAG had seen fit to correct the record in my case because I thought the AG's previous testimony had been misleading as to my case. I called to tell Mike Elston "thank you" and ask him to pass that sentiment on to the DAG. I think it was in that call that I also told him I had been contacted about testifying in Congress and had declined, but said that I would do it if DOJ wanted me to do it, and I thought I could minimize the drama related to my removal and also perhaps defend the notion that involving judges in the interim appointment process created unnecessary problems and that another "fix" should be found for the offensive Patriot Act provision. He took that offer under advisement. The tone of this call was positive, and my motivation in calling was to thank them and express to them that I had no hard feelings and hoped I was still considered to be a person of good standing with the administration. At this point I had no reason to know they were not being truthful about the other USAs.

(3) ***Third Call***. I am not certain, but I think the third call was one initiated by Mike Elston with Tasia Scolinos from DOJ OPA in the room with him on the speaker. They asked if I would be willing to write a letter to the editor in the Arkansas Democrat Gazette essentially vouching for Tim Griffin's credentials. Since I did want to be considered to still be on the "team", and because I did not have a problem with Tim Griffin's resume qualifications to serve as USA, I said I would consider it, but would have to discuss it with my wife first because she had some fairly strong feelings about Tim Griffin, the extent of his role in the decision to remove me, and the problems that seemed to be continually on the increase caused, at least in her view, by the inept way the matter was being handled at the time by persons she associated with Tim. Upon reflection after hanging up with Elston and Scolinos, it seemed to me that in spite of some public statements about nomination, there was no real commitment or intention evident that convinced me that there was any change in the intention regarding the nomination of Tim Griffin. In other words, I understood the plan to be that he would not be nominated, and in spite of the recent AG and DAG testimony, that plan had not changed. In addition, as predicted my wife was not comfortable with me writing the letter. I emailed Mike back and told him I wanted to wait until it was apparent that Tim Griffin would actually be nominated before I decided whether or not to write a letter.

(4) ***Fourth Call***. The last call was the call that I testified about earlier on March 6 which came in response to a Washington Post article quoting me. He essentially said that if the controversy continued, then some of the USA's would have to be "thrown under the bus."

5. ***Other than Mike Elston, did you have phone conversations or email communications with any other high ranking DOJ officials regarding your dismissal or the dismissal of USAs? If so, who, when and what was the substance***? Answer: Mike Battle called in June 2006 to tell me I had to resign. When I had difficulty reaching the DAG in January, I also put in a call to Bill Mercer. By the time he returned the call, I had already had an extensive conversation with Mike Elston (the "first call"). I didn't want to eat up Mercer's time repeating the same information, and so I think I told him I had been taken care of by Elston and probably gave him a very quick summary of the points I had made earlier with Elston. I don't have a clear memory of how much detail we went in to, or of any response he might have made. I think we congratulated each other regarding our service together as USAs. Mike Battle called me one time after I resigned, probably in early 2007 to relay some message to me either from a press person or from a congressional person, and I don't remember which. It was

basically a call to pass on a message. We chatted very briefly and Mike shared with me that he had plans to go into private practice.

6. ***In the hearing, you testified that you sent an email to former USAs regarding the February 20, 2007 Elston phone call, what was their reaction and what follow up conversations have you had with them?*** Answer: Their reaction was fairly uniform and it was that they were offended and viewed the statements made by Elston as a threat. One remarked, "What's next? A horse head in the bed?" I think we all viewed the "threat" to be that they would speak publicly about that which they had already spoken privately with Senators. From the limited information we had about those presentations, the justifications offered for the firings had been pretty lame, which was proved out later when Will Moschella presented the same allegations to the House Committee. The USAs in question have talked among themselves one to one on many occasions and we have had a number of conference calls from time to time to make sure everyone was up to speed on various developments. In regard to the Elston call, I think the common sentiment has always been that it had constituted a poorly veiled warning or threat. I didn't take it too seriously, because by that point, I frankly wasn't taking Elston himself too seriously as it appeared to me that he was intentionally trying to deceive me about the reason the other USAs were fired. I also did not know whether to believe his representation that he had no knowledge of the obvious intention to avoid senate confirmation in the Eastern District of Arkansas.
7. ***Based on your knowledge and experience as a USA, what is your response to the reasons that William Moschella offered as the justifications for the dismissals of the USAs?*** Answer: I was disappointed in Will Moschella and thought that many of the explanations were facially invalid. Based on information I already had, I believed additional justifications to be pre-textual and information learned later led me to believe the balance of his presentation was false, misleading and pre-textual. I found it remarkable that he could suggest that Carol Lam was fired over her immigration numbers and PSN numbers when DAG Comey had met with her and apparently blessed her PSN program and when DOJ had recently endorsed her immigration performance in a letter to Congress, and particularly when it was obvious that no one had even attempted to bring these supposed concerns to her attention before taking the unprecedented step of removing her. In regard to Paul Charlton, they seemed to be saying that he was being removed for having strong principled arguments against imposing the death penalty in one or more cases and that he had dared to argue with them. They also referenced an issue about taping FBI confessions that Charlton had raised with them in an entirely respectful and appropriate way. As far as I could tell, they didn't even really have a pretextual reason to remove Dan Bogden and mumbled something about "new blood" or some such. They said David Iglesias wasn't in the office

enough and delegated too much. This was an outrageous thing to say for several reasons. First, David's absence was due to Navy service in a time of war. The White House and DOJ knew of his Navy obligations when he was first appointed. Second, Bill Mercer, apparently or at least possibly one of the "deciders" who put Iglesias's name on the list for removal, has been serving in Washington at main justice for several years while holding on to his appointment as the USA in Montana. I had read articles where his Chief Judge in Montana had been demanding a full time USA in his district for some time and had been roundly ignored. In short, I found every justification offered by Moschella to be false and misleading. Pure pretext. Even to the extent the substance was partially accurate, it was presented out of context. Had those firing decisions been made on those bases, it would have been incredibly poor management to do so without consulting the USA first. There was no evidence presented that those issues were credibly part of any legitimate performance review exercise of any kind. It was a bunch of hogwash, and Will either knew it, or should have known it based on his experience.

