AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

CONTINUING INVESTIGATION INTO THE U.S. ATTORNEYS CONTROVERSY AND RELATED MATTERS (PART II)

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCIAL AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

JUNE 21, 2007

Serial No. 110–73

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

36–176 PDF WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

JOHN CONYERS, JR., Michigan, *Chairman*

HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. (BOBBY) SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
LINDA T. SÁNCHEZ, California
STEVE COHEN, Tennessee
HANK JOHNSON, Georgia
LUIS V. GUTIERREZ, Illinois
BRAD SHERMAN, California
TAMMY BALDWIN, Wisconsin
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
ARTUR DAVIS, Alabama
DEBBIE WASSERMAN SCHULTZ, Florida
KEITH ELLISON, Minnesota

LAMAR SMITH, Texas
F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
DANIEL E. LUNGREN, California
CHRIS CANNON, Utah
RIC KELLER, Florida
DARRELL ISSA, California
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TOM FEENEY, Florida
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio

PERRY APELBAUM, *Staff Director and Chief Counsel*
JOSEPH GIBSON, *Minority Chief Counsel*

SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

LINDA T. SÁNCHEZ, California, *Chairwoman*

JOHN CONYERS, JR., Michigan
HANK JOHNSON, Georgia
ZOE LOFGREN, California
WILLIAM D. DELAHUNT, Massachusetts
MELVIN L. WATT, North Carolina
STEVE COHEN, Tennessee

CHRIS CANNON, Utah
JIM JORDAN, Ohio
RIC KELLER, Florida
TOM FEENEY, Florida
TRENT FRANKS, Arizona

MICHONE JOHNSON, *Chief Counsel*
DANIEL FLORES, *Minority Counsel*

CONTENTS

JUNE 21, 2007

Page

OPENING STATEMENTS

The Honorable Linda T. Sánchez, a Representative in Congress from the State of California, and Chairwoman, Subcommittee on Commercial and Administrative Law 1
The Honorable Chris Cannon, a Representative in Congress from the State of Utah, and Ranking Member, Subcommittee on Commercial and Administrative Law 3
The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, Chairman, Committee on the Judiciary, and Member, Subcommittee on Commercial and Administrative Law 5
The Honorable Lamar Smith, a Representative in Congress from the State of Texas, and Ranking Member, Committee on the Judiciary 7

WITNESSES

The Honorable Paul J. McNulty, Deputy Attorney General, United States Department of Justice
Oral Testimony 9
Prepared Statement 11

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Prepared Statement of the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Chairman, Committee on the Judiciary 55
Answers to Post-Hearing Questions from the Honorable Paul J. McNulty, Deputy Attorney General, United States Department of Justice 57

CONTINUING INVESTIGATION INTO THE U.S. ATTORNEYS CONTROVERSY AND RELATED MATTERS (PART II)

THURSDAY, JUNE 21, 2007

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

The Subcommittee met, pursuant to notice, at 12:11 p.m., in Room 2141, Rayburn House Office Building, the Honorable Linda Sánchez (Chairwoman of the Subcommittee) presiding.

Present: Representatives Sánchez, Conyers, Johnson, Lofgren, Delahunt, Watt, Cohen, Cannon, Smith, Keller, Feeney, and Franks.

Staff present: Eric Tamarkin, Majority Counsel; Daniel Flores, Minority Counsel; and Elias Wolfberg, Professional Staff Member.

Ms. SÁNCHEZ. This hearing of the Committee on the Judiciary, Subcommittee on Commercial and Administrative Law, will now come to order. I will recognize myself first for a short statement.

The House Judiciary Committee began this investigation 4 months ago to look into the possibility that partisan political considerations had driven the Bush administration's decision to fire U.S. attorneys last year.

The purpose behind this investigation remains clear. Our justice system must remain free from the contamination of partisan politics, a cancer on our ability to enforce the rule of law. Put simply, the American people need to know that they will not be arrested or prosecuted for the reason of helping any political party win elections.

Some Members of this Committee have expressed concerns that this investigation has been a fruitless attempt to embarrass the Bush administration. These statements are confusing and disappointing, to say the least.

Since beginning this investigation, five senior Justice Department officials involved with the U.S. attorneys' firings have resigned or announced their intention to do so, including today's witness.

There are now at least two internal Bush administration investigations into partisan maneuverings and related issues, including the possibility that the Attorney General tried to improperly influence the investigation.

We have seen documents and heard testimony that the Bush administration used partisan considerations to hire assistant U.S. attorneys, immigration judges and civil rights watchdogs.

Some of these critics have themselves voted to issue immunity to a former Justice Department official in order to compel her testimony, acknowledging the serious nature and troubling questions of this issue.

Most troubling, however, were the recent statements by two former U.S. attorneys who are professional prosecutors whose expertise leads them to believe that there will be criminal charges as a result of the firings.

All of these developments are a direct result of this investigation.

Unfortunately, despite all that we have learned, we still do not have answers to two fundamental questions: Who made the decisions to put the fired U.S. attorneys on the termination list? And why were these particular prosecutors chosen?

We have talked with every senior Justice Department official who was or should have been involved in a process to review and fire Federal attorneys. Each one has said, "Not me."

We have also been presented with continually conflicting explanations for the mass firings of the U.S. attorneys, both in testimony and through a review of documents.

Years after the plan to fire these prosecutors began, and 4 months after we first started these questions, the Bush administration still cannot get its story straight.

This hearing was called to help clear up some of these contradictions.

Last month, the Judiciary Committee heard from Monica Goodling, former senior counsel to Attorney General Alberto Gonzales and the deputy's White House liaison. Ms. Goodling made specific allegations about the Deputy Attorney General, including that he testified inaccurately before Congress and that he misled Members of the Senate Judiciary Committee in a private briefing.

I was particularly troubled when Ms. Goodling testified that a few minutes before the private Senate briefing was to take place, the deputy made clear to her that he did not think she should attend. The deputy suggested, if someone recognized her as the White House liaison, then the Members would be more likely to ask questions about the White House.

In a private interview with Judiciary Committee staff in April, Mr. McNulty stated he had scant knowledge as to who was responsible for placing the U.S. attorneys on the firing list and why they were placed on the list. This is the same thing we have heard from every other senior Justice Department official who appears to have played a significant role in the firings of the nine U.S. attorneys.

I hope that today Mr. McNulty will set the record straight and explain these matters to the American people and to the Congress.

As we continue to work with the Department of Justice to get complete and honest testimony from officials in that department, it is also clear that the investigation must now include the White House. Despite mounting evidence contradicting the initial explanations by Attorney General Gonzales and other Administration officials about why the U.S. attorneys were dismissed and what role the White House played in the process, the White House has stub-

bornly refused to negotiate its unreasonable take-it-or-leave-it offer to this Committee.

In March, the White House offered to make Karl Rove, his aides Scott Jennings and Sara Taylor, Harriet Miers and her deputy William Kelley, available for private discussions, only without an oath and without a transcript.

These conditions condone perjury, promote confusion as to what was actually said, and do nothing to restore the trust and faith of the American people.

I know we have bipartisan commitment to honesty, openness and transparency in Government. But off-the-record, behind-closed-door conversations do nothing to advance these goals.

Chairman Conyers and Chairman Leahy have rightfully rejected these conditions and I applaud their decision to issue subpoenas to the White House last week.

While we recognize the institutional prerogatives of the White House, the issuance of the subpoenas was a necessary and last resort that will finally allow the American people to learn the truth about what happened.

President Bush has recently complained about the length of this investigation, and I, quite frankly, agree with him. If the White House fully cooperates with our legitimate request for information, I believe that this investigation could be concluded very rapidly.

Thank you, Mr. McNulty, for being here and I look forward to hearing your testimony.

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

Mr. CANNON. Thank you, Madam Chair.

Welcome, Mr. McNulty. We worked together for years on the House Judiciary Committee, and it is nice to see you here, nice to have you back. Not under the most pleasant of circumstances, granted, but it is nice to have you here.

As you know, we are here to explore what happened in the dismissal of the U.S. attorneys last year.

The Chairman and I disagree significantly on at least one point—actually, many points of her opening statement. There is, in fact, nothing wrong with firing U.S. attorneys—nothing—at any time, for any reason. They serve at will.

Mr. Clinton fired 93 attorneys, one of whom was investigating him in particular.

So we hope that we can get to the bottom quickly of some of these things.

You have testified exhaustively on this issue in your full day of staff interviews. And you testified in February before the Senate in both public hearing and at a private briefing.

It has been an awfully long time since then. And what have we discovered in the meantime?

At the start of this process, I stated unequivocally my interest in getting the facts out. But my concern was that this investigation would shun the facts in favor of political headlines. I am afraid that events have borne out my fears.

As I stated at the Subcommittee's initial hearing on March 6, the Department of Justice has shown in briefings and other commu-

nications of the Congress that there were legitimate reasons to opt for new leadership in certain districts. The evidence cited in the investigation to date has continued to support that interpretation.

I decried at the outset the loose accusations of corruption, political retaliation and favoritism that have been bandied about. These accusations have yet to be substantiated.

For example, not a single public corruption prosecution or investigation has been shown to have been halted or even slowed down because of the December dismissal of U.S. attorneys.

I stressed at the start my concern with the political maneuvering of the majority disregarded the department's reasonable explanations for the purposes of stirring up partisan controversy for partisan gain.

So why are you here today, Mr. McNulty, so long after the investigation began? Is it because the majority really wants to know what happened in the U.S. attorney dismissals? Or is it because when Monica Goodling was before us last month she presented an alluring he-said/she-said moment when she took issue, Mr. McNulty, with your Senate testimony and questioned whether you had been fully candid?

If the majority is focused on knowing the facts, we would have called you months ago or asked you about these issues in your original or in a subsequent interview.

We are here because the majority wants to feed the breathless reporting of scandal in the press and on the blogs with the hushed anticipation about who will throw whom under the proverbial bus.

Frankly, I am not interested in seeing people hurt. And I really don't want to see the Department of Justice hurt as it is as a byproduct of these inexhaustible hearings. So before we start today I suggest that we take a step back and objectively look at what Ms. Goodling said and didn't say.

She said that you were not fully candid about the involvement of the White House in the review of U.S. attorneys and request for resignations. But your testimony on that issue at your February 6 Senate hearing is consistent with evidence we have heard thus far.

Ms. Goodling also mentioned she gave your chief of staff information about Tom Griffin and vote caging—that is gathering information about letters that don't go where they need to go—on the eve of your Senate testimony in February. She didn't say, however, that you received it from your chief of staff or that you had time to read it before the Senate testimony.

In fact, Mr. Sampson's testimony to investigators suggests that the information that may have been given to you is subject to individual interpretation and emphasis. And your emphasis as it related to Mr. Cummins was that he was being removed for replacement and not for performance.

And still some believe his removal was performance. Why? Because some interpreted the emphasis in the information differently.

I could give you other examples, but time is short.

Today is your opportunity to clear this up. During your interview, when you were questioned about your prior testimony, you answered: "It is my full intention and I still am confident that I went before the Senate with a desire to speak truthfully, and I spoke truthfully based upon what I knew at the time."

After Ms. Goodling's testimony, you issued a statement to the same effect. It read: "I testified truthfully at the February 6, 2007, hearing based on what I knew at the time. Ms. Goodling's characterization of my testimony is wrong and not supported by the extensive record of documents and testimony already provided to Congress."

I look forward to hearing your testimony to clear up any questions that remain on the record so that we can move on to other issues that will promote the good work of the Department of Justice instead of tearing it down.

Thank you, and I yield back.

Ms. SÁNCHEZ. Thank you, Mr. Cannon.

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

Mr. Conyers.

Mr. CONYERS. Thank you, Chairwoman Sánchez.

And I, too, welcome Paul McNulty. I have known him longer than probably anybody on the Committee. He worked here at one time. And we welcome him as a friend and as a cooperative person for us to try to clear up some of the discrepancies that exist.

But, you know, this Committee works in a bipartisan way more than ever. And I regret that my good friend Mr. Cannon continues to describe the conduct of the Democrats on this Committee as being politically motivated. And I regret that he chooses to do that because he has done it time after time in these hearings.

And so I just want to try to correct at least one thing here: that a U.S. attorney can be removed at any time, for any reason.

If that were correct, there would be no basis for any hearing. Obviously, there are some ways—well, you agree with me now, but you said the statement. I mean, you know, people aren't foolish. They are listening.

There are reasons that a U.S. attorney can't be removed for any reason whatsoever or at any time. As a matter of fact, Attorney General Gonzales has repeatedly said there are times when it can't happen.

So to start our hearing off with a former staffer in Judiciary, a person who can help us get to the bottom of this and to bring this to a close, seems to contradict my continued repeating about the bipartisanship of this Committee. And I really wish that we could start this off in a more friendly way.

Mr. CANNON. Would the gentleman yield?

Mr. CONYERS. Of course. I can't refuse you at this point. [Laughter.]

Mr. CANNON. The Chairman of the full Committee understands my great respect for him and, in fact, the bipartisanship with which, generally speaking, this Committee has operated.

And I want to thank him for that. It has been a great pleasure over 10 years, 11 years now, to work with the Chairman on many issues where we have been on the same side.

I tell my friends, you know, if you are philosophically clear, it is easy to work with people. And Mr. Conyers has been very clear philosophically.

And the gentleman is correct in saying that there are reasons—I was giving a broad statement—there are particular reasons, and that goes to corruption. If you are removing someone from a U.S. attorney's office for a corrupt purpose——

Mr. CONYERS. Well, okay——

Mr. CANNON [continuing]. That is not acceptable. And the gentleman is right; I want to acknowledge that.

Mr. CONYERS. Well, political firings is not acceptable, either, sir. Corruption, no. But you cannot fire a person in the U.S. attorney's office for political reasons.

Mr. CANNON. You can fire a U.S. attorney for political reasons.

Mr. CONYERS. A U.S. attorney——

Mr. CANNON. But not someone at a lower level, not a career person in the U.S. attorney's office.

Mr. CONYERS. Well, okay.

Mr. CANNON. But I think we agree fundamentally on these things.

I also wanted to add——

Mr. CONYERS. Wait a minute. Let's do this in a more organized way. I just yielded to you because we have got to be bipartisan.

Now, nobody on this side of the aisle, Chris, has ever suggested that all the Republicans on this Committee are engaged in some attempt to defend blindly the Attorney General or the President. We stay away from that. As a matter of fact, if I hear them going in that direction, I am going to say the same thing to them that I am saying to you publicly.

So let's have a hearing that doesn't accuse the people that have called a hearing.

I am ultimately responsible for every hearing in this Committee. And we are not doing this for fun and games. This is a very serious matter that the person that he replaced has said, Mr. Comey, the former Deputy Attorney General, and many other Republicans and great lawyers and people whose political persuasions I have no idea of what it is about, have all said this is a very serious matter.

And for a person of your rank and experience and friendship to start us off by saying the Democrats are just hunting for political fodder is something that hurts the bipartisan spirit that brings us together.

Mr. CANNON. If the gentleman would yield, let me reiterate again my admiration for the gentleman and also for the Chairman of the Committee, Linda Sánchez, the gentlelady from California, with whom I have a very amicable relationship.

But I think it would not be unfair to characterize the opening statement by the Chair as fairly direct and partisan on issues that are appropriate. So I am not criticizing the Chair.

I do think that this issue needs to be drawn to a head. I appreciate the gentleman saying that on our side we have attempted to help move this thing forward, because we have wanted to get it out and resolved and done.

Ms. SÁNCHEZ. If I could ask the gentleman to yield, just to respond to that.

Mr. Cannon, I do enjoy a very good working relationship with you. I don't think that my opening statement was political. It merely states the fact of why we are continuing this investigation.

And the fact that statements have been made that it is a purely partisan endeavor is belied by the facts. We have had five senior department officials resign or intend to resign. We have got investigations going on right now within the DOJ.

There is ample evidence in the written testimony that we have received, in the oral testimony that we have heard in the Subcommittee and the full Committee that shows that this is a serious problem.

It warrants our time and our attention and investigation. And it is not fabricated because it is supported by factual information——

Mr. CONYERS. May I get an additional moment——

Ms. SÁNCHEZ. Without objection.

Mr. CONYERS [continuing]. Merely to point out that the part that is so important to me with Mr. McNulty today is the alleged caging of Black voters possibly involving Tim Griffin; the process where lists of voters to be challenged are generated?

What we have been told is that Mr. McNulty may be able to help us on that subject. And I really hope he will. I trust that he will. He has been a person that we have known across the years.

And it is, to me, very important that we review with Mr. Elston, your chief of staff, and try to figure out as much as we can.

Now, this is not a meeting, an argument between lawyers on Judiciary. The whole of the country is trying to determine to what degree the Department of Justice, the ultimate enforcer of our laws, may have been politicized. And that is all we are trying to get at.

And we keep asking very simple questions and now we have stacks of testimony that contradict—quite frankly, you don't have to be a lawyer to figure out that a lot of these statements are at loggerheads. They are contradictions.

And all the Chairman wants to do is try, to the best of her ability, to get to the bottom of this. We issue subpoenas very rarely, only when we have to.

But it is the White House that has made you gentlemen and ladies at the Department of Justice look great. They haven't responded to beans. And of course the natural flow of legal documents will have to follow that.

And I thank the gentlelady.

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

At this time, I would now like to recognize the distinguished Ranking Member of the full Judiciary Committee for an opening statement. Mr. Smith?

Mr. SMITH. Thank you, Madam Chair.

Mr. McNulty, your extended welcome continues, and I welcome you as well.

We are here primarily as a result of Monica Goodling's hearing in May. Ms. Goodling's testimony was consistent with what we have heard so far. After more than 3 months of investigation and as much as the Committee hunts, the evidence does not support the conclusion that U.S. attorneys were wrongly dismissed.

What did we learn from Ms. Goodling? That Ms. Goodling, the Justice Department's former White House liaison, never spoke to Karl Rove or Harriet Miers about whether U.S. attorneys should be dismissed for partisan purposes.

This was seismic news because the force behind this investigation has always been to see if White House partisanship lurked behind the U.S. attorney dismissals.

Ms. Goodling's testimony was a long-awaited burst of sunlight helping to dispel that fog of suspicion.

