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

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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Report from the U.S. Department of Justice entitled: *An Investigation into the Removal of Nine U.S. Attorneys in 2006,* U.S. Department of Justice, Office of the Inspector General, U.S. Department of Justice, Office of Professional Responsibility, September 2008. This report is available at the Committee and can also be accessed at *http://www.usdoj.gov/oig/special/s0809a/final.pdf*

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

FRIDAY, OCTOBER 3, 2008

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:55 a.m., in room 2141, Rayburn House Office Building, the Honorable John Conyers, Jr. (Chairman of the Committee) presiding.

Present: Representatives Conyers, Nadler, Scott, Watt, Lofgren, Delahunt, Wexler, Sánchez, Cohen, Johnson, Davis, Cannon, and Issa.

Staff Present: Sam Sokol, Majority Counsel; Daniel Flores, Minority Counsel; and Adam Russell, Majority Professional Staff Member.

Mr. CONYERS. Good morning. Today we are pleased to welcome the Inspector General of the Department of Justice, Glenn Fine, to testify about the U.S. attorney firings. And let me recognize also two fine former United States attorneys who are with us today, Dan Bogden of Nevada and John McKay of Washington State.

As we begin I would like to commend Mr. Fine for 8 years' outstanding service as inspector general on a series of issues: national security letters, torture, improper politicization of the Department of Justice. Mr. Fine and his team have approached their work with the utmost independence and skill. And in so doing, they have not only bettered the Department and helped our government live up to its own ideals, they have encouraged all of us to do the same. And so today we will review the general's findings on the U.S. attorney matter.

And I want to begin by inviting the Chairperson of the Subcommittee that has had so much to do with this, who has done such an excellent job, to begin this discussion. And I would like to recognize Chairwoman Linda Sánchez.

Ms. SÁNCHEZ. Thank you, Mr. Chairman. During the first 6 years of the Bush administration, Congress neglected one of its primary duties: to conduct rigorous oversight of the executive branch. After the Democrats gained control of the House of Representatives in 2006, the Judiciary Committee and the Subcommittee on Commercial and Administrative Law devoted significant time to examining the Justice Department. Had previous Congresses devoted time to this essential function, I think the Department might not

have wandered so far from its core mission, which is to ensure he fair and impartial administration of justice for all Americans.

We started the investigation into the firings of nine U.S. attorneys because of the troubling prospect that partisan politics had contaminated our system of justice. Despite mounting evidence uncovered in the Committee's investigation that this was the case, the minority stubbornly defended unethical, incompetent and perhaps criminal conduct by the Department's senior leadership, alleging that this was merely a fishing expedition. Despite acknowledging this Committee's tremendous productivity during the 110th Congress, the minority consistently criticized our investigation as a partisan witch-hunt, a waste of time, and a fishing expedition that had caught no fish. Clearly the scathing 392-page report from the Justice Department Inspector General and Office of Professional Responsibility released on Monday vindicates the time and effort expended to try to get to the bottom of the U.S. attorney firing controversy.

I was disturbed but not surprised that the report found improper political considerations to be an important factor in the removal of several of the fired U.S. attorneys. The report also determined that the firings severely damaged the credibility of the Department and raised doubts about the integrity of the Department's prosecutorial decision-making. Furthermore, the report's conclusion that Attorney General Gonzales and Deputy Attorney General McNulty's lack of supervision and general lack of knowledge of the removal process showed that the top ranks of the Justice Department were asleep at the switch.

Given the growing public record that the White House improperly injected partisan politics into our justice system, I was troubled by the White House's brazen snub of its own Justice Department. Because of the White House's refusal to cooperate with the IG OPR investigation, we still have major gaps in information as to why these U.S. attorneys were fired.

That is why I support the report's recommendation that a counsel be specifically appointed by the Attorney General to work with IG OPR to conduct further investigations and ultimately determine whether the evidence demonstrates that any criminal offense was committed with regard to U.S. attorney firings or the testimony of any witness related to the U.S. attorney firings.