8. ***During your tenure as USA, did a federal official ever contact you about a State Fee Privatization Investigation?*** Answer: I presume this refers to the 2005-2006 Missouri investigation assigned to my district when the USAO districts in Missouri recused. If so, the short answer is "no." Aside from some routine communication at the outset with DOJ regarding the recusals and the appointment itself, I do not remember ever being contacted by anyone in regard to this case except agents working the case, prosecutors in my office working the case, witnesses, and attorneys for persons involved or alleged to have been involved. I am not aware of any attempt to influence the investigation in any way. I was contacted by Bill Mateja on behalf of the Governor making what I considered to be legitimate inquiries into whether the investigation involved the Governor personally and if not, whether I would at any time be able to make a statement to that effect. I informed Mateja that I would stay in contact with him, and consider such a statement at the appropriate time, but was unable to discuss the matter while it was under investigation which he completely understood. Once the investigation was closed, I did write a letter and issue a brief statement regarding the Governor, which I believe was permissible under the provisions of the USAM.
9. ***Please describe any awards, commendations or other performance related assessments you received during your tenure as USA.*** Answer: We had two good EARS reviews in 2002 and 2006. Our numbers and other performance were very good in the priority categories and we may have received a letter or letters over time from the person in DOJ assigned to that priority initiative, or from the EOUSA director commending our performance in one area or another, but I really don't recall and have no files upon which to rely.

10. ***Did you ever receive a warning from the Justice Department that your office's priorities would result in your being asked to resign***? Answer: No. All input from DOJ was that our priorities locally were in line with national priorities.

11. When Mike Battle called to ask you to resign, did he give an explanation? Did you discuss with any other DOJ official? Answer: Since I was unaware of any USA ever being asked to resign by the appointing president absent misconduct, I was concerned that someone was alleging misconduct, so I asked Mike Battle if I had done anything wrong. He responded that it was just the opposite, that I had done a great job, and the decision was entirely about a desire by the White House to allow another person to serve as USA in my district. I took Mike at his word especially since he had recently visited my district, and had told me on a number of occasions since that we appeared to be doing quite well. Except for a brief call late in the year from Mike Battle to relay a phone message, and the previously discussed phone calls with Elston, Scolinos , and Mercer, I have never been contacted by any DOJ official about being asked to resign, the timing of my departure, the manner in which it would be explained to the staff or to the public, or about who would succeed me. I found it remarkable that no one saw fit to attempt to coordinate any of these issues. At some point, I began communicating with Tim Griffin, and he was obviously in constant communication to DOJ management through Monica Goodling and others. It appeared to me that Tim Griffin was also in contact with the White House. Anything I learned about any of the issues set out above I learned through communication with Tim Griffin. Not that I needed desired one, but it was curious to me that after five years of loyal and particularly successful service to the administration, I did not receive so much as a form letter from the AG or President or anyone else acknowledging, commending or appreciating that service. This was significant to me because it seemed inconsistent with the explanations that were floated in some quarters that these changes were being made to develop or credential the "bench" of Republicans in various districts. The manner they were dealing with me (or ignoring me) was not consistent with any high minded plan to expand the number of credentialed team members. I already was a credentialed team member. It looked like to me that whoever was pulling the strings in this particular plan had no regard or concern whatsoever for the people in the positions aside from getting them removed. There was no effort whatsoever to preserve their standing in the communities in which they served or to retain their loyalty or other service to the administration. My views in that area have certainly been reinforced by the subsequent demonstrations of willingness to slander the reputations of some or all of us simply to protect persons yet largely unidentified from having to explain embarrassing issues and circumstances that obviously lead to these decisions. These circumstances paint a picture of a group of people acting not with the greater good of the Republican party in mind, but with a more selfish, self serving

motivation along the lines of ingratiating themselves to the White House, to GOP congressional members, and party leaders, and also to clear some USA spots to be awarded to the staff level decision makers themselves, or their friends and "inner circle," perhaps ingratiating them to those people as well.

12. ***Did you ever have any conversations with Tim Griffin regarding the process that would be used to appoint him to be an interim USA in ED AR? If so, how many, what was the substance, who initiated each conversation, what was the method of communication, discuss with anyone else, by what method?*** Answer: These are difficult questions to answer because I have had a great number of communications with Tim by every mode of communication mentianed since June 2006, including several months when he was working in my office and I worked with him almost daily. I contacted Tim by email when he was in Iraq in June 2006 to advise him that Mike Battle had directed me to be ready to resign in favor of an unidentified person. I knew Tim intended to succeed me when I left, and assumed Tim or the White House ar both had become impatient and was taking these steps in his favor. If that proved to be the case, I was resigned to accept the decision even though I found it somewhat insulting that they would presume to execute the plan in that way instead of simply consulting me and asking for my cooperation to afford Tim the opportunity. If I learned that it was some person other than Tim, I thought I might want to consider "pushing back" or somehow appeal the decision depending on the circumstances. When contacted, Tim professed to know nothing about the matter and said he had not been contacted. Several days or weeks later, he suggested that he had been sent paperwork related to the appointment, so from that point forward, I assumed he was the person in question and so I planned to quietly accept the decision and leave. Tim and I had fairly regular communication, mostly by email, some by phone, until he returned to the States from Iraq in late Summer. I had not yet determined where I would go professionally after resigning, and it appeared Tim would have a background check completed and be "ready" to come in as the new USA by sometime in late September or early October. For partly self serving reasons, I suggested to Tim that I was concerned about the appearance of my leaving without having a job and him coming in immediately to replace me because I thought some of the USAO staff might conclude that he had used his Washington political connections to have me knocked out of the way so he could have my job. I told him that even though I was not necessarily universally "loved and admired" in the USAO, that it was a close knit office and that any number of people there might resent such a perception thus hindering his ability to succeed in the office and potentially having a negative impact on the work environment and morale of the office. I suggested as an alternative that he consider obtaining an appointment at main justice, and then a detail to our district, allowing him to get on down here to start transitioning into the job