However, we are not here to discuss, as we might be, whether to bring the investigation of the U.S. attorney dismissals to a close. On the contrary, we appear to be meeting to discuss what information Ms. Goodling says she shared with you, Mr. McNulty, or your staff about the U.S. attorney dismissals prior to your Senate testimony in February; whether you were aware of that information; and if you were, why you did or did not convey some of that to the Senate.

I find this a little odd for several reasons.

First, this exercise is not about whether there was any real wrongdoing in the U.S. attorney dismissals themselves. It is not about whether the Administration did anything other than exercise its privilege to dismiss presidential appointees who were serving, in fact, at the President's pleasure.

Instead, it is about the after-the-fact steps that Administration took to explain its position that there was no wrongdoing. So-called scandals about attempted explanations have become a subplot of Washington theater.

Second, what Ms. Goodling said was actually a long way from saying that you, Mr. McNulty, had intentionally misled Congress in explaining the department's actions.

Finally, I find today's hearing a little odd because our staff, along with the Senate staff, interviewed you long ago specifically about your Senate testimony. Following your interview, the majority made no urgent calls to bring you before us for a hearing. That call came only after Ms. Goodling was thought to have provided some additional dry grist for the press mill.

This hearing is really about another innocuous explanation of yet another issue overblown by premature speculation. If that is what we hear, I hope that we will listen and proceed accordingly. Let's respect the evidence rather than clinging to prejudgments.

So, again, welcome. I look forward to your explanation, and hope that the hearing helps us move the investigation toward its natural and rightful conclusion.

Madam Chair, before I close, let me mention some new information that has just come to my attention this morning.

The Committee majority has opened a new Web site. This Web site purports to solicit evidence, but it actually appears to be a partisan persecution of the Administration.

Let me quote: "The Web site proclaims that it is designed to receive on a completely confidential basis any information concerning the possible politicalization of the United States Department of Justice since 2001."

It explicitly silences anyone who might want to offer information about any other Administration: "The incoming communications should be limited to those who represent that they are or were employed by the Department of Justice during that period since 2001."

Moreover, there is no pretense that the information received will be shared and vetted with the minority. To quote: "The communications will be received and reviewed by a select group of members of the majority staff of the Judiciary Committee of the United States House of Representatives."

The minority was not notified about this Web site, which in fact is paid for with taxpayer funds. We have talked to the House parliamentarians, and they are "very troubled" as well.

This Committee, I am sure we all would agree, should not engage in the partisan persecution of the Administration's public officials.

And, Madam Chair, let me say I hope that this Web site was not set up with any Member's knowledge. And I trust it will be taken down immediately.

And now I will yield back the balance of my time.

Mr. CANNON. Will the gentleman yield?

Mr. SMITH. And I will be happy to yield——

Ms. SÁNCHEZ. The gentleman yields back his time, and, unfortunately, the gentleman was out of time.

Mr. CANNON. He wasn't. He had half a minute left.

Ms. SÁNCHEZ. Four seconds.

Mr. CANNON. You can't tell the 4 seconds from a half a minute on a clock that has colors. Thank you.

Ms. SÁNCHEZ. Okay.

I want to thank the distinguished Ranking Member for his statement and state for the record I did not have knowledge of the Web site. We will review it and make sure that it is an appropriate Web site. And if there are problems with it, we will take the necessary steps to correct that.

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

At this time, I am now pleased to introduce the witness for today's hearing.

Deputy Attorney General Paul McNulty is our sole witness today. Mr. McNulty was appointed as Acting Deputy Attorney General in 2005 and was confirmed in March of 2006.

Prior to that, he served as United States attorney for the Eastern District of Virginia. Mr. McNulty also served with the House Judiciary Committee, first as chief counsel to the House Subcommittee on Crime and then as chief counsel and communications director for House Judiciary Committee Republicans.

Mr. McNulty, thank you again for joining us this morning. We understand that you wish to make an opening statement before taking our questions. And so, we will allow you to do that at this time. You may begin.

TESTIMONY OF THE HONORABLE PAUL J. MCNULTY, DEPUTY ATTORNEY GENERAL, UNITED STATES DEPARTMENT OF JUSTICE

Mr. MCNULTY. Madam Chair and Chairman Conyers, Members of the Subcommittee, thank you for the opportunity to allow me to come here today and speak to you.

And as I leave the Department of Justice, I have been thinking a lot about my 22 years of public service. And many significant events and great memories during that time occurred in this room.

I spent 8 years with the House Judiciary Committee, and I am thankful for the experience I had here and the many lessons I learned here.

One of the lessons that I learned here during my time was that character matters. And at my confirmation hearing for the job of Deputy Attorney General, I was asked how I would handle a potential conflict between the values of integrity and loyalty. Senator Schumer asked me that question.

I responded by saying that in my view the values of integrity and loyalty never conflicted. Integrity always trumps loyalty.

And so, I have sought, by God's grace, to act with integrity in all that I have been called to do. And, yes, that includes the many, many times that I have testified before Congress.

So when I testified in February before the Senate Judiciary Committee, I testified truthfully, based on the facts that I knew at the time.

In the months since then, we have all had a chance to review thousands of documents from within the department and Congress has heard dozens of hours of testimony and interviews from me and others at the department. I was interviewed for a full day.

We have learned that my knowledge at the time I testified about the replacement of the United States attorneys was, in some respects, incomplete. But I want to be clear today that at all times I have sought to provide Congress with the truth as I knew it.

I also want to be clear that I do not believe and have never believed that anyone in the Department of Justice set out to intentionally mislead me so that I might provide Congress with inaccurate information about this matter.

To the contrary, I believe that thousands of documents that have been produced demonstrate only that in the weeks before my testimony many in the department struggled with the question of how to best provide Congress with accurate information about the removals of the United States attorneys in a way that was consistent with our efforts to protect the reputations of the United States attorneys involved.

And I appreciate today to have the opportunity to discuss these matters with the Committee. And I look forward to your questions.

One final point: I have served in the department under two Administrations and in many leadership positions. I have been the Deputy Attorney General. I have been the principal associate Deputy Attorney General. I have been the director of policy and communications. And for 4½ years I was United States attorney in the Eastern District of Virginia.

I am very familiar with how the Department of Justice works. And the public needs to know that when it comes to enforcing the law, Justice Department employees are blind to partisan politics. It plays no role in the department's actions.

The law enforcement professionals, lawyers and staff at DOJ check their politics at the door and investigate and prosecute cases based strictly on the facts and the law. That is what I have consistently observed over a period of 9 years at the Department of Justice.

It has been an extraordinary honor and privilege for me to be associated with the finest group of professionals you will ever find

serving in a Government department or agency. I greatly enjoyed my time at the Department of Justice.

So I thank you for the opportunity to be here. And I am pleased to answer any of the questions that you may have.

[The prepared statement of Mr. McNulty follows:]

PREPARED STATEMENT OF PAUL J. MCNULTY

Department of Justice

STATEMENT OF

PAUL J. MCNULTY
DEPUTY ATTORNEY GENERAL

BEFORE THE

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

CONCERNING

THE CONTINUING INVESTIGATION INTO THE U.S. ATTORNEYS CONTROVERSY AND RELATED MATTERS

PRESENTED

JUNE 21, 2007

Madam Chairman and Members of the Subcommittee,

I appear before you today at a significant stage in my professional life. Last month I announced my intention to leave the Department of Justice later this summer. My transition to the private sector comes after more than two decades of public service, including more than eleven years as a lawyer in the House of Representatives and nine years at the Department of Justice. As you may know, most of my eleven years in the House were spent right here as counsel for the Judiciary Committee.

At my confirmation hearing for the job of Deputy Attorney General, I was asked how I would handle a potential conflict between the values of integrity and loyalty. I responded by saying that in my view these values never conflicted; integrity always trumps loyalty. Indeed, Madam Chairman, I have sought

throughout my many years of public service to act with integrity by the grace of God in all that I have been called to do. And yes, that includes the many, many times I have been asked to testify before Congress.

When I testified in February before the Senate Judiciary Committee, I testified truthfully, providing the Committee with the facts as I knew them at that time. In the months since then, we have had the chance to review thousands of documents from within the Department, and Congress has heard dozens of hours of testimony and interviews from me and others at the Department. We have learned that my knowledge at the time I testified about the replacement of the U.S. Attorneys was in some respects incomplete. I want to be clear today, however, that at all times, I have sought to provide Congress with the truth. And I also want to be clear that I do not believe, and have never believed, that anyone in the Department of Justice set out

to mislead me so that I might provide Congress with inaccurate information about this matter. To the contrary, I believe that the thousands of documents that have been produced demonstrate only that in the weeks before my testimony, many in the Department struggled with the question of how best to provide Congress with accurate information about the removals of the U.S. Attorneys, consistent with our efforts to protect the reputations of the U.S. Attorneys involved. I appreciate today having the opportunity to discuss these matters with the Committee, and I look forward to your questions.

One final point needs to be made. I've served in the Department under two Administrations and in many leadership positions, including 4 ½ years as the U.S. Attorney for the Eastern District of Virginia. I am therefore quite familiar with the work of the Department. It is important for this Committee and the public to know that when it comes to enforcing the law,

Justice Department employees are blind to partisan politics. It plays no role in the Department's actions. The law enforcement professionals, lawyers, and staff at DOJ check their politics at the door and investigate and prosecute cases based strictly on the facts and the law.

It has been an extraordinary honor for me to be associated with the finest group of professionals that could ever be found serving in a government department or agency.

Thank you for this opportunity to testify here today. I am pleased to answer any questions you may have.

Ms. SÁNCHEZ. Thank you, Mr. McNulty.

Subcommittee Members will be permitted to ask questions subject to the 5-minute limit. And I will begin by recognizing myself for the first set of questions.

Ms. Goodling, in her testimony before the full Committee, stated that, "As the plan was approved and updated the deputy was involved and kept updated and also that the deputy certainly knew that Mr. Sampson had been working with several offices in the White House for some period of time, and certainly understood that they had signed off and were involved in the decision."

I am curious in getting your response to Ms. Goodling's statement that your Senate testimony was knowingly incomplete.

Mr. MCNULTY. Well, that involves going into four areas that Ms. Goodling identified where she believed or she characterized my testimony as being less than candid. I know you are going to be pressed with your time, so we will have to try work through the four.

You have raised the first of the four—it has to do with knowledge of the White House—so let's take that one on.

Senator Schumer asked me at my hearing about what I knew about the White House involvement. And I said, "These are presidential appointments. So White House personnel, I am sure, was consulted prior to making the phone calls." And that is exactly consistent with what I knew at the time, and that is a true statement.

Ms. SÁNCHEZ. So you dispute, then, the statement by Monica Goodling that you had been updated and involved and kept updated and knew that Mr. Sampson had been working with several offices in the White House for some period of time.

Your statement before the Senate Committee is a very general statement, will you agree to that? To say, "Well, you know, these are political appointees and so I am sure the White House was involved."

It is a little bit more specific to know that they have been updated or that communications are going back and forth between the White House and the DOJ. And you don't think that was an accurate reflection of your knowledge at the time?

Mr. MCNULTY. No, my statement at the Committee hearing was very accurate and truthful. And what Ms. Goodling said to you in your exchange at this hearing does not contradict the truthfulness of my statement.

What she was describing was what my role was in this process.

When I first learned of this, first consulted, it was in October, not before that, and so I had no knowledge of any plan to remove U.S. attorneys prior to October of 2006, and therefore no knowledge of any White House contacts or White House involvement.

After I was consulted, which has been described by the Attorney General and by Mr. Sampson I was consulted in October/November, that information or that list of names was sent to the White House. The White House sent back its concurrence. And that is the awareness I had of the White House involvement——

Ms. SÁNCHEZ. But you were aware of the White House involvement prior to your testimony before the Senate Committee.

Mr. MCNULTY. That is what I said: that the White House was involved in approving the names.

Ms. SÁNCHEZ. But your statement——

Mr. MCNULTY. So I was very accurate.

Ms. SÁNCHEZ. It seems to me that your statement before the Senate was less than completely candid about the fact that the White House was involved——

Mr. MCNULTY. With all respect, Madam Chair, I believe that is an incorrect characterization of my testimony. I believe my testimony was dead-on accurate in what I knew at the time: that the White House had approved the names. And that is how I responded.

Ms. SÁNCHEZ. So you dispute Monica Goodling's testimony that you had been kept updated and had known that several offices in the White House had been communicating?

Mr. MCNULTY. Well, what she is saying there is she is referring to, I assume, what I did know, which is what occurred from October forward. And to the extent——

Ms. SÁNCHEZ. But October forward was prior to your testimony before the Senate, was it not?

Mr. MCNULTY. And that is why I knew that the White House had been consulted and kept informed, because from the point I first learned about it until I testified, I was aware of the White House's involvement at that point.

Ms. SÁNCHEZ. I understand that you were aware of the White House's involvement. But the statement that you gave before the Senate Committee strikes me as a very broad statement, not a very specific statement as to what extent the White House was involved. And I think that it could have been a little misleading in that it didn't give the specifics of what you knew at the time that you testified.

Mr. MCNULTY. Can I say one more——

Ms. SÁNCHEZ. We may dispute that, but——

Mr. MCNULTY [continuing]. Very important issue. I just think it is fair for me to be able to respond to what you just said.

Ms. SÁNCHEZ. I don't actually have your quote in front of me. I believe that you expressed it. And if you wouldn't mind repeating that again, I think that it contradicts the very specific knowledge that you had that the White House was involved.

Mr. MCNULTY. Okay, I will be happy to repeat again. And, Madam Chair, let's remember this occurs in a question-and-answer moment like you and I are having right now.

Ms. SÁNCHEZ. Correct.

Mr. MCNULTY. So Senator Schumer said, "Was the President involved?" That was his first question. And I said, "I don't know."

And then he said, "How about the White House? And my response when he asked about the White House was, "These are presidential appointments, so White House personnel, I am sure, was consulted prior to making the phone calls."

And that is exactly what I knew: that the White House had been consulted prior to our making those phone calls on December 7. So I answered the question to the best of my ability.

And one more point: You know, after this was all over, after I testified, we produced all these e-mails. And when you look at all the e-mails you can learn things from them that refresh memory or provide more specificity.

And so one of the e-mails produced, a December e-mail, shows the White House getting back to the department and saying specific offices were signed off on the idea.

But, of course, I wouldn't have had the benefit of refreshing my memory with that e-mail on February 6. I could only remember that we submitted it to the White House and the White House approved it, and that is how I answered the Senate question.

Ms. SÁNCHEZ. Well, pardon my skepticism—and my time has expired—but I think an unduly broad statement like that was not helpful before the Senate Judiciary Committee. And, again, it directly contradicts other testimony that was given before this Subcommittee, and I find that troubling.

My time has expired. I would now like to recognize Mr. Cannon for 5 minutes of questioning.

Mr. CANNON. Thank you, Madam Chair.

During your interview, you stated as follows on page 165: "I believe that information that has come to light as a result of this process is information that the Senate would very much have wanted at the time they were gathering information from me, particularly. But I haven't reached a conclusion that any one person misled me in that process."

Today, do you stand by that statement that you haven't concluded that any one person—for example, Ms. Goodling—misled you?

Mr. MCNULTY. That is right. I stand by that statement. I made that in my interview and I have believed that all through the process, that no one in particular misled me when I was trying to get ready for my hearing.

Mr. CANNON. And nothing from that time until the present has led you to a conclusion that someone did mislead you?

Mr. MCNULTY. No, I have not made that accusation.

Mr. CANNON. Have you any reason to believe that someone did, whether you made the accusation or not?

Mr. MCNULTY. No, I do not have that reason to believe.

Mr. CANNON. Thank you, Mr. McNulty.

It has been reported that in early March, you and Senator Schumer had a conversation in which you suggested to Senator Schumer your disappointment that you had not been able earlier to provide information that was then coming to light. In your staff interview, you suggested that you and Mr. Schumer might have different memories of that conversation. Could you please explain that to us?

Mr. MCNULTY. Well, when the documents all came to light that we are all familiar with at this point, Senator Schumer and I had a brief telephone conversation. It was very brief. In that conversation, I expressed to him my disappointment that I did not have that information at the time I testified. He understood that and that was basically the extent of it.

And so my point is that I didn't accuse anybody or purposely withholding that information. I expressed my disappointment that information which I am sure Congress would wanted to have had was not provided at that time, but only came later, after those documents came to light.

Mr. CANNON. There has been much concern about the possibility that some of the U.S. attorneys were dismissed while their offices were in the middle of sensitive cases with political ramifications.

As Deputy Attorney General, and as a former U.S. attorney, what is your reaction to this suggestion that the department shouldn't dismiss U.S. attorneys while their offices are in the middle of such cases?

Mr. MCNULTY. Well, my problem with this view is that dismissing a U.S. attorney or a U.S. attorney leaving in the middle of an investigation doesn't fit with the reality of how investigations work.

The fact is that all investigations, whether it is public corruption or other types, are conducted by career agents, worked on by career assistant United States attorneys, and they go on for long periods of time potentially.

If it was the case that the removal of a U.S. attorney or the resignation for any reason whatever disrupted a case, we could never change U.S. attorneys. We would have U.S. attorneys serve just from Administration to the next, there could never be a possibility of a switch, because you would have this problem of disruption.

That is why the system is designed the way it is, to have career people doing the investigations, career prosecutors working the cases, so that a change of U.S. attorneys does not disrupt it and that the work continues to go on just fine.

When I left the Eastern District of Virginia, I might have liked to think that I was critical to everything that was occurring there, but the truth is that the office continued along just fine, and my departure did not affect the ongoing work of that office.

And I think that is something being lost in a lot of this discussion about U.S. attorneys coming and going.

More than half the U.S. attorneys who served with me at the start of this Administration have left the position of U.S. attorney by now. And, again, in the 94 Federal districts, the work continues to go on.

Mr. CANNON. So a U.S. attorney has a responsibility to be responsive to the President's priorities and at the same time is dispensable. So he or she can organize the office's priorities, like Ms. Lam testified that she was not important to the investigation of Mr. Cunningham, for instance, because the system would hold that.

And on the other hand, that is not inconsistent to say she was great at what she did, but she didn't do what the Administration expected of her and was very clear in setting its priorities for her.