However, I am concerned that Attorney General Michael Mukasey's appointment of Nora Dannehy, the acting U.S. attorney in Connecticut, may prevent the truth about the firings from ever being released. I am concerned that Ms. Dannehy's findings will remain hidden because of criminal grand jury secrecy requirements and the absence of a public reporting requirement as part of her appointment. I am also troubled by the fact that Ms. Dannehy will lack much needed independence because she has been appointed as the acting U.S. attorney for the District of Columbia rather than as the special counsel under the Department's regulations.

Earlier this year Attorney General Mukasey refused to let the D.C. U.S. attorney prosecute contempt citations for Harriet Miers and Joshua Bolten. I am concerned that without appropriate safeguards, this or a future Attorney General could similarly intervene on Ms. Dannehy's investigation.

Because the public deserves to know the full extent to which the Bush administration has undermined the independence and nonpartisan tradition of the Justice Department, the White House must immediately take steps to allow Congress to conclude our investigation into the firing of the U.S. attorneys and the politicization of the Justice Department. Instead of hiding behind specious claims of immunity and executive privilege, the White House should make Karl Rove and Harriet Miers available for on-the-record testimony and produce documents improperly withheld. Until and unless the White House cooperates with both the internal and congressional investigations, the Justice Department will not be able to remove the dark clouds of scandal that have devastated this once venerable institution.

And with that, I would like to thank the Chairman for all of his hard work on this issue as well. And I yield back.

Mr. CONYERS. I thank the gentlelady. I am pleased now to recognize Chris Cannon, our distinguished colleague from Utah. Who is Ranking Member on Chairwoman Sánchez's Subcommittee.

Mr. CANNON. Thank you, Mr. Chairman. I ask unanimous consent to include the statement of the Ranking Member of the full Committee, Mr. Smith, in the record.

Mr. CONYERS. Without objection, so ordered.

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF THE HONORABLE LAMAR SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND RANKING MEMBER, COMMITTEE ON THE JUDICIARY

Following the release of the Inspector General's report regarding the removal of several U.S. Attorneys, Judiciary Committee Democrats stated the report "confirmed" their "fears."

The report, if read objectively, should calm, not confirm those fears. In fact, it validates what Republicans on this Committee have expressed in our Minority Views.

The Inspector General found no evidence to support claims of a "grand conspiracy." White House and Department officials did not dismiss a host of U.S. Attorneys to favor Republicans and punish Democrats.

In fact, according to the IG's report, the White House itself was misled by the Justice Department's Chief of Staff who was in charge of the removal process and led then-White House Counsel Harriet Miers to believe that the Department's review of U.S. Attorneys had been "painstaking" and its results "deserved her confidence."

There is no evidence of a politically-motivated plot at the White House and no evidence of wrongdoing on the part of White House officials.

The report found no "smoking gun" to support the supposed need for litigation to enforce subpoenas against Harriet Miers and Josh Bolten. On the IG's recommendation, Attorney General Mukasey has appointed a federal prosecutor to continue the investigation.

The Committee's "need," if any, to compel information from Ms. Miers and Mr. Bolten is therefore extinguished. If a grand jury subpoenas these officials, we expect they will appear and testify. The White House has already agreed to cooperate with the prosecutor.

The appointment of a federal prosecutor also eliminates the Committee's supposed need to pursue a contempt resolution against Karl Rove. The federal prosecutor should handle any additional questions for current or former Administration officials.

As to the dismissal of David Iglesias, former U.S. Attorney for the District of New Mexico, that too is resolved by the naming of a federal prosecutor.

The Inspector General was not able to talk with every witness or review every document he believed necessary. But the federal prosecutor has the legal tools to obtain that information if she chooses. I urge Committee members to let the prosecutor do her work without interference or partisan pressure.

While the IG's report does not confirm House Democrats' fears; it has, unfortunately, strengthened one of my own.

That is, that the investigation of the U.S. Attorneys matter has contributed to the "criminalization" of politics. For example, the IG concludes that it is improper for the Justice Department to consider whether a U.S. Attorney still has the confidence of their home state Senators.