while I kept looking for a job. He thought that was a good option and sought and obtained permission from DOJ management and/or the White House to do it that way. I don't think at this time we had had any discussions about senate confirmation and may not have had any until he arrived in the office, I think around October 1 or shortly thereafter. When he arrived, I involved him in every management meeting or decision, including the interviews and hiring of three new AUSAs. This actually did offer a unique opportunity to prep him for taking over later in the year. At some point, and I don't really know when, I became aware that he had identified some resistance from Senator Pryor about getting through the Senate. I cannot recall specifics, but my impression was that whoever he was consulting in Washington was committed to his appointment no matter what, which mildly surprised me, because I had observed in the wave of appointments in 2001-2002 that the administration seemed unwilling and even skittish about pushing forward on any nomination after potential resistance or problematic issues appeared. It seemed during this time that Tim was waiting on a decision from DC about the possibility of a recess appointment, but I cannot recite any specific conversation we had about that. I just remember wondering if it meant I would have to leave during a recess. Sometime in early November, I determined that I was not willing to go to a law firm immediately and was interested in pursuing a number of business opportunities. It appeared that the process might drag on because I wasn't sure what direction I was going to take, so I offered to Tim that I would go ahead and resign and let Tim take over. He said that he was comfortable in the configuration we were in, and that he had a week- long vacation planned in early December, and if I didn't mind staying he would prefer to not accept the USA appointment and then leave town for a week, and instead thought it better to first take the trip and accept the appointment upon his return. Sometime in early December (I think), Tim called me and said "They are going to use the Patriot Act to appoint me." I have a fairly clear memory of that particular conversation. He said that there was a provision in the Patriot Act that nobody knew about that would enable them to appoint him in a way he could stay in place throughout President Bush's administration with or without Senate confirmation. I voiced a concern about the criticism such a plan might draw to the Patriot Act itself, which many of us had worked many days and weeks to defend and to get reauthorized. Over five years many of us had made serious representations about the necessity of the tools in the Patriot Act and had put our personal credibility on the line asking for the trust of the public and congress to give us those tools. I hated to see them use any part of the Act to "game the system" because I thought it would "open up a can of worms" again over the whole Act. I don't remember any specific conversations on this subject, but I am sure it was referenced from time to time, and I don't remember ever hearing Tim or anyone else say anything after that inconsistent with a plan to install Tim using the provision of the Patriot Act where he would stay for the duration of the administration if necessary without Senate confirmation. I believe there

was some discussion of monitoring Senator Pryor's mood on the issue and perhaps seeking confirmation at a later time. In regard to third parties Tim or I spoke to on these subjects, I mainly confided in the First Assistant, Jane Duke, and Cherith Beck, who served in the administrative area in the office and as my assistant. Very few others in the office knew I was being forced out or that Tim would succeed me, though over time it at least seemed apparent to most of them that he had come there for a reason. Jane and/or Cherith may have had some conversations of their own directly with Tim Griffin that were consistent with mine. I know Tim also had similar discussions about serving without Senate confirmation if necessary with many local people outside the USAO. It was my impression that he was telling a lot of people about this plan that stimulated my call to the DAG's office in January after the AG testified that a person would be 'nominated and confirmed in every district,' because it appeared to me that the plan was to only nominate and confirm Tim if the climate for success (mainly Senator Pryor's mood on the issue) ever looked more appealing.

13. Have you had communications with former USAO colleagues or agents concerning their assessments of Mr. Griffin's qualifications?

Answer: No, I have avoided that subject to a great extent because I do not want to be, or even appear to be, a critic of Mr. Griffin's, or do anything to injure his ability to be a successful USA. I also wouldn't want to hurt the office by contributing to or creating any morale problems that would hurt the office. So, I don't ask.

Second Set of Questions:

1. ***When you were a USA, did DOJ take steps to assure that you understood you served at the will of the President?*** Answer: Yes, I can't remember specifically, but I always knew that.
2. ***Did you understand that you served at the will of the President?*** Answer: Absolutely yes.
3. ***Did you serve out the full, four year term of your appointment?*** Answer: Yes I did, actually I served five full years, December 21, 2001 to December 20, 2006. If you ever asked anyone at DOJ about the meaning of the four year term, you would be told that it was really almost meaningless in light of the at will nature of the job and the customs of the Department. You served at the will of the President, so if he asked you to leave on the second week of your appointment, you would have to go. If the President lost reelection, and your term was not up, you could still expect to be removed by the next President, especially if of the other party. On the other hand, as long as the President who appointed you was in office, there was no precedent for removal of you absent misconduct even after the four year mark came and went. Dismissal for misconduct had occurred in a very few cases of obvious misconduct, i.e. political activities within the

office, assaulting a woman, etc. Of course, many USA's leave short of two terms to become judges or return to private practice. My wife would tell you that if DOJ intends to start making it a practice to remove folks at the four year mark, out of fairness they ought to tell you that on the front end because a lot of people would not choose to take a job you have to fill out thousands of forms for, submit to a background check by the FBI, submit to a Senate confirmation process that might be randomly delayed at the fancy of one or more Senators, and probably go without income in the process, and generally put your family through hell to take a job that might be taken away even if you are performing well.

4. ***With regard to Mr.Timothy Griffin, who had previously served in your office, did you not write a letter to him on August 13, 2002, thanking him for his service to your office, complimenting him for indicting more people during his time in the office than any other AUSA, and telling him that his work was excellent?***
5. ***Did you not also compliment Mr. Griffin for developing and launching PSN program for your district and state that the program in your USAO had been highly recognized and commended in a recent evaluation?***

Answers to 4 and 5: Tim asked me to write a positive letter for him after he left the USAO in 2002 and I did. I don't have a copy of it, so I don't know exactly what it said, but I do remember commending him for getting our PSN program off the ground and for indicting a lot of cases. It has come to my attention that some DOJ officials or members of Congress have stated that I called him my "right arm" or "right hand," presumably in that letter, but I do not recall writing such a statement or know exactly why I would have said that. Tim was (and is) a bright, energetic young man. Our PSN program started well because of Tim's efforts to set it up, and achieved great things for the four years after Tim left due to the efforts of virtually every person in the criminal division. I think in the letter I was probably guessing about the number of cases he indicted, but if we researched the question I think we would find that he indicted quite a few cases at least for several of the months he was there. That is certainly to be commended, but it is equally true that other prosecutors in the office inherited most of the cases and took them to trial or convictions after Tim left. If this question goes to Tim's objective qualifications to serve as a USA, I do not dispute that he is qualified. If it is intended to lock me in to some statement endorsing Tim's abilities, I have never criticized his abilities and don't intend to do so.