Mr. MCNULTY. Right. Setting the priorities is one of many tasks that the U.S. attorney is in a unique position to do. And that sends the right message to the agents and to the prosecutors as to the kinds of cases that we want to try to accomplish in this district, and then they go about doing that work on the specific cases.

So, again, it is a difference of responsibilities. Priority-setting is definitely an important responsibility for a U.S. attorney.

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

Mr. CANNON. I thank the gentlelady and yield back.

Ms. SÁNCHEZ. Thank you, Mr. Cannon.

At this time, I would now like to recognize Mr. Conyers for 5 minutes.

Mr. CONYERS. Thank you so much.

Thank you, Mr. McNulty, for your candor and your being present here.

Let me just get this out of the way. You know, both the House and the Senate Judiciary Committees have issued subpoenas to the White House, and several former White House officials, for documents and testimony in the controversy that is before us. And we are still hopeful that they may cooperate. But it is possible that enforcement action may need to be taken.

What is the policy of the Department of Justice with respect to United States attorneys helping to enforce such congressional subpoenas?

Mr. MCNULTY. Well, first of all, on a question of the document production and providing things to the Congress, I am recused on that matter. So I don't have any involvement or knowledge of where things stand, as to what has been provided or not provided.

And as to your question about the policy of the department with regard to enforcement, I don't want to respond off the top of my head. I would have——

Mr. CONYERS. Let me help you. Would you help us bring charges of criminal contempt if these subpoenas are resisted? Because that may likely be the next step. Hoping that we don't have to do that.

Mr. MCNULTY. Well, I would have to say that my recusal on this question would extend to the question of how subpoenas are enforced or not enforced. So I would not be involved in that question.

Mr. CONYERS. Well, do you know——

Mr. MCNULTY. I am recused because the documents, in part, are documents that can come from the Deputy Attorney General's Office. And so, all officials who are leading offices where documents——

Mr. CONYERS. But we are not talking about you weighing the credibility of the documents or the witnesses. We are just talking about us having to bring criminal charges if our subpoena isn't obeyed.

We don't want you to become a member of the Federal court yet. We just want you to do what the Department of Justice ought to be doing.

Mr. MCNULTY. Well, Mr. Chairman, I hear your question in, sort of, two parts. First, I hear, sort of, a general question about enforcement of subpoenas. And then, secondly, I hear you asking about enforcement of particular subpoenas that be associated with these documents that you are seeking.

Mr. CONYERS. Are you interested in either one?

Mr. MCNULTY. As to the second question, that is where I say my recusal would clearly extend. I would not be involved in a question of whether or not the subpoenas are to be enforced or not enforced.

And as to the first, I said I wanted to be careful before I speculated as to what a policy is, because I am not sure I could articulate a clear policy just sitting here right at the moment.

Mr. CONYERS. Okay. Let me quickly go to the White House was consulted on this matter. Who in the White House was this consultation with?

Mr. MCNULTY. Well, if you look at the records that have been produced to the Committee, what you see is there was a November

7 e-mail that was sent by Kyle Sampson over to the White House counsel's office, submitting names and a plan for how the U.S. attorneys would be contacted and how the process would proceed——

Mr. CONYERS. But over and above that, what did you know about it? I mean, we all know that, that is——

Mr. MCNULTY. Right. That is what I was referring to——

Mr. CONYERS [continuing]. Public information.

Mr. MCNULTY. Well, actually, that is my point——

Mr. CONYERS. Look, you are the number-two man in this operation. Let me ask you directly, was it through consultation with Harriet Miers?

Mr. MCNULTY. Well, that e-mail I am referring to——

Mr. CONYERS. I am not referring to an e-mail.

Mr. MCNULTY. Well, that is my knowledge of the consultation process.

Mr. CONYERS. You don't know anything about it other than that? And that was an e-mail that came subsequently.

In other words, you have cut yourself out of the loop here on this matter. It is kind of hard—and I believe you, you know. You are a very trusted ex-former staffer on Judiciary Committee. Remember that.

But we want to know where the lines go from the Department of Justice to the White House. That is where these bread crumbs keep leading us, and then they get lost in the snow or something out here.

Ms. SÁNCHEZ. The time of the gentleman——

Mr. CANNON. Could I ask unanimous consent that the gentleman's time be extended for a couple of minutes at least? Because I think that the Chairman is getting to the point of this hearing, and I would love to get the answers to these questions. So I ask unanimous consent that the gentleman be granted an additional 2 minutes.

Ms. SÁNCHEZ. Without objection, so ordered.

Mr. Conyers, you may continue for 2 additional——

Mr. MCNULTY. May I respond, Mr. Chairman?

Mr. CONYERS. Yes, sir.

Thank you, ma'am.

Mr. MCNULTY. Well, you referred to my knowledge as being out of the loop.

And the information I provided to you in my day-long interview and the information you see in the e-mails, and perhaps most importantly what the Attorney General said in his testimony and what Kyle Sampson said in his testimony, explains that I was consulted in this process at the end of what we now know to be the process; that is, there was a process which extended over a 2-year period of time looking at different U.S. attorneys, and Kyle Sampson described his consultations with lots of different officials.

At the end of that process, or near the end, I was approached, consulted. Kyle Sampson explained that he was told by the Attorney General, "Go get the deputy's input."

So he came to the deputy in October. I provided my feedback to the process. And that is how I began—and, Madam Chair, this goes right to the question that you were asking earlier——

Mr. CONYERS. Okay.

Mr. MCNULTY. That, again, is my knowledge, sir, of how the White House was involved.

Mr. CONYERS. Okay.

Now, we had testimony from the liaison to the White House that she was told not to attend your briefing for the senators on the United States attorney firings because if someone recognized her as the White House liaison, there would be a greater likelihood that there would be questions asked about the White House. Remember?

Mr. MCNULTY. I remember what she said to the Committee, yes.

Mr. CONYERS. No, what you said to her.

Mr. MCNULTY. What happened there was, as best I can remember, as we went up into that Senate briefing, my focus was on providing the information that we had promised concerning the reasons for seeking the removal, the resignations, of the seven U.S. attorneys.

And my sense was at that time—again, this is before documents have come to light—that this was something the Department of Justice had done on its initiative, to look at individuals based on issues and concerns and so forth.

And so, my own view was that that was not a political thing; that that was a very substantive thing. And I was concerned about any appearance of it being political. And that——

Mr. CONYERS. That is why you told——

Mr. MCNULTY. That is my best memory as to why I would have been concerned at that point and made that judgment.

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

At this time, I would like to recognize the gentleman from Florida, Mr. Keller, for 5 minutes of questioning.

Mr. KELLER. Thank you, Madam Chairwoman.

Thank you for being here today, Mr. McNulty. Sorry it is under these circumstances. This is a tough town, as you know. Harry Truman once said, if you want a friend in Washington, get a dog.

I got a dog. It bit me. [Laughter.]

So, sympathetic to you.

You are appearing here today without a subpoena. Is that correct?

Mr. MCNULTY. That is correct.

Mr. KELLER. You are here voluntarily?

Mr. MCNULTY. Yes, sir.

Mr. KELLER. You haven't invoked the fifth amendment?

Mr. MCNULTY. No, I have not.

Mr. KELLER. You haven't gone to court and sought immunity?

Mr. MCNULTY. No, I haven't.

Mr. KELLER. Not everyone before us has appeared under the same circumstances.

It is hard for a Member of Congress, when we have 5 minutes to question Monica Goodling and 5 minutes to question you, to make an accurate assessment as to what person is courageously telling the truth and what person is full of baloney. It is just hard to tell in a 5-minute instance.

I can tell you, though, that I got a very long phone call yesterday from the attorney general of Florida, Mr. Bill McCollum, who served in Congress for 20 years as my predecessor. And he told me

that he worked very closely with you for 8 years on the Crime Subcommittee when you were his chief counsel, and told me that he can't think of a single person in his lifetime that has more integrity, more honesty or more ethics than you do.

And I think that speaks volume, as someone who has known you for a little bit longer than 5 minutes.

I want to begin with some of the areas of agreement that I saw between you and Monica Goodling, for example.

I reviewed your prior testimony in the Senate and I reviewed her testimony before us, and both of you have testified that you are not aware of any evidence whatsoever that any U.S. attorney was fired because of their pursuit of public corruption cases against congressmen. Is that still your testimony?

Mr. MCNULTY. That is correct.

Mr. KELLER. Okay. There has been some confusion about can you fire someone for political reasons. Just let me simplify this, give you analogy.

If I was the President and down in Orlando, Florida, my home town, I had the world's best U.S. attorney, he was ranked number one out of 93, 100 percent conviction rate, the staff loved him, and one day, in a very big, important mass murder case he says, "You know, I am not going to seek the death penalty; just politically I don't believe in it, and I think life imprisonment is enough," and I am the President, says, "I think you are going to seek it, and if you don't enforce the law on the books you are fired," is that within my constitutional right to fire him just because I have a political difference of opinion on that issue?

Mr. MCNULTY. Well, I believe that a President has, again, a right to remove U.S. attorneys for any reason that is not an improper reason. And enforcement of the law is certainly in the area of proper reason.

Mr. KELLER. In your testimony before the Senate in 2007, February, you did not intentionally mislead anyone. Is that correct?

Mr. MCNULTY. That is correct.

Mr. KELLER. Now, as you sit here today there are certain aspects of your prior testimony that you feel are incomplete. Is that correct?

Mr. MCNULTY. The testimony that I gave in February was shown to be incomplete as additional information came forward, yes.

Mr. KELLER. Tell us what things, as you sit here today, that based on the information that you have now you feel were somewhat incomplete and that you would like to specifically clarify.

Mr. MCNULTY. Well, when I say "incomplete," what I mean by that is that there were a number of questions that were being asked, either at the hearing or at the briefing I did, which were connected to the information that came to light after we produced documents and looked at various e-mails in the department.

So what I am referring to——

Mr. KELLER. I don't want to cut you off——

Mr. MCNULTY [continuing]. Is the fuller story.

Mr. KELLER. We have got a minute left.

Is there any specific subject area or two that you want to clarify as saying, "Hey, I said this back then, but now that I have reviewed that information, what I would tell you now is X, Y and Z"?

Mr. MCNULTY. I am sorry, not one is popping to mind that I would say, this is a specific issue that was revealed in a particular document or e-mail, that was right on point as to a question I received. It is just, nothing is popping to mind.

Mr. KELLER. Final question: As someone who has been a U.S. attorney, tell us the percentage of cases that the U.S. attorney himself or herself would actually personally handle, in terms of them personally doing the opening statement, examination of witnesses, closing statement. What would you estimate the percentage of cases those are?

Mr. MCNULTY. We break offices down into four sizes: extra-large, large, medium and small.

Extra-large offices are offices that have more than a hundred assistants. In those offices, U.S. attorneys handle very, very few cases; just too much work to do, management-wise to be able to get involved. It is pretty much the case in large offices, too.

Sometimes U.S. attorneys who have a long assistant United States attorney/prosecutor background like to stay involved if they can. Others just simply don't see that as being a wise use of time.

But if you get to a real small office, it is sometimes different. It depends upon, again, the background of the United States attorney as to whether or not they can prosecute.

So I would say that, again, generalizing, it is going to be a very small percentage of actually case or trial work done by U.S. attorneys. They really have a lot to do in terms of managing the office, outreach to the community, taking care of a wide variety of responsibilities as U.S. attorney.

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

The gentleman from Georgia, Mr. Johnson, is recognized.

Mr. JOHNSON. Thank you, Madam Chair.

Mr. McNulty, I would like to ask you some questions about the March 1, 2006, Attorney General's delegation order, entitled "Delegation of Certain Personnel Authorities to the Chief of Staff to the Attorney General and the White House Liaison of the Department of Justice."

The order delegated to Kyle Sampson and Monica Goodling the authority to take final action in matters pertaining to the appointment, employment, pay, separation and general administration of various employees, including, by the way, employees in the Offices of the Deputy Attorney General.

Are you familiar with that order?

Mr. MCNULTY. I am now, yes.

Mr. JOHNSON. And when did you first become aware of that order, sir?

Mr. MCNULTY. The best I can recall is I became familiar when there was a story on the subject in the National Journal, I believe.

Mr. JOHNSON. What date would that have been, approximately?

Mr. MCNULTY. Within the past month or so.

Mr. JOHNSON. So you were unaware of that——

Mr. MCNULTY. Well, that is my best memory. I just can't remember any time seeing it or having some connection to it.

Mr. JOHNSON. Had you seen the order before?

Mr. MCNULTY. Before that story?

Mr. JOHNSON. Yes.

Mr. MCNULTY. Again, I don't have any recollection of that.

Mr. JOHNSON. Did you understand that Kyle Sampson and Monica Goodling ever had authority to make hiring and firing decisions in your office?

Mr. MCNULTY. Well, that is what I have come to understand, and——

Mr. JOHNSON. And you only came to that understanding after reading that article?

Mr. MCNULTY. No, no. As a practical matter, I knew that, with regard to how the office operated, but as an order——

Mr. JOHNSON. But it wasn't the way that the office operated when you were first sworn in as Deputy Attorney General, isn't that correct? That is not how the office was conducted then, hiring and firing decisions out of your office, correct?

Mr. MCNULTY. Well, it is a difficult subject——

Mr. JOHNSON. Is that correct, or is that incorrect?

Mr. MCNULTY. It is hard for me to say yes or no to because I would have to recall just exactly what was occurring at the time——

Mr. JOHNSON. Well, let me ask you this question. Let me put it like this: When it came down to hiring your chief of staff, you did that yourself when you were first employed as Deputy Attorney General, correct?

Mr. MCNULTY. Not necessarily.

Mr. JOHNSON. Well, there was no White House liaison to the Justice Department involved in your decision to hire your chief of staff, Mr. Elston, was there?

Mr. MCNULTY. I am sorry to make this difficult. It is just that, if a person——

Mr. JOHNSON. Is that true or is that false?

Mr. MCNULTY. I can't say it is true or false. It doesn't fit that way. If a person is being hired into a political position, then there is a process——

Mr. JOHNSON. Okay, well, let me stop you. I don't want to run out of time.

What is your understanding of the purpose of that delegation order that you just learned about, you say, about a month or so ago in a magazine article? What was the purpose of that order?

Mr. MCNULTY. My understanding of that order is to delegate to the Attorney General's chief of staff and to the White House liaison the responsibility for making hiring decisions in the leadership offices at the department.

Mr. JOHNSON. You never had an opportunity to understand why that order was entered?

Mr. MCNULTY. I don't have any memory of knowing about that order being developed or being executed. It just doesn't come to my mind.

Mr. JOHNSON. Does it surprise you? Did it surprise you, back in March when you first learned about it, that your authority to hire and fire within your own office had been taken away from you and given to a couple of inexperienced political appointees?

Mr. MCNULTY. What struck me was the guidance on the control sheet, if you will, that said, "This is to not be circulated through

the Office of the Deputy Attorney General." And I still don't know, to this day, why that was the case. I think——

Mr. JOHNSON. Were you disturbed because you were cut out of the loop, as the Chairman indicated?

Mr. MCNULTY. Well, that definitely was a concern to me when I saw that.

And I have heard Ms. Goodling's explanation of it. I didn't quite understand it. And I am still not clear as to her position on that subject.

But as to what I understood it to be, it looked like it was something that wasn't going through the deputy's office for recommendation to the Attorney General, as most of our documents do. I can't say much more about it than that.

Mr. JOHNSON. Did you have any discussions with Mike Elston about him calling the U.S. attorneys, urging them to remain silent about the circumstances of their firing?

Mr. MCNULTY. Well, I am familiar with that issue.

There are two things we are talking about here. There were some January phone calls, three calls.

Mr. JOHNSON. Did he discuss the calls before he made them?

Mr. MCNULTY. The January phone calls I was aware of. The March phone call I was not aware of.

Mr. JOHNSON. March phone call——

Mr. MCNULTY. To Mr. Cummins, which was the subject of some discussion at the Senate hearing and perhaps this hearing as well.

Mr. JOHNSON. What was the purpose?

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

Mr. CANNON. Madam Chair, this is an important issue, and I would ask unanimous consent that the gentleman be given an extra minute so that we get this clear on the record.

Ms. SÁNCHEZ. Without objection, so ordered.

You may continue, Mr. Johnson.

Mr. JOHNSON. Thank you, sir.

What would the purpose of the phone calls prior to the testimony of the fired U.S. attorneys before this body—what were the purpose of the phone calls?

Mr. MCNULTY. The phone call that was made in March was the one that occurred prior to testimony of the U.S. attorneys. And that was a phone call that Mr. Elston had made to Mr. Cummins. And Mr. Elston wrote a letter to the Senate Judiciary Committee after the testimony of Mr. Cummins about that. He did the best he could to explain his reasoning.

Senator Specter asked a lot of questions to Mr. Cummins. You have Mr. Cummins doing an inference of what he thought Mr. Elston meant, and then you have three other U.S. attorneys and their friends.

Mr. JOHNSON. What was the purpose of the phone call?

Mr. MCNULTY. Mr. Elston would say that the purpose was to encourage Mr. Cummins to understand that there was no effort to try to release information about individuals; that, in fact, Mr. Elston explains that he was simply trying to assure Mr. Cummins that there was no personal information or information about specific individuals that was being released by the department. He had read a newspaper article——

Mr. JOHNSON. And the earlier phone calls——

Mr. MCNULTY. Now, the January phone calls, those occurred prior to the Attorney General's testimony before the Senate Judiciary Committee, long before there was any notion that any U.S. attorney would be testifying on Capitol Hill.

At that time, Mr. Elston, at my encouragement, called two—I think only left a message or didn't get through to a third—but called two U.S. attorneys to assure them that the Attorney General's testimony the next day was not going to get into any information about particular individuals. Some of the folks' names had never even come out in the public yet, and there was growing press interest or there were articles starting to show up and there was a concern that their confidentiality might be—that there may be information about them.

And he was trying to assure them that that was not going to occur in the Attorney General's testimony; he was not going to speak about any particular people. We were trying to, again, stick with the original thinking of keeping the matter quiet for purposes of the privacy and the confidentiality of the individuals involved.

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

Mr. JOHNSON. Thank you, Madam Chair.