Unfortunately, the IG's report goes further, saying that even the following can be "improper" political considerations:

- responding to constituent complaints over whether a U.S. Attorney is adequately pursuing important classes of cases; and
- seeking to replace a U.S. Attorney who has served his term with a well qualified candidate known to and trusted by White House officials.

"Criminalizing" the consideration of these actions threatens to undermine our constitutional system. As Members of Congress, we must not assert political influence over prosecutions or investigations. However, that should not limit our ability to voice concerns. That's part of our oversight authority and our responsibility to our constituents.

I am disappointed by the findings in the report. I am also disappointed that so much time and effort has been spent investigating individuals who were guilty of no crime. We owe them an apology for unfairly damaging their reputations and for unnecessarily forcing them to spend personal funds.

Mr. CANNON. Thank you. This has been a long journey. And in fact I have characterized it as a fishing expedition. There has been a great deal of rhetoric, things like whether or not the U.S. attorneys should have independence from partisan issues or the role of the Justice Department.

I guess when President Clinton fires all the U.S. attorneys, that is not partisan. When the Department undertakes to look at who is doing what the Department wants, that becomes a different issue.

Following the release of the inspector general's report regarding the removal of several U.S. attorneys, Judiciary Committee Democrats stated the report confirmed their fears. The report if read objectively should calm, not confirm, those fears. It in fact validates what certain Republicans on this Committee have expressed and our minority views on many occasions. The inspector general found no evidence to support claims of a grand conspiracy. White House department officials did not dismiss a host of U.S. attorneys to favor Republicans and punish Democrats. In fact, according to the IG's report, the White House itself was mislead by the Justice Department's chief of staff who was in charge of the removal process and lead then White House counsel Harriet Miers to believe that the Department's review of U.S. attorneys had been painstaking in its results and its results deserved her confidence.

There is no evidence of a politically motivated plot at the White House and no evidence of wrongdoing on the part of White House officials. The report found no smoking gun to support the supposed need for litigation to enforce subpoenas against Harriet Miers and Josh Bolten. On the IG's recommendation, Attorney General Mukasey has appointed a Federal prosecutor to continue the investigation. The Committee's need, if any, to compel information from Ms. Miers and Mr. Bolten is therefore extinguished. If a grand jury subpoenas these officials, we expect they will appear and testify.

The White House has already agreed to cooperate with the prosecutor, the appointment of a Federal prosecutor who also eliminates the Committee's supposed need to pursue a contempt resolu-

tion against Karl Rove. The Federal prosecutor should handle any additional questions for current or former Administration officials.

As to the dismissal of David Iglesias, you will recall that is the fellow who, instead of using the telephone or e-mail, used a press conference to inform his superiors in the Department of Justice of his communication months earlier with his Senator. As for him, former U.S. attorney for the District of New Mexico, that too was resolved by the naming of a Federal prosecutor.

The inspector general was not able to talk with every witness or review every document he believed necessary. But the Federal prosecutor has the legal tools to obtain that information if she chooses.

I urge Committee Members to let the prosecutor do her work without interference or, heaven help us, partisan pressure. While the IG's report does not confirm House Democrats' fears, it has unfortunately strengthened my own; that is, that the investigation of the U.S. attorneys matter has contributed to the criminalization of politics. For example, the IG concludes that improper political considerations can include the strength of support from home State senators.

Unfortunately, the IG's report goes further, saying that even the following can be improper political considerations: responding to constituent complaints over whether U.S. attorneys adequately pursuing important classes of cases and seeking to replace a U.S. attorney who has served his term with a well-qualified candidate, known and trusted by White House officials.

Criminalizing the consideration of these actions threatens to undermine our constitutional system. As Members of Congress, we must not assert political influence over prosecutions and investigations. However, that should not limit our ability to voice concerns about who is appointed and what the issues are that have priority. That is part of our oversight authority and our responsibility to our constituents.

I am disappointed by the findings in the report. I am also disappointed that so much time and effort has been spent investigating individuals who were guilty of no crime. We owe them an apology for unfairly damaging their reputations, for unnecessarily forcing them to spend personal funds, and for saying over and over and over again things that have proven not to be true.