ANSWERS TO POST-HEARING QUESTIONS FROM PAUL CHARLTON,
FORMER UNITED STATES ATTORNEY FOR THE DISTRICT OF ARIZONA

QUESTIONS FROM SUBCOMMITTEE CHAIR LINDA SÁNCHEZ
FOR PAUL K. CHARLTON

1. Please describe any conversations you had with officials at the Department of Justice relating to your termination as U.S. Attorney that occurred after the notification you received on December 7, 2006. Your description of each conversation should include, but is not limited to, who initiated each call, who participated, and what was said by whom. In hindsight, please describe the message you believe was conveyed by officials at the Department of Justice. If you discussed any of these calls with any of the other former U.S. Attorneys who testified at the hearing, please describe these conversations.
After December 7, 2006, but prior to the Attorney General's testimony before the Senate Judiciary Committee, I received a call from Mike Elston, Chief of Staff to the DAG. In that conversation I believe that Elston was offering me a quid pro quo agreement: my silence in exchange for the Attorney General's.

2. Outside of the EARS reports, please describe any awards, commendations, or other performance-related assessments that you received during your tenure as United States Attorney for the District of Arizona. **The Financial Litigation Unit received the Director's Award for their work on behalf of victims of crime, as did the Victim Witness Unit. I received a Special Commendation award from the Attorney General in 2005, and during the Attorney General's visit to Arizona in November of 2005, the Attorney General told me that he had heard nothing but "great" things about me and that he agreed with that assessment.**

3. An e-mail exchange from Brent Ward, Director of the Department of Justice Obscenity Prosecution Task Force, to Kyle Sampson, Attorney General Chief of Staff, on September 20, 2006 references your "unwillingness" to prosecute obscenity cases. Please respond to this.

Please see the attached summary of a Salon article that I believe accurately reflects the answer to your question:

Failure To Prosecute Pornography Cases Seen As Reason Behind Some Dismissals. Salon.com **(4/19, Follman) reports, "Facing a torrent of criticism that the Department of Justice has been tainted by partisan politics, Alberto Gonzales is poised for the defense argument of his life. The attorney general must explain to Congress an accumulation of embarrassing partisan e-mails and inaccurate statements by top Bush officials, which have helped transform the quiet firing of eight U.S. attorneys last year into an explosive Washington scandal. ... Gonzales will be grilled about alleged Republican meddling on issues from corruption to cronyism, widely documented in the four months since the purge. But a Salon investigation has uncovered another partisan issue dirtying the U.S. attorneys scandal: adult pornography." Salon continues, "Although the prosecution of adult obscenity has long been a fixation for right-wing Republicans, since the Reagan era it has never been more than a negligible fraction of the Justice Department's work. Yet, the alleged failure of two U.S. attorneys to go after porn prosecutions became part of a dubious set of 'performance-related' reasons given by top officials for the recent firings. Meanwhile, several of the small handful of porn cases done under Gonzales were conducted by high-ranking officials close to the attorney general. Those officials were also involved in the group firing of the U.S. attorneys, and two of them recently received promotions. ... Two of the fired U.S. attorneys, Dan Bogden of Nevada and Paul Charlton of Arizona, were pressured by a top Justice Department official last fall to commit resources to adult obscenity cases, even though both of their offices faced serious shortages of manpower. Each of them warned top officials that pursuing the obscenity cases would force them to pull prosecutors away from other significant criminal investigations. In Nevada, ongoing cases included gang violence and racketeering, corporate healthcare fraud, and the prosecution of a Republican official on corruption charges. In Arizona, they included multiple investigations of child exploitation, including 'traveler' cases in which pedophiles arrive from elsewhere to meet**

children they've targeted online. ... The U.S. attorneys' doubts about prioritizing obscenity cases drew the ire of Brent Ward, the director of the Obscenity Prosecution Task Force in Washington, who went on to tell top Justice Department officials that the two were insubordinate over the issue. But the obscenity case that Ward pressured Bogden to pursue was 'woefully deficient' according to a former senior law enforcement official who spoke to Salon last month. And Charlton's office was in fact on the leading edge of adult obscenity prosecutions, including a recent case aimed at stopping pornography distributed via SPAM e-mail."

4. William Moschella testified at the March 6, 2007 hearing before the Subcommittee on Commercial and Administrative Law of the House Committee on the Judiciary that you were terminated for policy disagreements on the taping of FBI interviews and the death penalty. Please supplement your response to these issues and respond to any other issues that have since come to light in documents released by the Department of Justice. **I understand that that those are the reasons currently posited for my request to resign. I leave it to the ongoing investigations to determine the veracity of these reasons.**

5. Are you aware of any efforts to politicize the Department of Justice with respect to its personnel decisions? If so, please explain. **I have no first hand knowledge of this issue.**

6. Do you know if any target of your office's investigations or prosecutions complained to either main Justice or the White House**? I do not know if that happened.**

7. During your tenure, were you ever contacted by the Administration, a member of Congress, or congressional staff about any of your office's investigations or prosecutions? If so, please describe those contacts. **I was never personally contacted.**

8. Why should United States Attorneys be able to exercise some degree of independent judgment? **U.S. Attorney's know their District best. Some discretion must be left to U.S. Attorney's so that they may address issues and resources as is best within the District.**

9. When a highly respected United States Attorney is abruptly and without explanation removed, what impact does that have on other United States Attorneys? **I believe that these dismissals have impacted the U.S. Attorney community in a number of ways, including moral.**