Ms. SÁNCHEZ. Thank you.

At this time, I would like to recognize the gentleman from Florida, Mr. Feeney, for 5 minutes.

Mr. FEENEY. Thank you, Madam Chairman.

Mr. McNulty, it has been reported that in early March, when you and Senator Schumer had a conversation, you suggested to the senator your disappointment that you hadn't been able to provide more information, that things were currently coming to light.

In your staff interview you suggested that you and Mr. Schumer might have different memories of that conversation. Could you please elaborate for us?

Mr. MCNULTY. Well, what I meant by that was in any kind of conversation that occurs, especially a brief conversation, then its description later can sometimes differ in general ways.

And so my point was that Senator Schumer had said on different occasions that I told him that I didn't have the information or I had been misled, and that my memory of that conversation was a bit different.

But, again, we were moving quickly, and I was trying to communicate to him that I regretted the fact that we didn't have all the information available when we originally provided it to the Senate Judiciary Committee.

I didn't mention any specific individual and refer to a person as having misled me.

But the point is that Senator Schumer's memory of that conversation came to be something that Ms. Goodling in particular characterized as my blaming her or accusing her of having not provided me with information. And that is just simply not true. I didn't do that, and I have never accused anybody of not providing me with information.

Mr. FEENEY. And you have made that clear today, that you are not alleging, nor have you intended to allege, that Ms. Goodling in

any way misled you or deliberately misinformed you in preparation for any of your testimony or of your interviews.

Mr. MCNULTY. That is right, Congressman.

What I tried to say today in my statement and in some of these remarks is that in this process, we were moving quickly, we were trying to respond to questions, we were focused on particular things. And I am not in a position to conclude or believe that individuals had some intention to keep information from me. There is just not information enough to suggest that. And, therefore, I am not going to reach that conclusion.

Mr. FEENEY. Well, I suppose the purpose of bringing you back today is that there are some alleged contradictions in what we heard from Ms. Goodling and what we have heard from you. But I see an awful lot of similarities on the key points between your testimony and hers.

Have you had a chance to review her testimony here to the House Committee?

Mr. MCNULTY. Yes, I have.

Mr. FEENEY. And given the fact that there were a dozen or so people over an extensive period of time involved in numerous decisions, both about the firings and the review of attorneys, and then how to respond to senators and press and House Members and other inquiries, you know, given your investigative background, both here on the Committee and with the Attorney General's office, do you find it unusual that people could have somewhat different perspectives and recollections about the details of who knew what or who perceived what of things that occurred several years ago?

Mr. MCNULTY. Well, no, I don't find it at all surprising that folks have different memories of things. I know that in my job as Deputy Attorney General, I touch dozens and dozens of issues every day, and I have a very complex and wide variety of things coming into the deputy's office.

And so this process, this kind of review, is very challenging because it requires you go back and remember specific things, and you work hard at it. But the fact that you all are finding, perhaps, some differences in recollections about things should not be surprising at all.

Mr. FEENEY. Well, and finally, with respect to Ms. Goodling's testimony, which a lot of us found to be very credible and forthright, do you find any inherent or critical contradictions between what you have told this Committee, either in interviews or in testimony, and what she has told us? Do you find, on any of the key points, any critical or inherent, unreconcilable contradictions in her testimony versus yours?

Mr. MCNULTY. The only issue in her testimony that I am here to discuss in a way which is designed to clarify it is what I see the four areas where she said that I was not fully candid with the Senate.

And I have discussed with the Chair the first of the four, and then I am looking forward to the other three coming up so I can talk about the two Tim Griffin issues and the Parsky Commission matter and set the record straight that I spoke truthfully in all four areas.

Ms. SÁNCHEZ. Time of the gentleman has expired.

Mr. FEENEY. Madam Chair, may I ask unanimous consert to include in the record the letter that has been referred to, I think, in the prior questioning from Mr. Elston? I think it was the March letter which he sent to the Senate to explain the phone calls that he made.

Ms. SÁNCHEZ. Without objection, so ordered.

The gentleman from Massachusetts, Mr. Delahunt, is recognized for 5 minutes of questioning.

Mr. DELAHUNT. Mr. McNulty, let me state for the record that I have always found you an individual of integrity and professionalism.

Mr. MCNULTY. Thank you, sir.

Mr. DELAHUNT. And I wish you well in the private sector.

Mr. MCNULTY. Thank you, sir.

Mr. DELAHUNT. Having said that——

Mr. MCNULTY. Yes. [Laughter.]

Mr. DELAHUNT [continuing]. Let me see if I can bring some clarity to this. You would be unaware of any political or improper political considerations in terms of the development of this list. I think your response to Mr. Keller was that you were totally unaware of any that might have occurred.

Mr. MCNULTY. The development of the list of U.S. attorneys.

Mr. DELAHUNT. Right.

Mr. MCNULTY. My involvement with that begin——

Mr. DELAHUNT. My point is that you were not really part of that process.

Mr. MCNULTY. That is correct.

Mr. DELAHUNT. You were the caboose, am I correct?

Mr. MCNULTY. I became involved at the end of the——

Mr. DELAHUNT. At the end. I mean, you were left out of that process. I mean, am I making a fair statement?

Mr. MCNULTY. You are making a fair statement, yes. I am not saying it was intentional or not, I just know I was not involved.

Mr. DELAHUNT. I don't know myself, but I am just saying.

And the gentleman from Georgia indicated that in terms of the delegation order, you were unaware until about a month ago, or maybe 6 weeks ago, of the existence of that order.

Mr. MCNULTY. I don't have any recollection of that matter coming to my attention before that.

Mr. DELAHUNT. That is what I mean. And you referenced the fact that you read that somewhere, that it was an admonishment not to involve the Office of the Deputy Attorney General in the process itself.

Mr. MCNULTY. Well, it was routed around our office, yes.

Mr. DELAHUNT. But it was clear to route around the Office of the Deputy Attorney General.

Mr. MCNULTY. That is what the paper indicated.

Mr. DELAHUNT. You know, I am drawing an inference that you were zoned out of this process. I don't know for what reason, but maybe that is an issue to be pursued by the Committee.

You know, the day after you resigned, the Attorney General had a press conference and he made several observations: "The one person that I would care about would be the views of the Deputy Attorney General, because the Deputy Attorney General is the direct

supervisor of the U.S. attorneys." And yet you weren't part of the process.

Mr. MCNULTY. Well, at another time, the Attorney General said, I think in his Senate testimony, that one of the regrets he had was not directly involving the Deputy Attorney General in the process.

And to be fair, I mean, Mr. Sampson might say that he talked to me about U.S. attorneys over the course of my time, that year I served as deputy, and we talked about——

Mr. DELAHUNT. But you were not involved in the compilation.

Mr. MCNULTY. I wasn't aware of the specific process of identifying U.S. attorneys——

Mr. DELAHUNT. I mean, did Attorney General Gonzales call you in and say, "Paul, we have got a list of eight United States attorneys. What is your opinion?" And I would think this is a matter of significant consequence to the administration of justice, as far as the department itself was concerned. Did you talk to him about this?

Mr. MCNULTY. Not before the phone calls were made on December 7. That is not how that process worked. It was more indirect.

Mr. DELAHUNT. Well, I guess what I am saying is, I just find that remarkable.

Mr. MCNULTY. Let me make sure this is very clear. I was in a meeting with the Attorney General on November 27, so I did have that interaction.

Mr. DELAHUNT. What was that meeting about? Was it about the list?

Mr. MCNULTY. It was about the plan of going——

Mr. DELAHUNT. Was that your first communication——

Mr. MCNULTY. That was my first direct——

Mr. DELAHUNT. How long did that conversation——

Mr. MCNULTY. My best memory is, it was—well, it wasn't a conversation between us, it was a meeting involving several people. I don't remember the Attorney General saying much at the meeting. I don't recall even much that I said. So it was not like a meeting with him personally.

And the meeting lasted approximately half an hour.

Mr. DELAHUNT. Okay.

First time, November 27, for a half hour, on a key decision in terms of the functioning of the Department of Justice.

He went on to say—this is the Attorney General—he signed off on the names and he would know better than anyone else, anyone in this room, any, anyone. Again, the Deputy Attorney General would know best about the qualifications and experiences of the United States attorney committee, and he signed off on the names.

I dare say, understanding the realities of what occurs here in Washington, you were the caboose, you were given the list, and maybe it was never articulated, but the suggestion was, "Sign off, we are moving."

Mr. MCNULTY. Well, to be fair, I was given an opportunity to voice any objections I had, and I voiced some objections. And——

Mr. DELAHUNT. Were your objections respected?

Mr. MCNULTY. Yes. At least one name was taken off a list on my objection. I raised some questions about another and did not at the end of the day voice that objection so that it wasn't removed.

And to be fair to the Attorney General, I think he would say he was relying on Kyle Sampson to get my input, and that is why we didn't have direct communication.

Ms. SÁNCHEZ. The time of the gentleman has expired. Would the gentleman like an additional minute?

Mr. DELAHUNT. Well, you know, of course I will take the additional minute. Why not?

Ms. SÁNCHEZ. Is there any objection?

Without objection.

Mr. DELAHUNT. Let me just say this, Mr. McNulty, and I say this respectfully to you: I think you were poorly treated. I don't think that the process was done in a way that reflected well, in terms of the professionalism that I know exists in the Department of Justice. It is my belief that you were thrown under the bus.

And with that, I will yield back.

Ms. SÁNCHEZ. Thank you, Mr. Delahunt.

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

Mr. COHEN. Thank you, Madam Chair.

I incorporate, by reference, all the nice things that have been said about you, to save time. [Laughter.]

Mr. MCNULTY. You can feel free to go ahead and take that time, if you would like. [Laughter.]

Mr. COHEN. Let me follow up on the previous question. Who did you take off the list?

Mr. MCNULTY. Well, we have not made that name public. I——

Mr. COHEN. That is why I am asking the question.

Mr. MCNULTY. I know, but I am—— [Laughter.]

I am trying to respect that process. I hope you don't feel as though I am resisting you. Your staff knows the name. And I really would like to be able to keep it that way.

Mr. COHEN. Well, we will discuss with the Chairman about that.

And by the way, I think it is very bipartisan. I didn't know about that Web site, either, so it is a bipartisan thing in not knowing about it. But that is neither here nor there.

What was your relationship with Ms. Goodling?

Mr. MCNULTY. You mean, in terms of——

Mr. COHEN. Cordial?

Mr. MCNULTY. Oh, yes, I had a very good relationship with her.

Mr. COHEN. Why would she suggest in her testimony that you had basically given false information? You don't think it was because she had anything in for you, was it? She was just, kind of, testifying on things of which she had no knowledge?

Mr. MCNULTY. Congressman, I do not know why—and I have given it a lot of thought, but I would be totally speculating as to why she felt it was necessary to say that.

Mr. COHEN. She said she crossed the line in using politics to hire and fire folk. Are you aware of any suggestions whatsoever, personal or just through the department, that you crossed the line in hiring in other areas other than politics?

Mr. MCNULTY. I am not so sure I get that question.

Mr. COHEN. Favoritism to people based on any particular ideological bent.

Mr. MCNULTY. Well, I am not entirely clear on whether or not she specified a category in particular where she crossed the line, using her own words. So I am not sure I have——

Mr. COHEN. She, kind of, said she did it if you were a Democrat, you were out.

Mr. MCNULTY. I see.

Mr. COHEN. But were you out if you were a moderate.

Mr. MCNULTY. I don't know. That would not be information I would have access to.

Mr. COHEN. If you went to a tier-two law school.

Mr. MCNULTY. I don't know.

Mr. COHEN. The honors program and the intern program, there are some letters here from April, and you are aware of some of those, I know. Were politics involved in determining who got those appointments to the honors program at the Department of Justice and the summer internship program?

Mr. MCNULTY. I don't know the answer to that question. I am happy to try to provide you with more information in terms of context, but I don't know the specific answer to that question.

Mr. COHEN. Should politics have been involved?

Mr. MCNULTY. Politics should not be involved in the hiring of any career person at the Department of Justice.

Mr. COHEN. And you are familiar with this letter of April 9, and a subsequent meeting, in a meeting where some top Justice Department people pointed out some people that were summa cum laude from Harvard and/or Yale that were not even asked for interviews.

Mr. MCNULTY. I am aware of that letter, and I am aware of that allegation. I know that is being reviewed. I don't know if that allegation is correct or not.

I think the honors program has worked extremely well over the years. It has attracted outstanding candidates to the Department of Justice. And I don't know if it was subject to any political consideration.

When I was aware that the honors program needed to be reviewed—and, again, in fairness to those who were involved in that, they were working on looking at changes and improvements before it was brought to my attention.

We have now made sure that it is controlled by career people throughout the process.

Mr. COHEN. You have been in the Justice Department, both in the previous Bush presidency and this one. How would you describe the difference in the morale of the Department of Justice today and how it was when you started your job and how it was under Bush the First?

Mr. MCNULTY. Well, that is, of course, a tough question to be precise about, the department is so big. And to this day there are just a lot of people who have very good morale at the Department of Justice, because they love what they do and they have a clear mission.

And so, I have had contact with folks in a wide variety of positions over the past several months who still have very good morale. So it is hard to be specific about that.

Mr. COHEN. It is rather subjective.

Mr. MCNULTY. It is.

Mr. COHEN. But let me ask you this: If General Gonzales would choose to resign, would that hurt the morale at the Department of Justice?

Mr. MCNULTY. I don't know how to gauge that.

I think the morale at the department is generally good. I think people, again, love what they are doing and are fulfilling their responsibilities in a very excellent way.

Mr. COHEN. Thank you, sir.

I yield the balance of my time.

Ms. SÁNCHEZ. Thank you.

The gentleman from North Carolina, Mr. Watt, is recognized for 5 minutes.

Mr. WATT. Thank you, Madam Chair.

And thank you, Mr. McNulty, for being here.

Ms. Goodling testified before this Committee that Senator Domenici had raised concerns about U.S. attorney David Iglesias and indicated that she briefed you on that fact prior to your Senate testimony. You were aware of it.

In fact, in her handwritten notes, there is a quote that says, "Domenici says he doesn't move cases."

Ms. Goodling further testified that you told her not to reference these concerns expressed by Senator Domenici in the materials to be used in briefing Congress. Is that correct or is it incorrect?

Mr. MCNULTY. She explained—and to the best of my memory, I——

Mr. WATT. My question is, did you instruct her not to include references to Senator Domenici's statement in her briefing materials in which she was preparing you for your testimony?

Mr. MCNULTY. I don't remember it that way.

What I remember is we were trying to identify the issues, concerns associated with different U.S. attorneys. And we were discussing what those issues would be in relationship to David Iglesias.

And certain characterizations were being listed in that chart, which you now have. And that, as far as I can remember, is discussing those different characterizations.

Mr. WATT. So you deny that you——

Mr. MCNULTY. Well, I don't want to say "deny," because——

Mr. WATT [continuing]. Instructed her not to include the references to Senator Domenici in the briefing materials?

Mr. MCNULTY. Her memory on that may very well be correct. And what she says is that I said we should let Senator Domenici speak for himself, rather than us speaking for him. And I don't specifically recall that, but that may be correct.

Mr. WATT. So did you find Senator Domenici's observations about Mr. Iglesias to be an important factor in the fact that he was on the list and was terminated?

Mr. MCNULTY. Well, when I saw his name on that list and I had to make my own judgment as to whether or not I objected to it, the phone conversation that I had with Senator Domenici on October 4, which was a brief conversation in which he expressed his own dissatisfaction, that certainly was a factor in my mind when I saw

the name on the list. And just as the Attorney General said, it affected his judgment.

Mr. WATT. So if you had instructed that that communication not be part of the briefing materials and failed to fully disclose that to the Senate, would it be accurate then for you to say that you were fully informing the Senate about factors that were important in making the determination of whether to put somebody on the list, leave them on the list, or remove them from the list?

Mr. MCNULTY. I think it wasn't inconsistent with that, and we were being as forthcoming as we could. Because we were identifying the things that we understood to serve as these justifications, but we didn't always reference the source of that information.

We had congressional complaints involving Carol Lam in San Diego. We probably identified Carol Lam as somebody who was not moving or not acting consistent with the priorities of the department.

So, in my mind, I was distinguishing between what the factors were that had been identified from perhaps the source of that and trying to respect the process of letting members, you know, convey their own views.

And that is about as best as I can remember as to why we would try to distinguish there.

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

Mr. WATT. May I ask unanimous consent for 2 additional minutes?

Ms. SÁNCHEZ. Without objection, so ordered.

Mr. WATT. And the reason I ask for this additional time, I wanted to explore this particular thing.

But more generally, the whole purpose of this series of hearings has been about getting to the bottom of why various people were put on a list and removed. And we don't seem to have much more information about that today than we had when we started.

What is your understanding, now, Mr. McNulty, based on everything you know about who put the list together and why various people were put on that list?

Mr. MCNULTY. Well, as I sit here today, my best understanding is that Mr. Sampson put the list together, and that he put the list together based upon information that he gathered over an extended period of time, that he made changes to it from time to time based upon various inputs he received, conversations he had, and that he came to a point, finally, in October of 2006, with an essentially close to final list, and then——

Mr. WATT. And what was his position?

Mr. MCNULTY. He was the chief of staff to the Attorney General. He started that process, though, as the deputy chief of staff. And then, because we now know based upon the information that he——

Mr. WATT. And you think all of this was happening without the Attorney General's knowledge?

Mr. MCNULTY. Well, I think the Attorney General has been pretty clear in his testimony that he directed—and I won't want to pick the wrong word, but my best memory is he said he directed Mr. Sampson to begin a process sometime in 2005 that involved dis-

cussing with different people their views on the work of the U.S. attorneys.

And, again, I am just, best I can, paraphrasing what I thought the Attorney General's testimony was on that.

And so, over that period of time, as first the deputy chief of staff and then the chief of staff, Mr. Sampson gathered that information and compiled lists and interacted with the White House from time to time on that.

Ms. SÁNCHEZ. The time of the gentleman has, once again, expired.

Mr. WATT. Thank you, Madam Chair.