Thank you, Mr. Chairman. I yield back.

Mr. CONYERS. Well, I thank the gentleman from Utah. I would like to make available to him a copy of the inspector general's report,* but we have him here with us, and we are delighted that he is here. All other statements will be put in the record at this time.

This detailed report that was submitted by the Inspector General for the Department of Justice leaves very little dispute that the firings were improper, that false statements were made to Congress and that the Justice Department has been severely damaged as a result. And it includes, I think in a very persuasive way, that political partisan considerations unfortunately were an important factor in the removal of several of the United States attorneys.

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*The report referred to is not reprinted here but is available at the Committee and can also be accessed at *http://www.usdoj.gov/oig/special/s0809a/final.pdf.*

David Iglesias was forced from office because New Mexico Republicans complained that he would not bring voter cases, and because he crossed two Members of Congress. Bud Cummins, forced out in Arkansas to make room for Karl Rove's assistant Tim Griffin. Our investigation has suggested other examples such as Republican complaints about fired prosecutor John McKay which further IG investigation may corroborate. The report makes equally clear that Administration officials made false statements to this Committee and the Congress.

But we welcome Mr. Glenn Fine to give us his explanation and summary of the very important work that he did. And on behalf of the Committee, we are pleased to welcome you here today, sir.

TESTIMONY OF THE HONORABLE GLENN A. FINE, INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. FINE. Mr. Chairman, Mr. Cannon, Members of the Committee, thank you for inviting me to testify about the report——

Mr. CONYERS. Microphone.

Mr. FINE. Thank you for inviting me to testify about the report by the Office of the Inspector General and the Office of Professional Responsibility into the removal of nine U.S. attorneys in 2006. The report we issued earlier this week describes how each of the nine U.S. attorneys were selected for removal and the process used to remove them. Our investigation focused on the reasons for the removals and whether the U.S. attorneys were removed for partisan political considerations. In addition, we investigated whether Department officials made false or misleading statements to Congress, the public, or to us concerning the removals.

In my testimony today, I will briefly summarize the major findings from our report. Our investigation concluded that the process the Department used to select the U.S. attorneys for removal was fundamentally flawed and that Attorney General Gonzales delegated this entire project to his chief of staff, Kyle Sampson, with little direction or supervision. Gonzales eventually approved the removals of a group of U.S. attorneys without inquiring about the process Sampson had used to select them or why each name was on the removal list.

Gonzales also claimed to us and to Congress an extraordinary lack of recollection about the removal process. For example, he testified that he did not remember the meeting in his conference room on November 27, 2006 when the plan was finalized and he approved the removals. This was not a minor personnel matter that should have been hard to remember. Rather, it related to an unprecedented removal of a group of high-level Presidential appointees.

We also found that Deputy Attorney General McNulty had little involvement in or oversight of the removal process, despite his role as the immediate supervisor of U.S. attorneys. McNulty deferred to Sampson and did not raise concerns with regard to the plan itself or, except in a couple of cases, the evaluation of specific U.S. attorneys to be removed. Rather, McNulty distanced himself from the project both, while it was ongoing and after it was implemented.

We also found no evidence that Gonzales, McNulty, Sampson or anyone else in the Department carefully evaluated the basis for

each U.S. attorney's removal or attempted to ensure that there were no improper political reasons for their removals.

Moreover we found conflicting testimony about the reasons most of the U.S. attorneys were recommended for removal. In some cases, neither Sampson nor any other Department official acknowledged recommending that the U.S. attorney be placed on the removal list.

In other cases, the Department's senior leaders did not even know why Sampson had placed the U.S. attorney on the list. The most serious allegations that arose in the aftermath of the removals were that several of the U.S. attorneys were forced to resign based on improper political consideration. Our investigation found substantial evidence that partisan political considerations did play a part in the removal of several of the U.S. attorneys. The most troubling example was the removal of David Iglesias, the U.S. attorney for New Mexico. As we described in detail in the report, we concluded that complaints from New Mexico Republican politicians and party activists to the White House and the Department of Justice about Iglesias' handling of voting fraud and public corruption cases led to his removal. Yet the Department never objectively assessed these complaints. Rather, based upon these complaints and the resulting loss of confidence in Iglesias, his name was placed on the removal list, and in December 2006 he was told to resign.