10. Did you ever receive a warning from the Justice Department that your office's priorities would result in you being asked to resign? **No**

11. When you were notified by Executive Office for United States Attorneys Director Michael Battle that you were being asked to resign, did he give you any explanation why this was being done? **No.**

12. What effect, if any, did the Administration's annual budget cuts have on your office? **Please see the attached PDF forms. One is from the former Chief of the U.S. Border Patrol for the Tucson Sector who indicates that Justice did not provide sufficient resources to our office, and the other a series of DOJ e-mails which indicate that while we received some new resources on 2006, they were not sufficient to cover the deficit in resources we faced.**

13. Did these budget cuts have a disproportionate effect on your office? If so, please explain

why. **See 12 above.**

14. What effect did these budget cuts and lack of personnel have on the ability of your office to meet the Justice Department's myriad priorities? **We were forced to raise our intake guidelines.**

15. Were there competing Justice Department priorities that conflicted with your office's ability to prosecute high-volume immigration cases? **Every new priority forced us to reevaluate our ability to continue to do border prosecutions at a high rate.**

16. Did your office request additional resources from the Attorney General? If yes, were your requests granted or denied? If denied, were you told why? **We continually requested more resources from the Department. Only in the late 2006 were we granted some additional resources, and those were insufficient to cover the deficit in resources we faced at that time. See the DOJ e-mails attached above.**

17. Did your office experience any hiring freezes during your tenure? **Effectively, yes.**

18. How many Assistant United States Attorneys did your office have when you started and completed your tenure as United States Attorney? **I do not have access to that information.**

E-MAILS FROM JUSTICE DEPARTMENT OFFICIALS REGARDING PAUL CHARLTON, SUBMITTED BY PAUL CHARLTON, FORMER UNITED STATES ATTORNEY FOR THE DISTRICT OF ARIZONA

was read on Mon, 17 Jul 2006 14:48:43 -0700

Seidel, Rebecca

From: Voris, Natalie (USAEO)
Sent: Monday, July 17, 2006 5:41 PM
To: Seidel, Rebecca
Subject: RE: AG hearing tomorrow

Oh dear.

-----Original Message-----
From: Seidel, Rebecca
Sent: Monday, July 17, 2006 5:40 PM
To: Voris, Natalie (USAEO)
Cc: Warwick, Brian; Scott-Finan, Nancy; Parent, Steve (USAEO)
Subject: RE: AG hearing tomorrow

No - Kyl staff said they routinely talk to USAZ on many issues, and brought this up in one of those conversations. Didn't mean to circumvent OLA staff Kyl staff said, it just came up in routine conversation.. UGH.

-----Original Message-----
From: Voris, Natalie (USAEO)
Sent: Monday, July 17, 2006 5:35 PM
To: Seidel, Rebecca
Cc: Warwick, Brian; Scott-Finan, Nancy; Parent, Steve (USAEO)
Subject: RE: AG hearing tomorrow

EOUSA is showing that AZ is down 12-13 attorneys and 10 support. Attached is the 07 request. I've added Steve Parent to this email, please keep him in email traffic on this subject since it is budget-related. The attached information has been provided to the AGAC to use in their phone trees. Is there a chance that ODAG's Mark Epley coordinated any contact b/t the USAO and Kyl re budget?

nv

From: Seidel, Rebecca
Sent: Monday, July 17, 2006 5:26 PM
To: Charlton, Paul (USAAZ); Koehler, Joe (USAAZ)
Cc: Warwick, Brian; Scott-Finan, Nancy; Voris, Natalie (USAEO)
Subject: AG hearing tomorrow
Importance: High

Paul / Joe, please advise me asap as to what conversations your office may have had with Kyl staff in response to their questions about your resources?? I have intel that Kyl's office is going to ask the AG at his oversight hearing tomorrow about resources for USA's, specifically your office where he has been informed you are 25 spots short? Please fill me in asap - I have to get info to the AG in the next 15 minutes tonight so that he is prepared for this question tomorrow.

Natalie - do you have handy what our 07 request is for USAs?

Seidel, Rebecca

From: Charlton, Paul (USAAZ)
Sent: Monday, July 17, 2006 5:52 PM
To: Seidel, Rebecca
Subject: RE: AG hearing tomorrow

Attachments: tmp.htm

tmp.htm (2 KB)

Hi Rebecca - His office called and asked about resources. I told him that we were down approximately 10%, 11 AUSA's and 14 support staff.
Paul

From: Seidel, Rebecca
Sent: Monday, July 17, 2006 2:26 PM
To: Charlton, Paul (USAAZ); Koehler, Joe (USAAZ)
Cc: Warwick, Brian; Scott-Finan, Nancy; Voris, Natalie (USAEO)
Subject: AG hearing tomorrow
Importance: High

Paul / Joe, please advise me asap as to what conversations your office may have had with Kyl staff in response to their questions about your resources?? I have intel that Kyl's office is going to ask the AG at his oversight hearing tomorrow about resources for USA's, specifically your office where he has been informed you are 25 spots short? Please fill me in asap - I have to get info to the AG in the next 25 minutes tonight so that he is prepared for this question tomorrow.

Natalie - do you have handy what our 07 request is for USAs?