Ms. SÁNCHEZ. We will now go to a second round of questions and——

Mr. CANNON. Madam Chair, could we poll the panel to see who wants to do a second round, just so we can, sort of, plan our time?

Ms. SÁNCHEZ. Certainly.

Interested in a second round of questions, raise your hand.

I think there is significant interest in a second round of questioning so I will——

Mr. CANNON. It is my fervent hope that the second round is more productive or interesting than the first round has been.

Ms. SÁNCHEZ. Well, that all depends on the questions and the witness.

We will now start the second round of questioning, and I will recognize myself for 5 minutes.

Mr. McNulty, when you briefed the Senate on the U.S. attorney issue, did you ask Mr. Goodling to wait outside while you did that briefing?

Mr. MCNULTY. Yes, I have already explained that I did.

Ms. SÁNCHEZ. Can you refresh my memory briefly, if you will, because we have a limited amount of time, as to why, again, you asked her not to participate or not to be inside during that briefing?

Mr. MCNULTY. Well, the best memory I have of that was that it was a judgment I made there at the last moment. But I was concerned that it would give an appearance of the process being more political, given the fact that her job was uniquely associated with the political appointment of individuals to the department.

I felt that we were doing something that wasn't political, in my mind. What we were doing was talking about the specific reasons related to the seven U.S. attorneys that stood behind their seeking the resignations.

Ms. SÁNCHEZ. Well, briefly——

Mr. MCNULTY. I thought it was not a process that really involved the political aspect of——

Ms. SÁNCHEZ. Well, briefly, what would be your response to her suggestion that you wanted to discourage questions about the White House and its role in the firing? Briefly.

Mr. MCNULTY. Well, I mean, again, I can understand that is her testimony on that subject, it is just not my memory of why that would have been a concern.

I think that my own sense was, because I was the one going to do the talking——

Ms. SÁNCHEZ. Certainly, it clearly was a concern of hers, because that was the opinion that she expressed, that she was excluded from that briefing because——

Mr. MCNULTY. Right. I know she expressed that.

Ms. SÁNCHEZ. Okay. All right.

Mr. Elston was your chief of staff, correct?

Mr. MCNULTY. Yes, he is.

Ms. SÁNCHEZ. Okay.

When Carol Lam, the former U.S. attorney for San Diego, asked to stay on the job longer in order to deal with some outstanding prosecutions, the expanding Duke Cunningham case being one among them, Elston told her not to think about her cases, that she should be gone in "weeks, not months," and that "these instructions were coming from the very highest levels of government."

As Mr. Elston's boss, who was he referring to? Do you know?

Mr. MCNULTY. Well, he was referring to his interactions with the Attorney General's Office in particular.

He was in a bit of a difficult situation there. He was trying to implement the decision that had already been made to seek the resignation. And one of the challenging aspects of that was to settle on a final date of departure. And various individuals——

Ms. SÁNCHEZ. I am just interested in knowing who you believe the highest levels of Government meant. And would it be fair to say the Attorney General, then?

Mr. MCNULTY. Well, I am not sure specifically who Mike was referring to there.

Ms. SÁNCHEZ. Okay. All right. You have answered my question.

Mr. Elston also called around to the U.S. attorneys whom he had placed on one of the draft firing lists to apologize when he discovered that his list would be turned over to Congress.

Did you instruct Mr. Elston to make those calls?

Mr. MCNULTY. No, but he told me he was, and I thought that was a good thing he was doing.

Ms. SÁNCHEZ. Did Mr. Elston frequently make direct contact with U.S. attorneys without your knowledge or direction?

Mr. MCNULTY. He had a lot of contact with U.S. attorneys because, as the chief of staff to the Deputy Attorney General's Office, U.S. attorneys called in frequently and would talk to him, and he would talk to them. For example, on death penalty cases, which involves a lot of interaction, he would talk to U.S. attorneys frequently.

Ms. SÁNCHEZ. And you know that he allegedly called three of the fired U.S. attorneys and made an implicit threat that the Justice Department would detail the reasons for their firings if they "didn't stay quiet"?

Mr. MCNULTY. Well, I would strongly disagree with that characterization of those calls.

Ms. SÁNCHEZ. That is how it was characterized by the witnesses who received those communications.

Mr. MCNULTY. Well——

Ms. SÁNCHEZ. And you disagree with that——

Mr. MCNULTY. I disagree with their characterization.

Ms. SÁNCHEZ. Okay. We will agree to disagree.

On May 9, *The Washington Post* revealed that there was a ninth fired U.S. attorney, Todd Graves of Kansas City, who was terminated in January 2006, after his name appeared on one of Mr. Sampson's firing lists earlier that month.

The Department of Justice still has not produced documents to us about that firing, despite our requests over a month ago.

As Deputy Attorney General in charge of our U.S. attorneys, tell us what information or belief you have about the firing of Mr. Graves.

Mr. MCNULTY. I have very limited knowledge about that. I was not——

Ms. SÁNCHEZ. You were not kept in the loop on that and you were not consulted.

Mr. MCNULTY. Well, remember, I started as Acting Seputy Attorney General on November 1. I wasn't confirmed until March. And the phone call that he received was made in January. So that was before I was confirmed.

Now, having said that, I may have had some vague awareness that he was departing. But I was not consulted in any decision to seek—look, I think also you need to be careful. Mr. Graves's own words at his hearing a few weeks ago on the Senate side I think are somewhat in contrast to the language that is used with regard to him.

He did not refer to himself as—he referred to himself as being pushed out, but he also talked about the fact that he was intending to leave and that he had no bitterness and he felt it was appropriate that he could be called and asked to go.

But, in any respect, I was not involved in that matter. And I didn't have any specific understanding of what was going on there.

Ms. SÁNCHEZ. Okay. You had no knowledge. I am assuming, though, that being pushed out is not the same as voluntarily leaving.

With that, I will recognize Mr. Cannon for 5 minutes.

Mr. CANNON. Thank you.

May I just make an inquiry?

First of all, I think that Mr. Keller would be better recognized, because he may need to leave, and I don't.

But as to the inquiry, I think we have a vote in 10 minutes. Is it possible that we could wrap this hearing before the vote?

Ms. SÁNCHEZ. We will certainly try as hard as possible to wrap it before the vote, but I give no assurances.

Mr. Keller?

Mr. CANNON. I suggest that I could talk Mr. Keller out of taking his 5 minutes if you want to poll your side to see if we could get this done.

Ms. SÁNCHEZ. Why don't we recognize Mr. Keller for 5 minutes? He may begin his questioning. And we will discuss that in the meantime.

Mr. KELLER. Well, thank you very much, Madam Chairwoman.

And I am trying to figure all this out, because when I read Monica Goodling's testimony, some aspects of it, there just seems to be, kind of, some anger.

You know, for example, on some of the things that she is mad about you at, like, for example, she says you were asked about the

Parsky Commission, some obscure commission in California, and you said it was okay. And you had heard from some people who didn't like it. So, clearly, a false statement. It just seemed so much, you know, to quarrel on such a little thing.

And I am trying to figure that out. I have a guess. And since I am under privilege, I guess I am allowed to guess, so, without being, you know, prosecuted.

But I know that Monica Goodling and Tim Griffin were friends and opposition researchers at the RNC. And I know that you went before the Senate and testified, truthfully, that the dismissals were performance-based, except for one, except for Bud Cummins, who was removed to make way for Tim Griffin. And some people felt like that ended Tim Griffin's chance of permanently getting that job as a Karl Rove protege.

And I am wondering if she is just, kind of, mad at you and throwing up somewhat trivial stuff like, "What about the Parsky Commission? You knew that some people didn't like it."

But at any rate, I am just trying to sort it through. Tell us your side of the Parsky Commission debate.

Mr. MCNULTY. Well, thank you for letting me respond to that, because I do want, before the hearing is over, to get to all of them.

On that one, I stated at my hearing that I thought the Parsky Commission worked very well and that the department respected the process.

Now, first of all, that is a matter of opinion whether you think it is working well or not, and it may be that some at the department leadership felt it wasn't.

But at the time of my hearing, the Administration was relying on the Parsky Commission to select our U.S. attorney candidates in three out of the four California districts. So we were very much engaged in the use of the Parsky Commission.

And from my perspective as deputy, who wasn't involved in the selection of U.S. attorneys in particular, I assumed that we were satisfied with it, that we had accepted it and that it was working for us.

And so, that is why I described it that way at my hearing.

Mr. KELLER. All right, so, of the four things, we have covered her claim that you, kind of, under-represented your knowledge of the White House involvement.

Mr. MCNULTY. Yes.

Mr. KELLER. We have covered the Parsky Commission issue.

The third issue is the allegation she made that you, sort of, under-represented the degree of knowledge you had regarding the circumstances of Bud Cummins's departure.

Would you like to——

Mr. MCNULTY. Well, we have two other ones. And those are the two Tim Griffin ones.

Mr. KELLER. All right. Just go ahead and tell me your side on that.

Mr. MCNULTY. All right.

So the first is that Senator Schumer asked me at the hearing whether I knew who recommended Tim Griffin to us for that appointment as the interim in the Eastern District of Arkansas.

Now, this is after I have already stated at this hearing that Mr. Cummins was asked to leave so that Mr. Griffin could be given a chance. But what I didn't know until later was how, specifically, Mr. Griffin came to our attention.

I had known for months that Mr. Cummins was asked to move over so that Mr. Griffin would have a chance, as Ms. Goodling indicated, that she had told me that quite some time ago.

But I did not know—and I think, in her testimony—and I am going to be a little careful here, but I think in her testimony she said she wasn't even particularly aware of how he came to our attention.

So that was the issue there; I answered that question truthfully; I just didn't know the specifics of how he came to be recommended to us.

We have later learned that Ms. Miers contacted Kyle Sampson, and that is the way.

And the second one has to do with the caging issue. And there, it is a rather simple issue of where she is challenging my testimony.

Senator Schumer asked me about an allegation involving Tim Griffin in a practice known as caging. And I said that I was aware of an article on that subject, but I didn't—and here is my quote: "I didn't know anything about it personally." And that is perfectly true. I didn't know anything about it personally.

The night before my hearing, I was given an article and a short explanation. And I did not have an opportunity to read those things. I knew about the existence of the issue. And I therefore did not want to testify about a matter that I didn't know about personally. And I just said that at the time.

Mr. KELLER. You got it all out, on those four issues? That is your side?

Mr. MCNULTY. Yes, thank you.

Mr. KELLER. Okay. I will yield back, Madam Chairwoman.

Ms. SÁNCHEZ. Thank you. I thank the gentleman.

At this time, I would like to recognize Mr. Conyers for 5 minutes of questioning. Mr. Conyers?

Mr. CONYERS. Thank you, Madam Chair.

Now, did you just say you didn't know anything about caging?

Mr. MCNULTY. What I said was that when I was asked that question at the Senate hearing all I knew about the subject at that point——

Mr. CONYERS. Was an article that you——

Mr. MCNULTY [continuing]. Was that there was an article.

Mr. CONYERS. Was that article by Greg Palast about African-American soldiers scrubbed by secret GOP hit list?

Mr. MCNULTY. Right——

Mr. CONYERS. Dated June 16, 2006. Was that it, as you recall?

Mr. MCNULTY. That is the article I am referring to.

Mr. CONYERS. And didn't Monica Goodling tell you that caging might come up at the hearing as she was briefing you?

Mr. MCNULTY. Yes, that is correct.

Mr. CONYERS. And did it come up?

Mr. MCNULTY. It did.

Mr. CONYERS. And your response was you never looked at the caging, even though Goodling told you, you saw the Greg Palast article, and it was put in your briefing testimony for the Senate, your briefing book?

Mr. MCNULTY. Right.

Mr. CONYERS. And you didn't look at the material in your briefing book outside of the article?

Mr. MCNULTY. Mr. Chairman, I didn't read the article.

I was aware the article existed because Senator Pryor referred to it in his testimony right before I got up to testify and Ms. Goodling had raised the issue the day before. But I had not read the article and had not become familiar with the issue.

And even if I had read that article, Mr. Chairman, if I just may say so, even if I had read that article and I was asked that question again by Senator Schumer, I would still be very careful before I started speaking because information based upon just one article——

Mr. CONYERS. But there was more in your briefing book.

Mr. MCNULTY. There was another Tim Griffin e-mail, which gave his explanation of that article, which I have now seen, but I hadn't read before I testified.

Mr. CONYERS. So could I infer that caging of Black voters may not have been one of the high items on your list as your responsibility as Deputy Attorney General?

Mr. MCNULTY. Well, I am not sure what you mean by that. I mean, the——

Mr. CONYERS. What I mean by it is Goodling told you about it, it is in your Senate testimony, and yet you failed to answer questions on the subject before the Senate, and you tell me even now—as of today, have you looked at it yet?

Mr. MCNULTY. I have now read the article and I have read that e-mail.

Mr. CONYERS. No, I mean the whole subject matter of caging. I mean, this disenfranchises lots of people.

Well, first of all, you know, caging is challenging lists of voters that are usually minority voters, and——

Mr. CANNON. Would the gentleman yield? Because I think Ms. Goodling testified slightly about the——

Mr. CONYERS. Wait a minute. Let me just finish the question.

Ms. SÁNCHEZ. The time belongs to the gentleman from Michigan. Let him finish his question.

Mr. CONYERS. Yes, I will get back to you, Chris. I always yield to you. You know that.

But we have got a whole chain of testimony. This is one of the big issues that came out of at least a couple of major elections in this country. And you are saying, "Yes, I was told about it. Yes, it was in my tab in the briefing book for Senate testimony. And yes, I looked at Palast's article, but I didn't read it."

Why does it not generate much concern or attention for you? For me, voter rights is one of the big problems that we have in terms of having it enforced in the Department of Justice.

Mr. MCNULTY. Well, Mr. Chairman, if I may respond, we are dealing with two things here.

First of all, with regard to what I knew at the hearing I went to on February 6, I was about to go and testify on the question of why certain U.S. attorneys were asked to leave, and specifically what happened in the case of Arkansas.

The subject having to do with an article making an allegation against a particular person like that was not directly related to what I was doing. I was given an article the night before, I didn't have the time and I didn't focus on that particular issue, because, again, I was anticipating the hearing looking at other subjects.

Now, secondly, if you are raising with me as Deputy Attorney General the question of caging votes, I am very happy to work with you on that concern.

Mr. CONYERS. Good.

Mr. MCNULTY. I am not prepared today to give you a lengthy explanation of where that stands, if there is anything happening at the Department of Justice on the matter.

Mr. CONYERS. Well, just your commitment that we will work on it together is good enough for me.

Mr. MCNULTY. Well, you certainly have that commitment. You know, I am obviously not going to be around a long time. But I certainly understand the importance of the issue to you, and the department takes any issue involving voting rights seriously, and we will make sure that is understood.

Mr. CONYERS. Thank you.

Could I get an additional minute to yield to the Ranking minority leader of this Committee, as I always do when he asks?

Ms. SÁNCHEZ. Without objection, so ordered.

Mr. CANNON. In fact, the Chairman is extraordinarily gracious in this regard.

I just wanted to point out that the caging—we needed that clear, and I think Mr. McNulty was fair here—caging is, as I understand it, a term of art for mail houses, and it relates to what you do with a letter that comes back because it didn't have an address that worked——

Mr. CONYERS. I see. And that is all you know about caging.

Mr. CANNON. That is what I think the term generally means. But I am not an expert in the area at all.

Mr. CONYERS. Well, maybe I ought to bring you in and let's us work together on this. Because we are talking about the caging, the process where lists of voters to be challenged are generated that deal with blocking them out of the voting process. It is not an issue of the mail at all.

Mr. CANNON. Thank you. I yield back to the gentleman.

Ms. SÁNCHEZ. Thank you.

I believe Mr. Cannon is recognized for 5 minutes.

Mr. CANNON. You know, I am actually willing to defer to one of the Democrats, if you want to go ahead, and I will ask questions if I feel like we need to later on. Thank you.

Ms. SÁNCHEZ. I appreciate that, Mr. Cannon.

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

Mr. JOHNSON. Thank you, Madam Chair.

Mr. McNulty, you testified at the Senate Judiciary Committee that Bud Cummins was forced out to make room for Tim Griffin

to serve as U.S. attorney, and that it was "not connecting to the performance of Mr. Cummins."

Why did you believe that Bud Cummins was forced out just so that Mr. Griffin could serve?

Mr. MCNULTY. Because that is how the facts were laid out for me at the time that that was occurring.

It was occurring in the summer of 2006. And, as Ms. Goodling mentioned, I was regularly briefed about the status of U.S. attorneys, in terms of where they are going. And I was told at that time that Mr. Cummins was going to be encouraged to resign at some point so that Mr. Griffin would have an opportunity to serve in that position.

Mr. JOHNSON. And it was not a merit-or a performance-based reason why Bud Cummins was asked to leave. It was for some other reason, correct?

Mr. MCNULTY. I was never told that there was a performance issue associated with why Mr. Cummins was being asked to step aside.

Mr. JOHNSON. But you were told that there was a plan to install Tim Griffin in that position, correct?

Mr. MCNULTY. Well, what I was told specifically was that he was going to be going into the office with the hope of eventually becoming a U.S. attorney. But that would have been a multi-step process, involving his nomination and confirmation. Initially, he would be going in and he would have an opportunity to serve as the interim U.S. attorney.

Mr. JOHNSON. Now, when you revealed the fact that Bud Cummins was being replaced for non-performance reasons and that the White House was involved in the decision to get rid of him and put someone else, i.e., Tim Griffin, in his place, that angered some people at the White House, correct?

Mr. MCNULTY. Evidently.

Mr. JOHNSON. And it angered Sara Taylor.

Mr. MCNULTY. I have seen the e-mail recently to that effect.

Mr. JOHNSON. It angered Mr. Rove.

Mr. MCNULTY. I don't know that for a fact.

Mr. JOHNSON. It angered the Attorney General.

Mr. MCNULTY. Apparently so.

Mr. JOHNSON. What gives you that impression?

Mr. MCNULTY. Again, an e-mail that came forward which—I wasn't aware at the time that he was upset. But he——

Mr. JOHNSON. When did you become aware that he was upset?

Mr. MCNULTY. When I read the e-mail, that he apparently was "very upset" with my testimony, because he believed that it was a performance-related issue associated with Bud Cummins.

Mr. JOHNSON. Did it appear that he wanted to maintain a stance that all of the fired U.S. attorneys were fired due to performance-based reasons, as opposed to political reasons?

Mr. MCNULTY. Well, he explained that further at this hearing. And I think what he said was that he just misunderstood. He thought that there had been some performance issue associated with Mr. Cummins and that he stood corrected once he learned that that was not the case.

Mr. JOHNSON. Didn't the Attorney General know at the time that the preparations were ongoing to replace Bud Cummins with Tim Griffin, that that process was taking place?

Mr. MCNULTY. I assume so. I don't know exactly when he became aware that Mr. Griffin was going into the Eastern District of Arkansas to take that interim position at some point. I am not sure when he first learned that.

Mr. JOHNSON. You told Senator Schumer that you did not have information as to how Tim Griffin came to be appointed U.S. attorney in the Eastern District of Arkansas.

When Ms. Goodling testified before this Committee, she testified that that was false, and she said that she had kept you informed of the effort to remove Bud Cummins in order to arrange an opportunity for Mr. Griffin since the spring or early summer.

She stated that, "The subject came up frequently in my briefings over the course of the next 6 months." And she said that she was "confident that I had informed the deputy of Mr. Griffin's background," and the White House had approved Griffin to go into background investigation in advance of a nomination as early as June or July. And she talked about subsequent discussions about installing him as the interim U.S. attorney.

What is your response to that?

Mr. MCNULTY. Well, all of that, as best I can recall, is true. It is just that it doesn't go to the question of where I may have not answered, you know, her allegation.

The point is, she says that I did not answer Senator Schumer's question as to how he came to our attention. And I didn't know the answer to that question when I was asked at my hearing, how did we specifically come to know of Tim Griffin's interest.

What I knew was everything that you just recited: that he had come to our attention, that we had sent him to Arkansas, we had asked Mr. Cummins to leave. And everyone knew, of course, of his background, and Senator Schumer stated his background at my hearing before I ever was even asked anything about him.

So the only issue here between Ms. Goodling and myself is the question of how Tim Griffin came to our attention. That was what I was asked. And I didn't know that answer at the time, as I have explained today.

Ms. SÁNCHEZ. Time of the gentleman has expired.

Mr. JOHNSON. Madam Chair, if I could have just 2 minutes more, with unanimous consent.

Ms. SÁNCHEZ. Without objection, so ordered.

Mr. JOHNSON. Mr. McNulty, in an e-mail titled "McNulty Strikes Again"—you are familiar with that e-mail, right?

Mr. MCNULTY. Yes, I mentioned that a moment ago, that I read that e-mail.

Mr. JOHNSON. Yes. That was from Sara Taylor, correct?

Mr. MCNULTY. That is right. That is what I read.

Mr. JOHNSON. She is the political director at the White House under Karl Rove, correct?

Mr. MCNULTY. She was, I think.

Mr. JOHNSON. And she was very upset in that e-mail.

Mr. MCNULTY. Yes, I saw the e-mail, right.

Mr. JOHNSON. And you characterize it as being from an angry person.

Mr. MCNULTY. I said that?

Mr. JOHNSON. Well, I am asking you. Was she angry?

Mr. MCNULTY. Oh, I don't know——

Mr. JOHNSON. Think she was angry?

Mr. MCNULTY [continuing]. If she was an angry person or not. I don't know. The e-mail speaks for itself.

Mr. JOHNSON. She said that, "McNulty refuses to say Bud is lazy, which is why we got rid of him in the first place." Do you remember seeing that in that e-mail?

Mr. MCNULTY. Yes, I do.

Mr. JOHNSON. Did you believe, at the time that you first read the e-mail, that Bud Cummins was lazy, and did you refuse to testify about that issue?

Mr. MCNULTY. I don't remember refusing.

Mr. JOHNSON. Well, actually——

Mr. MCNULTY. No one has ever described Mr. Cummins to me as being lazy.

Mr. JOHNSON. So you did not think he was lazy.

Mr. MCNULTY. No, I didn't.

Mr. JOHNSON. And so you disagreed with the characterization that Ms. Taylor had made.

Mr. MCNULTY. I don't know where that was coming from. Maybe someone told her that. I just don't know.

But as far as I was concerned, there was no issue like that associated with Mr. Cummins, and I don't recall anybody ever trying to encourage me to think there was. And I had to reason to suggest it when I testified.

Mr. JOHNSON. Okay. All right.

Now, according to Ms. Goodling's testimony before the Committee here in May, she said a decision was made that Kyle Sampson would personally inform you of the Attorney General's designation order. Did Kyle Sampson ever personally brief you about the delegation order that we have talked about earlier?

Mr. MCNULTY. I just can't remember.

When I was asked the question—was it, I think, by you or perhaps Mr. Delahunt?—I did try to put some reservation there that I just don't have any memory of that prior to reading that story. But if he did, it just doesn't stand out in my mind.

Mr. JOHNSON. And, again——

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

I would like to recognize Ms. Lofgren, the gentlewoman from California, for 5 minutes of questions.

Ms. LOFGREN. Thank you. Thank you, Madam Chairwoman.

I want to explore a little bit the situation in Missouri.

At the Department of Justice, Mr. Scholzman really oversaw what seems to have been a dramatic shift within the Civil Rights Division, particularly with respect to voting rights. And the focus really on the enforcement activities went from protecting the rights of eligible individuals to register and vote to encouragement of ID requirements and voter roll purge programs.

And the case that Mr. Scholzman brought under the National Voting Rights Registration Act to force Missouri to purge its voter rolls is just one example.

I am wondering, Mr. Scholzman came in almost immediately after Mr. Graves was replaced. Were you in on this selection? What can you tell us about Mr. Scholzman's selection?

Mr. MCNULTY. Not much. I wasn't involved in any decision to have him become the interim there. I have no memory of being involved in any of that selection.

That would have been in, again, relatively early stages of my time as deputy. I was confirmed on March 17, and it was probably about March when that change was being made.

Ms. LOFGREN. Okay.

When Mr. Scholzman brought a case against four volunteers for a group known as ACORN on voter registration fraud, and that was the week before the election, contrary to the written guidance of DOJ stating that prosecutors and investigators "should be extremely careful not to conduct overt investigations during the pre-election period or while the election is under way."

Are you familiar with this ACORN case that was brought?

Mr. MCNULTY. Yes.

Ms. LOFGREN. Did you have a role in approving the indictments in that case?

Mr. MCNULTY. Yes, I will explain where the deputy's office came into that.

And really quickly, I am going on the back of your last question. An individual in my office is involved in interviewing interims that go into offices—David Margolis—and so I am not clear, just sitting here today, what role he played in that selection. But it is quite likely that he was involved in that discussion. I just don't, personally, have any memory of that.

Ms. LOFGREN. Well, if I can——

Mr. MCNULTY. Yes.

Ms. LOFGREN [continuing]. Mr. Scholzman says it was Mike Elston who had spoken to him prior to the indictments.

Mr. MCNULTY. Oh, yes. I will switch to that subject now. That is the ACORN issue you are asking about.

Ms. LOFGREN. That is correct.

Mr. MCNULTY. Okay. What happened was that sometime shortly before those indictments were returned, we received notification that there was an intention to seek the indictments. I am not sure if it was a phone call to Mike or a urgent report or something to that effect.

We notified the Attorney General's Office that this was occurring. We told the Western District of Missouri to hold on until we had reviewed what was going on.

We then checked with the Criminal Division responsible—the Public Integrity Section oversees this area of the law—and found out in discussing it with them and with this office in the Western District of Missouri and the assistant United States attorneys involved, some form of consultation, that the Criminal Division had no objection to this going forward at that time.

And, therefore, we informed the Attorney General's Office to that effect and were told that there was no objection or to the case being sought.

Ms. LOFGREN. Well, what about the policy of the department that opposed bringing these indictments? Did you consider that?

Mr. MCNULTY. Well, that is what we looked for when we consulted with the Criminal Division.

The people who were responsible for developing that policy and overseeing that policy are the Public Integrity Section folks in the Criminal Division. And those same folks, who established that policy and police it, were the ones who said that this did not violate that policy and that it could be done. And once we were aware of that, we——

Ms. LOFGREN. Well, are you aware that Mr. Schlozman has now told the Senate that he wants to clarify that the Public Integrity Section never directed or advised him on this case?

Mr. MCNULTY. Well, as best I know this issue, he——

Ms. LOFGREN. That is what we have been told, at least.

Mr. MCNULTY. Right. It is a question of the word. I believe there is some communication about using the word "directed" versus seeking the advice.

Ms. LOFGREN. Well, it says directed or advised, is what he said.

Mr. MCNULTY. Well, advised there I think may also be a question of whether or not he was being prompted to or advised to do something proactively as opposed to consulting and getting the input from that office. Because I am pretty confident that the office——

Ms. LOFGREN. Well, if I could, because that is contradictory to what we have been told. And if we could follow up in writing on this, I think that would help.

Mr. MCNULTY. I am very happy to help you try to get the clear answer to it. But I think the record is that the Criminal Division was consulted and that he got the information he needed to know that it was appropriate to go forward. And I believe right now he is trying to make sure that he doesn't——

Ms. LOFGREN. Well, if we can count on your written clarification, I think that would be best.

Mr. MCNULTY. Absolutely.

Ms. LOFGREN. And, if I may, with unanimous consent, I would like written clarification on one other item, if I may.

Ms. SÁNCHEZ. Without objection.

Ms. LOFGREN. I serve on the House Administration Committee as well, and Chair the Elections Subcommittee. And we have been exploring with the Election Assistance Commission various communications between the Department of Justice and that commission, and have come across an e-mail between Hans von Spakovsky, formerly of the DOJ, about a deal that he believed he made with the EAC on how the DOJ would consider changing its position on whether voters could vote or not.

And I would like to know whether it was practice for the DOJ to make deals about the proper interpretation of laws and whether this deal was brought to your attention.

And I will submit the e-mails to you for your written response, seeing that my light is on.

And I thank the gentlelady for her——

Ms. SÁNCHEZ. And I thank the gentlewoman from California.

Mr. Cannon is recognized for 5 minutes.

Mr. CANNON. I thank you, Madam Chair.

I want to thank you, Mr. McNulty, for being here with us today. You have been forthright. You have been directly responsive to questions, sometimes compound questions, and that is a little difficult. You have been thorough in your answers. And I appreciate that. And I think you have done your reputation a great service today with the way you have handled the questioning here.

I would like to ask a couple questions about Will Moschella.

After our review of thousands of pages of documents and testimony provided to this Committee, it is evident that Mr. Moschella had no role in the decision to fire any U.S. attorney, yet you directed him to testify before this Committee in early March.

Do you agree with my statement that Mr. Moschella had no role in the decision to fire any of the U.S. attorneys?

Mr. MCNULTY. That is correct.

Mr. CANNON. Thank you.

Some of the e-mails provided to this Committee show that you directed Mr. Moschella to testify. Can you tell us why?

Mr. MCNULTY. Well, first of all, as to the previous question, he began as the principal associate Deputy Attorney General just shortly before the final process. And therefore I have no memory of his involvement.

He did attend a meeting with the Attorney General on November 27. But again, that would have been the first weeks of his job as PADAG, so he had very little——

Mr. CANNON. Context?

Mr. MCNULTY [continuing]. Understanding. Yes, context and involvement.

The simple answer to your question about Mr. Moschella's testifying is because I already had suffered enough and I wanted to look for a way to share the pain. [Laughter.]

As you can see, testimony can always be a tricky business.

But the simple fact is, well, there aren't that many people who are candidates for testimony on a matter that cuts across, sort of, leadership issues and so forth. And from time to time, you know, the PADAG is—that is the position he has—is stuck with the short straw. And that is how it happened in his case.

Mr. CANNON. And, of course, he has worked for this Committee as well and is well-liked on the Committee and well-respected. And I think he has acquitted himself very, very well in the process.

Mr. MCNULTY. Well, Mr. Cannon, maybe I should be a little bit more fulsome, too.

I mean, he also, we knew, would be an excellent witness because he is a very intelligent guy, and he prepared himself as well as he could and came here. And as I tried, he answered the questions as fully and completely as he knew at the time.

Mr. CANNON. Yes. Based on everything you know, do you believe that Mr. Moschella testified truthfully and without intent to mislead when he testified before this Committee?

Mr. MCNULTY. Absolutely.

Mr. CANNON. Thank you.

This has been a very difficult process for everyone. I hope that we can get to the truth of the matter fairly quickly.

And I think that Mr. Keller would like me to yield to him, and I would be happy to do that.

Mr. KELLER. Thank you.

I just have one question for you, Mr. McNulty.

Earlier Mr. Delahunt was asking about, kind of, being cut out of the loop with a memorandum that essentially delegates certain personnel authority. And there is something called a control sheet on this issue dated February 24, 2006. And then sure enough this order was signed by the Attorney General on March 1, 2006.

You recall Mr. Delahunt talking to you about that effectively——

Mr. MCNULTY. Yes.

Mr. KELLER [continuing]. Cutting you out of the loop.

I was curious about how that arose and what led to you being cut out of the loop. And I had the staff research it for me, and I see an e-mail from Monica Goodling on January 19, 2006, a few days before, asking that this be done "outside of the system," in effect around the deputy attorney.

This is dated January 19, 2006, from Monica Goodling to Paul Corts. It says, "Please do a delegation from A.G. to his chief of staff and White House liaison," which is her, "by position titles. Okay to send directly to me outside of system. Thank you."

Were you aware that she was the one that requested, in effect, that you be cut out of the loop on this delegation of authority?

Mr. MCNULTY. Well, that came to my attention, I believe, in the context of that article that appeared a month or so ago about this subject.

Mr. KELLER. Do you know why?

Mr. MCNULTY. I don't know why. I just don't understand the full background to this. And, again, I would only be speculating. I just don't know.

Mr. KELLER. All right.

Mr. Cannon, I yield back.

Mr. CANNON. Reclaiming my time, I would ask unanimous consent to submit for the record or to be included in the record an article in the *L.A. Times*, "U.S. Attorneys Fallout Seeps into the Courts," and just make a point——

Ms. SÁNCHEZ. Without objection, so ordered.

[The article follows:]

Los Angeles Times

From the Los Angeles Times

Attorney firings echo in courts; The divisive dismissals under Gonzales are being cited to challenge the motives of federal lawyers in legal cases.

By Richard B. Schmitt
Los Angeles Times Staff Writer

June 18, 2007

For months, the Justice Department and Atty. Gen. Alberto R. Gonzales have taken political heat for the purge of eight U.S. attorneys last year.

Now the fallout is starting to hit the department in federal courtrooms around the country.

Defense lawyers in a growing number of cases are raising questions about the motives of government lawyers who have brought charges against their clients. In court papers, they are citing the furor over the U.S. attorney dismissals as evidence that their cases may have been infected by politics.

Justice officials say those concerns are unfounded and constitute desperate measures by desperate defendants. But the affair has given defendants and their lawyers some new energy, which is complicating life for the prosecutors.

Missouri lawyers have invoked the controversy in challenging last year's indictment of a company owned by a prominent Democrat, on suspicion of violating federal wage and hour laws. The indictment, which came two months after the owner announced that she was running for political office, was obtained by a Republican U.S. attorney who also has been criticized because he charged workers for a left- leaning political group on the eve of the 2006 midterm election.

A lawyer in a child pornography case recently defended his client at a federal trial in Minnesota in part by questioning the motives of the Republican U.S. attorney, who has come under scrutiny in the congressional investigation into the prosecutor purge.

Lawyers for a former county official in Delaware who has been accused of corruption asked a judge in early May to allow them to subpoena the Justice Department and White

House for documents to see whether political motives factored into charges being brought against the official. They cited the brewing controversy inside the Beltway.

"Those revelations dramatically reinforce the reasons to believe that considerations beyond mere law enforcement are behind this prosecution," the lawyers wrote.

The defendant, a once up-and-coming Democrat, was being prosecuted by the U.S. attorney in Wilmington, a Republican appointee.

In an inch-thick response, the U.S. attorney said nothing could be further from the truth, and said the attacks were "sullying the reputations of every prosecutor and law enforcement officer involved in this case," including more than a dozen career prosecutors and agents.

U.S. District Judge John P. Fullam eventually sided with the government, saying that if there were any improper motives for bringing the case, they would become evident at trial, in cross- examination. He also noted that the decision to bring the indictments was made in May 2004 -- "long before Mr. Gonzales became attorney general." (Gonzales' swearing-in was in February 2005.)

The defendant subsequently pleaded guilty to bank fraud.

The firing of the eight prosecutors last year has drawn attention because once appointed, U.S. attorneys traditionally have been allowed to serve until they resign or are ousted because of misconduct. New administrations routinely make changes as well.

Gonzales has defended the dismissals as justified for performance reasons, saying that some of the prosecutors failed to follow administration law-enforcement priorities.

But Democrats say there is evidence that the dismissals were part of a Bush administration effort to affect investigations in public corruption and voting cases that would assist Republicans. The probe has also shown that politics may have played a role in the hiring of some career Justice employees, in possible violation of federal law.

The controversy has drained morale from U.S. attorney offices around the country. And now, legal experts and former Justice Department officials say, it is casting a shadow over the integrity of the department and its corps of career prosecutors in court.

There has long been a presumption that, because they represented the Justice Department, prosecutors had no political agenda and their word could be trusted. But some legal experts say the controversy threatens to undermine their credibility.

"It provides defendants an opportunity to make an argument that would not have been made two years ago," said Daniel J. French, a former U.S. attorney in Albany, N.Y. "It has a tremendously corrosive effect."

Defense lawyers in political corruption cases often argue to juries that the prosecution was motivated by politics, especially when the prosecutor happens to be of a different political party than the defendant.

B. Todd Jones, a former U.S. attorney in Minneapolis, said such arguments are now "given credence in the public eye because they are seeing that maybe there were political decisions made. Any defense lawyer worth their salt is going to say this is a political prosecution that shouldn't have been brought."

The controversy may also be feeding anti-government feelings that many jurors bring to cases, even when defense lawyers do not overtly try to exploit the situation.