Seidel, Rebecca

From: Charlton, Paul (USAAZ)
Sent: Monday, July 17, 2006 5:49 PM
To: Seidel, Rebecca
Subject: Read: AG hearing tomorrow

Importance: High

Attachments: ATTACHMENT.TXT

ATTACHMENT.TXT
(320 B)

Your message

To: Charlton, Paul (USAAZ); Koehler, Joe (USAAZ)
Cc: Warwick, Brian; Scott-Finan, Nancy; Voris, Natalie (USAEO)
Subject: AG hearing tomorrow
Sent: Mon, 17 Jul 2006 14:26:14 -0700

Moschella, William

From: Nowacki, John (USAEO) [John.Nowacki@usdoj.gov]
Sent: Monday, March 05, 2007 5:58 PM
To: Moschella, William; Hertling, Richard; Scott-Finan, Nancy; Elston, Michael (ODAG); Goodling, Monica; Sampson, Kyle
Subject: AZ Resources

As requested:

On July 31, 2006, it was announced that the District of Arizona would receive:

1 OCDETF attorney (the same was provided to each of the other SWB USAO's; this person was transferred into the job around October 2006);

4 line AUSA's (filling existing openings; the last of these hires was slated to start in January 2007); and

4 DHS SAUSA's (these also started in Fall 2006).

LETTER FROM MICHAEL C. NICLEY, FORMER CHIEF PATROL AGENT, U.S. BORDER PATROL, SUBMITTED BY PAUL CHARLTON, FORMER UNITED STATES ATTORNEY FOR THE DISTRICT OF ARIZONA

April 17, 2007

To Whom It May Concern:

I retired last month after serving over 26 years with the U.S. Border Patrol. I was appointed to the position of Chief Patrol Agent of the Yuma Border Patrol Sector in July of 2001 and I served in that capacity until being appointed to the position of Chief Patrol Agent of the Tucson Border Patrol Sector in January of 2005. These two sectors encompass the entire State of Arizona and the Tucson Sector is by far the largest, busiest Border Patrol operation in the Nation.

During my time in Arizona, I had the opportunity to work closely with the U.S. Attorney for the District of Arizona, Paul Charlton. To say that Mr. Charlton had a positive impact upon border enforcement efforts in Arizona would be a gross understatement of his contributions. Mr. Charlton always stepped forward to support us in any way possible. During special operations such as the Department of Homeland Security's Arizona Border Control Initiative, he developed innovative ways to support our efforts and his office implemented protocols to maximize prosecutions in targeted corridors, thereby increasing the deterrence value of our operations.

He always took a leadership role amongst the various federal, state, local, and tribal law enforcement agencies operating along the border and he clearly understood the important role prosecutions have on border security efforts. His office never shied away from difficult cases and his decisions related to prosecution were always based upon the merits of the case rather than political expediency or pressure.

Mr. Charlton's depth of experience regarding border enforcement operations made him an expert whose advice and counsel was routinely sought while my Command Staff and I addressed serious, difficult border security issues throughout Arizona. I can recall no instance when Mr. Charlton withheld discretionary support after I asked for assistance.

The prosecution thresholds established by his office were the function of staffing levels rather than arbitrary target numbers. The Department of Justice simply never provided adequate resources to properly carry the prosecution burden in Arizona.

Paul Charlton's departure was clearly a loss to the Arizona law enforcement community in general and the U.S. Border Patrol in particular. During his tenure, the State of Arizona and the people of the United States were extremely well served. It was an honor to work with such a dedicated, loyal public servant.

Sincerely

Michael C. Nicley
Chief Patrol Agent (Ret.)
U.S. Border Patrol

ANSWERS TO POST-HEARING QUESTIONS FROM JOHN MCKAY, FORMER UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF WASHINGTON

QUESTIONS FROM SUBCOMMITTEE CHAIR LINDA SÁNCHEZ
FOR JOHN McKAY

1. Several press reports quoting you have referred to a meeting you had with White House Counsel Harriet Miers and her deputy in 2006 concerning your interest in being nominated to be a federal judge in Washington, and to complaints from Republicans concerning the 2004 Washington gubernatorial election that were discussed at the meeting. Please describe in full any meeting you had with Ms. Miers or any other White House employees on the above subject, including but not limited to the dates and locations of each such meeting, who was present, and what was said by whom.

   On or about August 22, 2006, I met in the White House Counsel's office with then White House Counsel Harriet Miers and Deputy White House Counsel William Kelley. No other persons were present. The meeting occurred at my request to seek consideration for appointment as U.S. District Judge for the Western District of Washington. Prior to seeking the meeting, I was aware that the White House Counsel's office had heard or believed that I had "mishandled" the 2004 Governors election in Washington state by not seeking indictments for election fraud, voter fraud or other federal crimes (*see answer to question no. 2, below).* This meeting lasted approximately 45 minutes, and began with Mr. Kelley asking me why "Republicans in the state of Washington" were upset with me. I described the merit selection committee process in which I had participated in the preceding months, including my understanding that the three Republican committee members had blocked my application, in spite of having widely been considered the leading candidate for the position. I explained that I did not know the reasons for this, but that others were speculating that I was being punished for failing to intervene and assist the election of the unsuccessful Republican candidate. Both Mr. Kelley and Ms. Miers expressed consternation over this situation and they repeatedly indicated they could not understand why I was not among the three candidates recommended to the President for nomination. I took this opportunity to remind them of my qualifications and experience, including my service as United States Attorney, and that I hoped I could still be considered for nomination by the President. I believed that I was given a full and fair opportunity to make my case, and at the conclusion of the meeting, Ms. Miers escorted me to the door, thanking me for my years of service as the former President of the Legal Services Corporation.

2. Press reports have also quoted you as stating that someone in the White House referred to "criticism" that you "mishandled the 2004 election." Please state your understanding of who made that remark to whom and when and on what basis it was made.

   Before seeking a meeting with the White House Counsel, I was advised that the Counsel's office was reporting within the White House that they were aware that I had allegedly "mishandled" the 2004 Governors election, and was therefore not one of the three recommended candidates for judge. In response, I submitted a detailed memorandum of activities undertaken by my office in connection with the 2004 Governors election and submitted it to the Counsel's office.

3. Please describe any conversations you had with officials at the Department of Justice relating to your termination as U.S. Attorney that occurred after the notification you received on December 7, 2006. This should include, but not be limited to, a conversation that the press has reported that you had with Michael Elston and your conclusion, as reported in the press, that Mr. Elston was suggesting a "deal" or "quid pro quo." Your description of each conversation should include, but not be limited to, who initiated each call, who participated, and what was said by whom. In addition, if you discussed any of these calls with any of the other former U.S. Attorneys who testified at the hearing, please describe any of these conversations.