"It has become part of the background that jurors have in their minds when they deliberate," said Rep. Adam B. Schiff (D-Burbank), a former assistant U.S. attorney. "Jurors will think, 'Gee, is there a political motivation for this? Is it being brought because the U.S. attorney wants to curry favor with the attorney general and keep his job?' Corruption cases are tough enough to prosecute without having to defend yourself against attack."

Lawyer Daniel Gerdts won an acquittal in federal court in Minneapolis last month for a New York computer consultant who had been accused of bringing child pornography into the United States on his way back from a business trip to Asia.

The defendant, who worked for a Japanese producer of adult videos, said he was hired to set up Web pages to market the videos and to search the Internet for pirated copies. He conceded he might have inadvertently downloaded child porn in the process of doing his job.

In court, Gerdts said prosecutors had failed to exercise proper discretion in bringing the charges. During his closing argument to the jury, he suggested a reason, alluding to published reports of upheaval in the office since Rachel Paulose had become U.S. attorney in 2006.

Paulose is believed to have gotten the posting with the help of Monica M. Goodling, a former Gonzales aide who recently testified under a grant of immunity from prosecution that she "crossed a line" by improperly allowing politics to influence hiring decisions at the Justice Department. Several senior prosecutors in the Minneapolis office resigned their management posts to protest Paulose's leadership.

The effect of Gerdts' courtroom remark was unclear. Government lawyers objected, and the judge told jurors to ignore the comment.

After the verdict, jurors said they did not believe the government's accusation that the defendant had intentionally downloaded contraband files.

In Springfield, Mo., defense lawyers are seeking a court order for evidence of improper contacts between former interim U.S. Atty. Bradley J. Schlozman and former Bush administration official Asa Hutchinson about the indictment last year of a company known as Managed Subcontractors.

Schlozman was questioned this month on Capitol Hill about his decision to obtain indictments of some former voter registration workers for the liberal Assn. of Community Organizations for Reform Now, or ACORN, less than a week before the midterm election last fall.

Managed Subcontractors had been the target of an investigation in 2002 by federal immigration agents working for the Department of Homeland Security. But its attorneys believed the case had gone dormant in the ensuing years.

Then, in June 2006, three months after his arrival as U.S. attorney, Schlozman secured an indictment. The principal owner of the company, Robbyn Tumey, had recently filed as a Democratic candidate for the state House in neighboring Arkansas.

Hutchinson, who was then in a hotly contested race for governor of Arkansas, was interested in the case because he was running on a get-tough-on-immigration platform, the court filing contends.

After her company was indicted, Tumey resigned as chairwoman of her local Democratic Party and withdrew from the Arkansas House campaign.

Hutchinson, who lost his bid for governor, could not be reached for comment. In an interview with the Arkansas Democrat-Gazette, he said there was "zippo" evidence linking him to the indictment decision.

Thomas Carver, Tumey's lawyer, conceded that seeking the court order "involves some degree of speculation on our part because we obviously are not privy to the inner workings of the U.S. attorney's office." But he said his client had a right to the information.

"One of the reasons to file the motion was to determine if there is any cause for alarm," he said. "We are not in a position to make accusations ... but we would certainly like to know."

rick.schmitt@latimes.com

Credit: Times Staff Writer

Reproduced with permission of the copyright owner. Further reproduction or distribution is prohibited without permission.

Mr. CANNON. Thank you, Madam Chairwoman.

Just to make a final point here——

Ms. SÁNCHEZ. That is 2 seconds.

Mr. CANNON. Maybe the Chair would indulge me for——

Ms. SÁNCHEZ. We will grant you an additional 30 seconds.

Mr. CANNON. "Defense lawyers in a growing number of cases are raising questions about the motives of Government lawyers who have brought charges against their clients. In court papers, they are citing the furor over the U.S. attorneys dismissals as evidence that their cases may have been infected by politics."

This is not a neutral process that we are involved in. And I have tried to work very hard today to get all the questions out that we could ask Mr. McNulty. I thank the majority and also the Members of our side for their intensity. And hope that we could actually move on, beyond this issue, quickly, because it is important to the country.

Thank you. And I yield back.

Ms. SÁNCHEZ. Thank you, Mr. Cannon, for your cooperation.

I would also like to thank Deputy Attorney General McNulty for his testimony today. I believe that your testimony will be a great help in helping us get to the truth in this entire matter.

Without objection, Members will have 5 legislative days to submit any additional written questions, which we will then forward to you 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 materials.

And, again, I want to thank everybody for their time and their patience.

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

[Whereupon, at 2:23 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY

Today's hearing is one of a series that the Judiciary Committee and this Subcommittee have held as part of our investigation into the unprecedented firings of nine United States Attorneys last year and related matters.

To date, three serious concerns have come to light as a result of our investigation. First, we have learned of apparent misrepresentations to Congress. Our witness today—Deputy Attorney General Paul McNulty—testified before the Senate Judiciary Committee regarding these firings.

Last month, the House Judiciary Committee received testimony from Monica Goodling, former Justice Department Liaison to the White House. Ms. Goodling said that Mr. McNulty's Senate testimony was "incomplete or inaccurate in a number of respects." For example, she testified that Mr. McNulty:

- knowingly tried to minimize the White House's role in the firings;
- falsely stated that he had no information on how Tim Griffin was selected to be an interim U.S. Attorney;
- claimed that he knew nothing about Mr. Griffin's alleged involvement in the notorious "caging" of black voters, even though she had provided such information to him; and
- withheld from the Committee the crucial fact that Senator Domenici had complained to him about U.S. Attorney Iglesias before he was fired

We expect you, Mr. McNulty, to respond to these serious accusations during today's hearing.

Second, we have uncovered a troubling effort to politicize the Justice Department. Although Mr. McNulty's statement claims that the Department is "blind to partisan politics," Ms. Goodling admitted that she "crossed the line" by using political criteria when hiring immigration judges, Assistant U.S. Attorneys, and other career professionals in the Department.

Politicization of the Justice Department, as former Deputy Attorney General Comey explained to this Subcommittee, undermines the very foundation of the Department's credibility and reputation for fairness.

Your knowledge about these efforts to politicize the Department and your response is of critical concern.

Third, despite several months of effort, we have been unable to find out the answer to a very simple question: who was responsible for putting these nine U.S. Attorneys on the firing list and why. Instead, we have run into contradictions and—to some degree—mutual finger pointing.

Although some requests remain outstanding, we appreciate the Justice Department's efforts to make its employees and documents available in our investigation. We know, for example, that Mr. McNulty asserts that he has limited knowledge on this question.

In contrast, the White House has failed to produce a single witness or document, and has offered only limited access under conditions that would make it impossible to get to the truth. We have thus had no choice but to serve subpoenas on the White House and on former White House counsel Harriet Miers. Although we have not yet received any response, we hope that cooperation will be forthcoming.

The issues we are examining go to the heart of our Nation's commitment to justice. We know already that U.S. Attorneys were politically pressured with regard

to their decisions to prosecute or not prosecute cases, and that Federal laws, such as the Presidential Records Act and the Hatch Act, may have been violated.

The American people deserve the truth about these issues. We hope today's hearing will shed light on the facts so we can ensure our Federal system of justice does in fact do justice.

ANSWERS TO POST-HEARING QUESTIONS FROM THE HONORABLE PAUL J. MCNULTY, DEPUTY ATTORNEY GENERAL, UNITED STATES DEPARTMENT OF JUSTICE

QUESTIONS FOR THE RECORD

PAUL MCNULTY
APPEARANCE BEFORE THE HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

June 21, 2007

Monica Goodling's Statements Regarding Your Prior Testimony on the Role of the White House and Tim Griffin & Voter "Caging"

1. **After you testified at the Senate Judiciary Committee, did Monica Goodling or Kyle Sampson ever tell you that your testimony had been incomplete or incorrect?**

   a) If they did tell you, when did they inform you?

   b) How did they inform you?

   c) What was your response?

   d) What if any corrective measure did you take?

   ANSWER: I have no recollection of such conversations.

2. **In your testimony before the Senate Judiciary Committee, you explained that "you [didn't] know anything about [the issues of Tim Griffin and voter caging] personally." In your testimony before this Subcommittee, you acknowledged that Ms. Goodling had briefed you about the subject prior to the hearing and that your hearing briefing book contained an article about the issue as well as an e-mail from Mr. Griffin in which he provided an explanation of the article itself, although you had not read those materials. Please specifically and clearly explain how you reconcile your Senate testimony about your lack of knowledge about Mr. Griffin and voter caging with the fact that Ms. Goodling had personally briefed you on the subject prior to the Senate hearing.**

   ANSWER: According to my best recollection, Ms. Goodling informed me the day before my Senate hearing that this subject could be raised at the hearing. An article from a BBC reporter on the issue and an e-mail from Mr. Griffin were placed in my briefing book. I did not read these items before the hearing, and, therefore, I had no personal knowledge about the subject. My Senate testimony accurately reflected my understanding of the issue at that time.

3. **In your testimony before this Subcommittee, you testified in response to questioning by Congressman Conyers that "if you're raising with me as deputy attorney general the question of cadging [sic] votes, I'm very happy to work with you on that concern." In keeping with your offer, please provide the Subcommittee with any documents that relate to the Department's knowledge of voter caging.**

ANSWER: I must refer you to the Office of Legislative Affairs with regard to this document request.

4. **To the extent that you considered it inappropriate for you to speak on Senator Domenici's behalf regarding David Iglesias, did you or your staff ask the Senator himself or his staff to provide the information regarding his calls to the Department to the investigating Committees?**

ANSWER: I have no recollection of anyone at the Department of Justice speaking to Senator Domenici or his staff in this regard.

a) **If you did, please describe what happened, including who spoke with whom and what was said.**

ANSWER: Please see my response above.

b) **If you did not, why not?**

ANSWER: I do not recall at this point what, if anything, was decided to be done on this matter.

5. **At the Senate Judiciary Committee hearing, Senator Schumer asked if anyone outside the Department urged one of these U.S. Attorneys to be dismissed. You did not want to answer with reference to any specific U.S. Attorney, but instead made a broad statement that there had been no outside influence in any of the firings, you said: "Generically, I can say that with any change we made, they weren't subject to some influence from the outside."**

Given that you had previously heard Senator Domenici's complaints about David Iglesias and that you considered the call from the Senator important in not objecting to Mr. Iglesias being fired, wasn't that statement at least incomplete, if not misleading? Please explain.

ANSWER: The context of my testimony at that point in the hearing concerned Carol Lam and whether her departure interfered with an ongoing public corruption investigation or

raised appearance problems. My intent was to respond to this concern without discussing any specific district, and to assure the Committee that the decisions were not made because of undue or inappropriate influence.

6. **During her testimony before the Committee, Ms. Goodling described a staff meeting that occurred near the end of her time at the Department and after Mr. Sampson had resigned. She said that, at this meeting, she asked how Mr. Iglesias had been placed on the list, and that someone said "that's been addressed."**

   a) **Do you remember the meeting at which she testified that you and the Attorney General were present?**

   b) **Who else was present at the meeting?**

   c) **Who said "that's been addressed"?**

   d) **What was said during this meeting about why Mr. Iglesias had been placed on the list?**

   ANSWER: I do not have a clear recollection of this meeting and therefore cannot respond to the above subquestions.

   e) **Have you ever had any other discussion with any senior official at the Department, including the Attorney General and his chief of staff, at which you asked or were informed why Iglesias was placed on the termination list?**

   f) **If so, what were you told and by whom?**

   ANSWER: I have no recollection of any discussions with senior Department officials at which I specifically asked or was informed about why Mr. Iglesias was placed on the list. I do recall that in preparing for my Senate briefing on February 14, 2007, I attempted to gather information related to the decision to ask for Mr. Iglesias' resignation. In so doing, I discussed this subject with Mr. Sampson, Ms. Goodling and others. The responses are generally reflected in the chart which the Department has provided to the Committee.

Firing of Todd Graves and Replacement by Brad Schlozman

7. **When you testified before the Senate Judiciary Committee in February of this year, you said the following about interim U.S. Attorneys chosen to replace fired U.S. Attorneys: "not one situation have we had an interim yet appointed who is - falls into some category of a Washington person or an insider or something...[I]n the cases**

where an interim has been appointed in those most recent situations, they've both been career persons from the office who are the interims." Was that statement true about the replacement of Mr. Graves by Mr. Schlozman? Please explain.

ANSWER: I was referring to the United States Attorneys asked to resign on December 7, 2006.

Hiring for the Attorney General's Honors Program

8. **In your testimony during the Subcommittee hearing, you acknowledged that you were aware of the anonymous April 9, 2007 letter from unidentified Department employees. The letter describes a December 5, 2006 meeting that top Department supervisors had with your Chief of Staff, Michael Elston, to address concern raised by the hiring practices. Specifically, the concerns related to the fact that the lists of qualified applicants the supervisors had ultimately sent to the DAG's office had been cut dramatically.**

   a) **Were you aware of the meeting involving Mr. Elston that was described in the letter?**

   ANSWER: To the best of my recollection, I first learned about this meeting when I was informed of the April 9, 2007 letter.

   b) **How and why was the meeting set-up?**

   ANSWER: I do not have any personal knowledge about this. After learning of the April 9, 2007 letter, I was informed that the meeting was set up to discuss ways for improving the Honor Program hiring process.

   c) **What was Mr. Elston's role?**

   ANSWER: To the best of my knowledge, he was one of two people who led the meeting.

   d) **Did you tell Mr. Elston what to say in the meeting or discuss in advance the nature of what Mr. Elston was going to say?**

   ANSWER: No, please see my response to subquestion 8a above.

9. **The letter further mentions that Mr. Elston "was offensive to the point of insulting" and claimed that the supervisors had not done their jobs in reviewing applicants.**

According to the letter, Mr. Elston explained that he had his own screening panel review lists of applicants, but he refused to provide names of those on the panel. The letter recounts that, according to Mr. Elston, applicants on the list had been cut for three reasons: grades, spelling errors on applications, and inappropriate information about them on the Internet.

a) Is this description correct? If not, please explain.

b) What inappropriate information is being referred to?

c) How do you reconcile Mr. Elston's alleged comments about grades with the supervisors' representations that the applicants had excellent grades?

d) Did you ever speak with Mr. Elston regarding the allegations of his inappropriate behavior? If so, what transpired?

ANSWER: Please see my responses to question 8. I spoke to Mr. Elston about this matter after the April 9, 2007, letter was brought to my attention. I also spoke to Mr. Louis DeFalaise, Director of the Office of Attorney Recruitment and Management (OARM), who participated in this meeting with Mr. Elston. As I now recall, they described the meeting as being more collegial than the letter suggests.

10. In the Subcommittee hearing, Congressman Steve Cohen asked you "Were politics involved in determining who got . . . appointments to the honors program at the Department of Justice and the summer internship program?" Your response was, "I don't know the answer to that question. I'm happy to provide you with more information in terms of context, but I don't know the specific answer to that question." Consistent with your offer to provide more information, please provide the relevant documents and information in response to Congressman Cohen's question.

ANSWER: In my response to Congressman Cohen, I was referring to the information provided in response to question 9. I have been advised that this matter is currently under investigation by the Department of Justice's Office of the Inspector General (OIG) and the Office of Professional Responsibility (OPR), and I expect that additional information responsive to your interests will become available at the conclusion of the joint investigation.

11. Other than Mr. Elston and supervisors in particular divisions, who else was involved in screening honors programs applicants at the time of the meeting with Mr. Elston?

a) **Was Ms. Goodling involved?**

ANSWER: I do not know.

b) **Was Mr. Sampson involved?**

ANSWER: Not to my knowledge.

c) **Was anyone outside of the Department involved?**

ANSWER: Not to my knowledge.

12. **Was there any discussion or e-mail traffic after the meeting about the meeting with Mr. Elston, the anonymous letter, or charges of politicization of the honors program? Please fully describe, to the best of your knowledge and belief, the content of any discussion and the name of each person involved in each discussion. Provide copies of any relevant written materials.**

ANSWER: Please see my responses to questions 9 and 10 above and question 13 below. I also have some recollection of discussing the issue of an OPR/OIG referral with David Margolis and Chuck Rosenberg, who was then Acting Chief of Staff to the Attorney General. I must refer you to the Office of Legislative Affairs with regard to your request for written materials.

13. **The Department has recently stated that it has returned control of the honors program hiring to career attorneys, after about four years during which political appointees directed the process. Were you involved in the decision-making process to change the honors program hiring process? Please describe what happened, including whether the change in control of the honors program in fact returns hiring completely to career lawyers in the Department.**

ANSWER: After I learned of this issue as described above, I worked with Mr. DeFalaise, Mr. Elston and others to redesign the Honors Program and Summer Internship hiring process. The Departmental review process will now be directed and controlled by Mr. DeFalaise's Office and career employees. One political appointee will participate in the OARM appeals process.

Other Politicization of Hiring at DOJ

14. **When you were serving as U.S. Attorney for the Eastern District of Virginia, and you were hiring people as career assistant U.S. Attorneys, did you ever take into account**

whether applicants were Republicans or Democrats, how they had voted in elections, or similar political factors?

ANSWER: No, my hiring decisions were based on the qualifications of the candidates and other non-political factors such as salary requirements.

15. **Why is it important that this hiring of career prosecutors be nonpolitical?**

ANSWER: It is essential to the rule of law and the integrity of the criminal justice system that prosecution decisions not be based on political considerations. Therefore, the hiring of career prosecutors must be non-political to best serve this core principle.

16. **Ms. Goodling testified before the full Judiciary Committee that she "crossed the line" and did take political factors into account in helping make hiring decisions on career legal positions at the Department of Justice, including Assistant U.S. Attorneys, detailees, immigration judges, and other career employees. When she was still working at the Department, did you have any indication at all that this was occurring?**

ANSWER: It was my understanding that immigration judges were not selected in the same manner as is career attorneys. I do not recall when I first learned this. I did not know until more recently when and how this process had changed, and I oversaw the development of a revised non-political process. With regard to detailees serving in Department leadership positions, I was aware that an effort was being made to find individuals who would be most supportive of the Administration's priorities. I learned this in the context of seeking career prosecutors to serve in the Office of the Deputy Attorney General. To the best of my recollection, I was not aware of the situation involving the hiring of Assistant U.S. Attorneys and other career lawyers.

17. **If you were aware that Ms. Goodling had engaged in these practices, what specifically did you know about them, how were you informed, when did you learn of them, and what, if anything, did you do after you became aware of these practices?**

ANSWER: Pleases see my response to question 16 above.

18. **Other than Ms. Goodling, do you have any indication as to who knew about this practice or who else may have participated in it?**

ANSWER: To the best of my recollection, I am not aware of anyone else being involved in the hiring of Assistant U.S. Attorneys as described in question 16.

a) **In particular, do you have any indication as to whether the Attorney General knew? Please explain.**

ANSWER: Please see my response above.

19. **The June 21, 2007 *Washington Post* reported that with respect to former acting Assistant Attorney General for Civil Rights, Brad Schlozman, DOJ employees "overheard him making brazen political remarks about career employees or witnessed him making personnel decisions with apparent political motivation." Do you have any information about this clear departure from your opening statement that the Department is "blind to partisan politics?"**

ANSWER: No, to the best of my recollection.

20. **What is your reaction to Ms. Goodling's admission and other disclosures about politicization of the Department, including its effect on the Department and its reputation and what can be done about it?**

ANSWER: I am troubled by any circumstance that negatively affects the reputation and credibility of the Department of Justice. As Deputy Attorney General, I was privileged to observe everyday Department employees doing the right thing for the right reasons. This consistent and continuous reality combined with appropriate reforms to hiring procedures will strengthen the public's already positive view of DOJ.

21. **What is the Department of Justice doing, if anything, to identify persons who were discriminated against in hiring and promotion based on political affiliation?**

ANSWER: Other than the on-going inquiry by the Offices of Professional Responsibility and the Inspector General, I am not aware of any particular initiative in this regard.

22. **Did anyone in the Department question the legality of considering political affiliation in hiring career attorneys?**

a) **If yes, who raised the issue of legality, and what came of it?**

b) **Was there any legal research done on this?**

c) **Was this matter ever referred to any component of the Department for legal analysis? Please explain.**

ANSWER: Assuming this question includes immigration judges, please see my response to questions 16 and 17 above. I have no recollection of who first raised concerns about the process for hiring immigration judges. It is my understanding that there is no disagreement within the Department, including the Civil Division and the Office of Legal Counsel, about whether the civil service laws apply to the appointment of immigration judges; they do apply.

The Department's Plan to have Annual Review Meetings with U.S. Attorneys

23. **At his appearance before this Committee in May of this year, the Attorney General answered a question from Representative Coble about whether the Department planned to change its process for evaluating U.S. Attorneys. His testimony was that "I think one thing that we are going to do is at least once a year every United States attorney is going to sit down with either myself or the deputy attorney general and we are going to have a very candid conversation about issues and problems in their districts. If I have heard of complaints from [someone] that is a member of Congress, it gives me an opportunity or the DAG, the deputy attorney general, an opportunity to tell the U.S. attorney what we are hearing."**

There has been some confusion about this issue, and, on June 17, 2007, the *Chicago Tribune* quoted Department officials making conflicting statements about whether these review meetings would occur.

a) **What do you know about the Department's plans to revise or change its U.S. Attorney evaluation processes?**

b) **Will the Attorney General, or your successor as Deputy, hold one-on-one meetings with U.S. Attorneys?**

ANSWER: I know that some thought was being given to this subject, but I do not know if specific changes have been finalized.

24. **Based on his testimony, the Attorney General seems to believe that the point of such meetings would be to pass on complaints from Members of Congress to U.S. Attorneys.**

a) **Do you believe that mentioning the views of Members of Congress to U.S. Attorneys will make them more responsive to political considerations? Please explain.**

ANSWER: I presume if such views were shared with United States Attorney, they would be about policies and not be political in nature. Political considerations should not play a role in law enforcement matters. Members of the House and the Senate, along with other political leaders, have a long and legitimate history of expressing views on law enforcement policies.

25. **Are any changes planned to the review process that would protect U.S. Attorneys from undue political pressure, encourage them to exercise appropriate independence and prosecutorial judgment, and communicate to them that they are expected to use their authority without taking partisan political considerations into account? Please describe.**

ANSWER: Please see my response to question 23. Based on my nine years of experience at the Department of Justice, I am confident that federal prosecutors understand that partisan political considerations must not play any part in enforcement decisions.

Mike Elston's Post-Termination Calls to Several U.S. Attorneys

26. **Several of the fired U.S. Attorneys have told our Committee that, as this controversy came to light, they received some very uncomfortable phone calls from your Chief of Staff Michael Elston. They are as follows:**

- **John McKay of Seattle wrote that "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." Mr. McKay also stated that the call was "sinister" and that he believed Mr. Elston was "prepared to threaten [him] further" if he did not stay quiet.**
- **Paul Charlton described a similar call: "In that conversation I believe that Elston was offering me a quid pro quo agreement: my silence in exchange for the Attorney General's."**
- **Bud Cummins testified in some detail at his March appearance before this Committee about a call he received from Mr. Elston, and in his written answers to follow questions described that call this way: "[Elston] essentially said that, if the controversy continued, then some of the USAs would have to be thrown under the bus.'"**

In your testimony before the Subcommittee, you explained that you were aware of the first two calls and that Mr. Elston made those calls "at my encouragement." Who else in the Department knew about the calls?

ANSWER: I do not recall if anyone else knew about these two calls.

27. **In your testimony before the Subcommittee, you explained that you initially were unaware of Mr. Elston's March phone call to Bud Cummins. You also testified to what you believed Mr. Elston "would say" about that phone call. Now that you also are aware of that phone call, what is <u>your</u> response to the reaction to the statements made under oath by these former United States Attorneys that all of Mr. Elston's calls were threatening?**

ANSWER: I recall that Mr. Cummins testified at his Senate hearing that he did not view Mr. Elston's call as a threat but more like "friendly advice." I do not believe Mr. Elston intended to threaten anyone with this phone call as he explained in a letter he immediately sent to the Senate Judiciary Committee, and it is regrettable that it may have been perceived in that way.

28. **Once these calls came to light, did you conduct or order any investigation into whether Mr. Elston had made the threats described by the U.S. Attorneys? Please explain, including if you did not order an investigation, why not?**

ANSWER: I did not order or conduct an investigation. Mr. Elston provided to me a reasonable explanation concerning his telephone conversation with Mr. Cummins, and he quickly sent a letter of explanation to the Senate Committee on the Judiciary.
I became aware of the concerns of Mr. McKay and Mr. Charlton weeks later when their answers to questions for the record were released publicly. By that time, there were already numerous reviews of the U.S. Attorney matters underway.

<u>Conversation with Mary Beth Buchanan regarding Paul Charlton</u>

29. **In her interview, Ms. Buchanan mentioned a conversation that she had with you at the award ceremony for Victim Rights Week in April or May of this year at the Ronald Reagan Building. She explained that you had told her about the Department's concerns about Paul Charlton and the death penalty. Do you recall that conversation?**

    a) **Please fully describe the content of the conversation.**

    b) **What do you recall about how that topic arose?**

ANSWER: I have only a vague recollection of this conversation. It occurred in passing in a busy setting. I do not have sufficient memory of the conversation to answer either subquestion above.

30. Ms. Buchanan also mentioned that you had expressed your regret that she "had been dragged into the process [of explaining the U.S. Attorney firings.]" Do you recall that aspect of the conversation?

a) Please fully describe the content of the conversation?

ANSWER: Though I have only a vague recollection of this conversation as stated above, my intention was simply to express my sympathy to her that this matter had affected her life.

b) At the time that you had that conversation with Ms. Buchanan, did you know that she was expected to be interviewed by Committee staff?

ANSWER: I believe that was my understanding although I cannot say with certainty at this time.

31. Did you have any other conversations with Department officials who were expected to be interviewed by Committee staff prior to their interviews?

a) If so, with whom did you have conversations?

b) What was the content of those conversations?

c) When did those conversations occur?

d) How did those conversations arise?

e) Where did those conversations occur?

ANSWER: In accordance with Richard Hertling's letter to Chairmen Conyers and Leahy, dated March 29, 2007, I made my best efforts not to discuss the substance of the interviews of other Department officials prior to my interview, nor did I discuss the substance of my interview prior to their interviews.

Reciprocal of America (ROA)

32. As you are aware from your tenure as the U.S. Attorney for the Eastern District of Virginia, that U.S. Attorney's office launched an investigation in 2004 into the collapse of Reciprocal of America (ROA), a Virginia-based medical malpractice insurance company. After two ROA executives pled guilty to conspiracy to commit

insurance fraud, investigations continued into another Reciprocal of America executive and General Reinsurance, a company possibly implicated in the fraud scheme. After you left your post as the U.S. Attorney for that district, however, your replacement removed the experienced senior Assistant U.S. Attorney from the case and eventually dropped the investigations of General Reinsurance and the other ROA executive, notwithstanding strong evidence presented by investigators, in a draft indictment and prosecution memorandum. Accordingly, concerns have been raised that these cases were dropped for improper political reasons. *See* Alan Cooper, *Further federal indictments in Reciprocal case unlikely*, VIRGINIA LAWYERS WEEKLY, Apr. 2, 2007.

Please explain what happened, including:

a) Provide the Subcommittee with copies of any and all written responses you made to the February 21, 2007, letter to you from Tom Gober, the forensic accounting expert hired by the U.S. Attorney's office to assist with these investigations. (A copy of the letter is enclosed). If you did not respond to Mr. Gober's letter, please explain why you did not respond and provide a response to the Committee.

ANSWER: I did not respond to Mr. Gober's letter because I judged it most appropriate to defer to the U.S. Attorney's Office handling the case.

b) During your tenure in the Office of U.S. Attorney for the Eastern District of Virginia, to the best of your knowledge, did anyone outside the investigatory team in that Office encourage, pressure, or suggest to you or anyone on the investigatory team that the investigations of General Reinsurance or of the ROA executive be dropped? If so, please name each person who did so, and explain fully, to the best of your knowledge and belief, what each such person did that you perceive to be such encouragement, pressure, or suggestion.

ANSWER: No, to the best of my recollection, with the exception of defense counsel who had begun meeting with the investigative team.

c) During the tenure of your successor, Chuck Rosenberg, in the Office of U.S. Attorney for the Eastern District of Virginia, to the best of your knowledge, did anyone outside the investigatory team in that Office encourage, pressure, or suggest to Mr. Rosenberg or anyone on the investigatory team that the investigations of General Reinsurance or of the ROA executive be dropped? If so, please name each person who did so, and explain fully, to the best of your knowledge and belief, what each such person did that you perceive to be such encouragement, pressure, or suggestion.

ANSWER: Not to my knowledge.

d) Did you, or to your knowledge did any other Department of Justice employee, discuss either of these investigations with anyone in the White House? If so, please name each person you know or believe to have participated in any such discussion, and fully describe the content of each such discussion.

ANSWER: To the best of my recollection, I had no such discussions, and I am not aware of any other person having such discussions.

e) Did you, or to your knowledge did any other Department of Justice employee, discuss these cases with any individuals associated with or speaking for General Reinsurance, Berkshire Hathaway, or Mr. Warren Buffett? If so, please name each person you know or believe to have participated in any such discussion, and fully describe the content of each such discussion.

ANSWER: To the best of my recollection, I had no such discussions. Representatives of the Department of Justice engaged in contacts consistent with standard investigative practices.

f) What is your understanding of why the U.S. Attorney for the Eastern District of Virginia dropped the investigations of General Reinsurance and the ROA executive regarding the insurance fraud schemes that caused the ROA collapse?

ANSWER: To the best of my knowledge, the decisions in this matter were based on standard considerations of law and evidence and made by highly experienced criminal prosecutors.

Question Submitted By The Honorable Zoe Lofgren (CA-16)

1. **In the attached email exchange, recently made public by the Election Assistance Commission, Hans Von Spakovsky, formerly of the DOJ and currently at the Federal Election Commission, discusses a "deal" that he believed he had made with the Vice Chairman of the EAC, Paul DeGregorio. Under the deal, the DOJ would consider changing its position on whether voters who did not comply with an Arizona voter ID law should be able to cast a provisional ballot. In exchange, the EAC was to change its position on the proper treatment of voter registration forms on which the citizenship checkbox is left blank but the applicant swears under oath that he or she is a US citizen. Mr. DeGregorio responded, "I do not agree to 'deals,' especially when it comes to an interpretation of the law."**

   a) **Although this exchange took place before you became the Deputy Attorney General, were you aware of this proposed deal?**

      ANSWER: No, to the best of my recollection.

   b) **In your experience, was it common for the DOJ to make "deals" about the proper interpretation of law with other federal agencies? Please describe any such deals of which you are aware.**

      ANSWER: I cannot recall ever participating in a matter of this sort at the Department of Justice.

   c) **Under DOJ guidelines, are such deals proper? In your view, are such deals proper?**

      ANSWER: The Department is responsible for interpreting the law consistent with long-standing principles of statutory construction and legal reasoning. Such efforts are not to be influenced by any considerations outside the bounds of the highest standards of professional responsibility.

Attachment

Paul DeGregorio /EAC/GOV
08/30/2005 10:33 AM

To "Hans.von.Spakovsky@usdoj.gov" <Hans.von.Spakovsky@usdoj.gov>@GSAEXTERNAL
cc
bcc
Subject Re: e-mail from Jack Bartling

Hans,

First of all, I do not agree to "deals," especially when it comes to an interpretation of the law. What I did tell you at the time that we discussed this issue was that a plan was already in the works for us to correct our position on the checkbox issue regarding our best practices; and that we would do so when we do another reiteration of our best practices documents. There was no deal to do so immediately. To my knowledge this delay has nothing to do with our Chairman--at least she has never said anything to what you have suggested in your e-mail to me.

The letter from our assistant General Counsel was not a "threat". It is, in fact, a courtesy we are extending to DOJ, since our positions are currently different on this issue. Had DOJ extended the same courtesy to us back when you sent your original letter to AZ, perhaps we would not be in this position. I believe that our staff has taken great pains to have good communications with DOJ on HAVA issues, and that DOJ has not extended to the EAC the same level of courtesy or communication. Perhaps a discussion with John Tanner or his boss is in order.

To assure you that I am not being "railroaded" by anyone on this Commission, I thought I would share the attached internal memos with you regarding the Eagleton contract and others, so that you can see for yourself that I take my job seriously and work to insure that we are getting proper balance in the work that we receive. Since they are internal, they are for your eyes only. August 19 memo regarding Eagleton.doc

Council on Government proposal.doc

Commissioner Davidson and I will call you at 4 PM, as previously arranged.

Paul DeGregorio
Vice Chairman
US Election Assistance Commission
1225 New York Ave, NW
Suite 1100
Washington, DC 20005
1-866-747-1471 toll-free
202-566-3100
202-566-3127 (FAX)
pdegregorio@eac.gov
www.eac.gov

"Hans.von.Spakovsky@usdoj.gov" <Hans.von.Spakovsky@usdoj.gov>

"Hans.von.Spakovsky@usdoj.gov" <Hans.von.Spakovsky@usdoj.gov>

To "'pdegregorio@eac.gov'" <pdegregorio@eac.gov>
cc

08/30/2005 08:32 AM Subject Re: e-mail from Jack Bartling

You and I should talk before any official call. We did not agree that your position was correct. If you will recall, we had a deal where I told you we would consider taking the position you were pushing even though we think it is too strict if you would correct the obviosly wrong position on the citizenship checkbox. You agreed to that. HOwever, instead of contacting me and telling me you are pulling out of the deal, I get an email from your assistant counsel threatening DOJ with this letter - with nothing about the citizenship issue. Are you aware that the Arizona AG, SOS, and governer have finally agreed on how to implement the ID rules? Your letter will blow that agreement out of the water. You and I are obviously both angry about this. I suggest a quick phonecall this morning to see if there has been some kind of miscommunication here. The fact that your chairman does not want to do this because she does not want to anger her friends at the league of women voters is no reason for you to be railroaded into this.

-----Original Message-----
From: pdegregorio@eac.gov <pdegregorio@eac.gov>
To: von Spakovsky, Hans (CRT) <Hans.VonSpakovsky@crt.usdoj.gov>
Sent: Mon Aug 29 22:58:26 2005
Subject: e-mail from Jack Bartling

Hans,

Is the e-mail below from Jack Bartling a product of some phone calls you have made regarding the AZ case? Is it an attempt by you to put pressure on me--and the EAC? If so, I do not appreciate it. As you may know, Donetta and I have scheduled a telephone call with you on Tuesday afternoon to discuss this issue. You are well aware our legal staff has done considerable research on this issue and, if I recall correctly, you told me and Julie Thompson several weeks ago that our position that HAVA requires a state to give someone a provisional ballot, even if they do not show an ID when requesting the provisional ballot, was the correct legal position and HAVA interpretation. You also indicated that the previous DOJ position on this issue was to be withdrawn. We have given Arizona and DOJ all summer to act on this issue to correct the previous position they have taken so that there would not be conflicting interpretations of HAVA by two federal agencies. To me HAVA is very clear on this issue. Our interpretation is a strict interpretation of HAVA. No more--no less. Our opinion also makes its very clear that if a state wants to require an ID for a provisional to be counted, it has every right to do so. If it is you who have contacted Jack, I'm disappointed that you feel you have to resort to this kind of tactics to get us to change our mind. I don't appreciate it. Perhaps if DOJ would have shared their AZ letter with us prior to it being sent, we would not be in this situation.

Paul DeGregorio
Vice Chairman
US Election Assistance Commission
1225 New York Ave, NW
Suite 1100
Washington, DC 20005
1-866-747-1471 toll-free
202-566-3100

202-566-3127 (FAX)
pdegregorio@eac.gov
www.eac.gov

----- Forwarded by Paul DeGregorio/EAC/GOV on 08/29/2005 10:37 PM -----

"Bartling, Jack (Bond)" <Jack_Bartling@bond.senate.gov>
08/29/2005 10:25 PM

To
pdegregorio@eac.gov
cc

Subject

Paul,

Just heard the EAC is seriously considering taking a position against DOJ on the Arizona issue. Didn't the parties reach a political compromise agreement?

Nonetheless, certainly seems DOJ has it right. What is going on with this?

Jack

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)