On January 17, 2007 at 2:30pm while still serving as U.S. Attorney, I received a telephone call from Michael Elston, the Chief of Staff to Deputy Attorney General Paul McNulty. Mr. Elston proceeded to make a number of statements using a familiar tone which I did not appreciate in light of the circumstances, and related that "no one could believe that they had not seen any incendiary comments from John McKay". I did not respond. He then indicated that the Attorney General would be holding to general statements about U.S. Attorney resignations in his upcoming testimony before the Senate Judiciary Committee, and that they had been advised by "OPA" that they could say no more than this about the circumstances of our removals, including our forced resignations. I did not respond. He volunteered that it was "never our intention" to avoid Senate confirmation with our replacements. Although I did not believe him, I did not respond. He then asked if, "you have any more questions?" I then reminded him that he initiated the call, and that I had not asked him or any other Dept. of Justice official any questions and that his call seemed strange coming more than a month after my dismissal having received no other calls. I greatly resented what I felt Mr. Elston was trying to do: buy my silence by promising that the Attorney General would not demean me in his Senate testimony. I clearly and slowly told Mr. Elston that his description of what the Attorney General would be saying would have NOTHING to do with what I said or didn't say publicly. I told him that my silence thus far was because I believed it was my duty to resign quietly because I served at the pleasure of the President, and that I did not want to reflect poorly on him or the Department of Justice. I told him that nothing he could say in Washington D.C. could demean me in Seattle, and made clear that I did not appreciate his offer. My handwritten and dated notes of this call reflect that I believed Mr. Elston's tone was sinister and that he was prepared to threaten me further if he concluded I did not intend to continue to remain silent about my dismissal. Shortly thereafter, I believe within the hour, I spoke by telephone with Paul Charlton, U.S. Attorney for the District of Arizona and related the call and my conclusion that I was being threatened by Mr. Elston.

On January 26, 2007, my last day in office, I received a telephone call from Bill Mercer, the Acting Associate Attorney General and U.S. Attorney for the District of Montana. Mr. Mercer asked if he was supposed to call me "Professor" and indicated he wished to have coffee with me when he was next in Seattle. I told him he could reach me at Seattle

University School of Law and ended the call. I believe I may have had one call with Michael Battle, then the Director of the Executive Office for United States Attorneys in the Dept. of Justice. During January, 2007 I had sent several emails requesting the identity of my replacement so that I could prepare my staff, the judges in our district and our law enforcement partners. At approximately 3:30pm on January 26th, I received a phone call from John Nowacki with EOUSA advising me of the selection.

4. Some reports suggest that your alleged failure to pursue allegations of voter fraud contributed to your dismissal. Please state your response to such claims.

I do not have any knowledge of the true reason for my dismissal, and neither apparently did the Attorney General of the United States at the time my resignation was requested. A detailed "Close Out" memorandum was prepared by my office at the conclusion of this investigation, and it was submitted to the Criminal Division of the Dept. of Justice. It details actions taken by me and the Seattle Division of the F.B.I. and reports the unanimous conclusion that no evidence of federal crimes was found.

5. Please describe any awards, commendations, or other performance-related assessments that you received during your tenure as United States Attorney for the Western District of Washington.

While serving as United States Attorney, the office was evaluated twice by the EARS (inspection) staff for the Executive Office for United States Attorneys. The first evaluation occurred during 2002, during a reorganization of the Criminal Division and following the implementation of a Strategic Plan developed under my leadership. The office received generally positive reviews, as did I personally. The second evaluation would have normally occurred in calendar year 2005; however I received a phone call at that time from Michael Battle, Director of EOUSA informing me that it would be delayed until 2006 because, "we know your District is so well run". In March, 2006 approximately 27 inspectors interviewed over 170 individuals and gave the office overwhelmingly positive reviews, making few significant suggestions for improvement and declaring my leadership of the Law Enforcement Information Exchange ("LInX") to be among the *Department of* Justice *Best Practices*. In addition to finding my leadership to be exemplary, the report which was finalized on September 22, 2006, found the office to be in compliance with all Dept. of Justice investigative and prosecutive policies.

I have received a number of awards and honors while serving as U.S. Attorney which undoubtedly were in part due to the efforts of the hard working women and men of my office. AUSA's, support and administrative staff, together with our federal law enforcement partners deserve the credit. The only noteworthy award is the Department of the Navy's *Distinguished Public Service Award,* its highest civilian honor, which was presented to me in January, 2007 for my leadership of LInX. Following is the

commendation accompanying the award, which was signed by Gordon England, currently the Deputy Secretary of Defense:

For exceptional public service to the Department of the Navy from October 2001 to December 2005, while serving as United States Attorney for the Western District of Washington. As the senior law enforcement officer for the Federal Government, Mr. McKay worked closely with the Naval Criminal Investigative Service and the Navy Master at Arms forces to ensure the safety and security of those working and living in the Western District by instituting innovative, cutting edge programs. Mr. McKay developed a collaborative strategic planning process with members of the federal law enforcement community to develop a common federal law enforcement approach to identifying the major criminal threats impacting his District. The result was greater information sharing among 23 law enforcement partners and the creation of the Washington Joint Analytical Center, providing real time analytical support to all law enforcement agencies in the State concerning terrorism and major criminal offenses. Mr. McKay provided critical leadership in the development and implementation of the Northwest Law Enforcement Information Exchange (LInX Northwest). The LInX Northwest, currently comprised of 53 federal, state, and local law enforcement agencies through the State of Washington, is an electronic database for the rapid exchange of criminal justice and investigative information among its members. This database has ensured immediate access to information that has deterred, disrupted and mitigated criminal and terrorist related activities in the Western District of Washington. The acting Deputy Attorney General of the United States recognized Mr. McKay for his efforts in information sharing by appointing him to lead the integration of LInX throughout the Department of Justice law enforcement agencies. Mr. McKay's initiative, perseverance, and noteworthy achievements reflect great credit upon himself and the United States Department of Justice, and are in keeping with the highest traditions of public service.

6. Did you ever receive a warning from the Justice Department that your office's priorities would result in you being asked to resign?

At no time did any official of the Department of Justice, either as part of a formal review or at any other time, advise me the I or my office was failing to execute the priorities of the Department or the President. At no time was I advised I might be asked to resign until December 7, 2006.

7. When you were notified by Executive Office for United States Attorneys Director Michael Battle that you were being asked to resign, did he give you any explanation why this was being done?

No explanation for my requested resignation was given. I asked Mike Battle if he could tell me anything, and he responded in the negative. When I asked him if others were receiving similar calls he stated, "John, I do not have any information on that". After a pause, and not

in response to any question of mine, Mr. Battle stated, "I know it must feel like when getting a call like this that you've done something wrong. That's not always the case". I said, "o.k." and he ended the call.

8. Please describe any conversations you had with officials at the Department of Justice relating to your termination as U.S. Attorney that occurred after the notification you received on December 7, 2006. Your description of each conversation should include, but is not limited to, who initiated each call, who participated, and what was said by whom. In addition, if you discussed any of these calls with any of the other former U.S. Attorneys who testified at the hearing, please describe any of these conversations.

   See answer to Question No. 3.

9. What effect, if any, did the Administration's annual budget cuts have on your office?

   While serving as U.S. Attorney, the office along with all other offices in the field had frozen or reduced budgets in my last three fiscal years. As I do not have access to office records at this time, I can not detail the dollars or positions that were lost. At the time I left office, I believe our Criminal Division was down over 10 percent in AUSAs and support staff, seriously impacting federal law enforcement in the District.

10. Did these budget cuts have a disproportionate effect on your office? If so, please explain why.

    I do not believe the budget situation in my office was disproportionate to other offices. At the time we learned of the first cuts, my management team concluded that the only way to meet budget was to freeze hiring, and we projected a 10-15 percent reduction in prosecutors. I contacted 5-10 U.S. Attorneys, including Carol Lam in San Diego, James McDevitt in Spokane, Kevin Ryan in San Francisco, Karin Immergut in Portland and Debra Wong Yang in Los Angeles. All reported similar experience.

11. What effect did these budget cuts and lack of personnel have on the ability of your office to meet the Justice Department's myriad priorities?

    Obviously, a reduction in resources of this magnitude impacts many prosecutive priorities within an office. Our management team responded by seeking to (1) reduce costs wherever possible; (2) increase workloads; (3) communicate honestly with law enforcement partners about our situation. Guidance concerning prosecutive priorities comes from the Dept. of Justice Strategic Plan and the goals and priorities listed there, the additional priorities stated by the Attorney General and Deputy Attorney General and by me as U.S. Attorney. I do not believe that we failed to meet all of these priorities due to the hard work of the men and women of federal law enforcement in my former District.

12. Did your office request additional resources from the Attorney General? If yes, were your requests granted or denied? If denied, were you told why?

On numerous occasions during my tenure as U.S. Attorney, I was given the opportunity to request additional AUSA and support staff positions. Although I do not have access to the office records, I did receive new AUSA positions for drug prosecutions, counter terrorism, cyber crime and gun prosecutions. However, at the time of my resignation, nearly all of these new FTE's were effectively unfilled due to the budget freeze and reductions. I did submit, in conjunction with the development of our Strategic Plan, a request for approximately 20 additional AUSA's to meet the priorities set forth in the Dept. of Justice and District Strategic Plan. I received no response from the Department. In the final three fiscal years, I requested that EOUSA adjust the litigation support line for the District which was, in my judgment, grossly inadequate. During my tenure, the number of indictments and defendants nearly tripled in number over prior years, and the budget developed in Main Justice did not reflect this. Then Director Mary Beth Buchanan promised to adjust this number (which in effect was penalizing the office for being more productive), and this never occurred. This shortfall prevented the office from hiring a number of AUSA and support staff that we were otherwise authorized to hire, and adversely impacted our ability to perform.

13. Did your office experience any hiring freezes during your tenure?

Although the Department never acknowledged a "hiring freeze" of AUSAs, every office in the country dealt with the budget freezes and reductions by delaying or failing to fill FTE positions.

14. How many Assistant United States Attorneys did your office have when you started and completed your tenure as United States Attorney?

As of the beginning of my term, the office had approximately 60 AUSAs. At my departure, there were approximately 65 ASUA positions, with seven unfilled due to budget constraints.

JOHN McKAY'S RESPONSES TO "Questions for John McKay, Esq." which accompanied the Questions from Subcommittee Chair Sanchez

1. *When you were a U.S. Attorney, did you understand that you served at the will of the President?*

Yes.

2. *Did you serve out the full, four-year term of your appointment?*

I served from October 30, 2001 to January 26, 2007.

3. *Do you understand the Department of Justice has to set enforcement policies for the nation?*

No. The Department of Justice sets enforcement policies for the Department. The Congress, the President and arguably other Departments and agencies also establish policies.

4. *Sentencing Commission statistics suggest that less than 37 percent of your cases were in the range suggested by the Sentencing Guidelines and that non-governmental downward departures from the Guidelines were more than 30 percent. Were you not aware as U.S. Attorney that the Department of Justice national policy is actively to seek sentences within the range established by the Sentencing Guidelines in all but extraordinary cases?*

Yes I am aware of and established policies within my office which strongly promoted sentencing recommendations to U.S. District Judges consistent with the Sentencing Guidelines, Ninth Circuit and U.S. Supreme Court decisions.

5. *Were you not aware as U.S. Attorney that Department of Justice national policy is to preserve the ability of the United States to appeal unreasonable sentences?*

Yes I was aware of this.

6. *What percentage of downward departures in your district did you recommend for appeal?*

I do not have access to this information; however you should be able to obtain it from the Department of Justice.

7. *Do you know the Department of Justice policy as stated in the U.S. Attorneys Manual with regard to contacts with Congress?*

Yes.

8. *Did you follow that policy in all respects when you received the alleged contacts from Congressional staff which you discussed at the hearing?*

Yes.

9. *Do you believe that your failure to follow all aspects of that policy reflected the best judgment that can be expected of a U.S. Attorney?*

Not applicable.