Sampson also acknowledged that he considered whether particular U.S. attorneys identified for removal had political support. For example, Sampson acknowledged the deleting from his removal list the names of several U.S. attorneys who he considered mediocre because he believed they had the political support of their home State senators, and he did not think the Administration would want to risk a fight with them over their removal.

While U.S. attorneys are Presidential appointees who may be dismissed for any lawful reason, or no reason, they cannot be dismissed for an illegal or improper reason. U.S. attorneys should make their prosecutive decisions based on the Department's priorities and the law and the facts of each case, not on a fear of being removed if they lose political support.

If a U.S. attorney must maintain the confidence of home State political officials to avoid removal, regardless of the merits of the U.S. attorney's prosecutorial decisions, respect for the Department of Justice's independence and integrity will be severely damaged and every U.S. attorney's prosecutorial decisions will be suspect.

Our report found that senior Department officials, particularly Attorney General Gonzales and Deputy Attorney General McNulty, abdicated their responsibility to safeguard the integrity and independence of the Department by failing to ensure that the removal of U.S. attorneys was not based on improper political considerations.

Our report devotes a separate chapter to each of the nine U.S. attorneys removed in 2006, describing in detail the reasons the Department offered for their removal and our analysis and conclusions regarding why each U.S. attorney was actually removed.

Our report also analyzes the conduct of senior Department officials and their significant failings in designing, overseeing, and implementing a removal process that was fundamentally flawed from

start to finish. We also found that Department officials made misleading statements to the Congress and to the public about the removals.

We believe our investigation was able to uncover most of the facts relating to the reasons for the removal of most of the U.S. attorneys. However, there are gaps in our investigation because of the refusal of key witnesses to be interviewed by us, including Karl Rove, Harriet Miers, and Monica Goodling. In addition, the White House declined to provide us internal documents related to the removals of U.S. attorneys.

Our report therefore recommended that the Attorney General appoint a counsel to assess the facts we have uncovered, work with us to conduct further investigation, and ultimately determine where the evidence demonstrates if any criminal offense was committed with regard to the removal of Iglesias or any other U.S. attorney, or the testimony of any witness related to the U.S. attorney removals. We made this recommendation for several related reasons:

First, we believe it is important to ascertain the full facts relating to why the U.S. attorneys were removed.

Second, we believe such a counsel should consider whether any Department official made false statements to Congress or to us about the reasons for the removal of Iglesias or any other U.S. attorney.

Third, we believe a full investigation is necessary to determine whether other Federal criminal statutes were violated with regard to the removal of Iglesias or any other U.S. attorney.

It is important to note that our report did not conclude that the evidence establishes that a violation of any criminal statute has occurred. However, we believe that the evidence collected in this investigation is not complete. We believe that the matter should be fully investigated, the facts and conclusions fully developed, and final decisions made based on all the evidence.

In response to our recommendation, Attorney General Mukasey appointed Nora Dannehy, a career Federal prosecutor who currently serves as acting U.S. attorney in Connecticut to pursue this investigation. I hope she moves forward aggressively and expeditiously to address the unanswered questions identified in our report.

In conclusion, the Department's removal of the U.S. attorneys and the controversy it created severely damaged the credibility of the Department. We believe that our investigation and the final resolution of issues raised in this report can help restore confidence in the Department by fully investigating and describing the serious failures in the process used to remove the U.S. attorneys and by providing lessons for the Department and how to avoid such failures in the future.

That concludes my statement. I would be pleased to answer any questions.

Mr. CONYERS. Thank you very much, Mr. Fine.

[The prepared statement of Mr. Fine follows:]

PREPARED STATEMENT OF THE HONORABLE GLENN A. FINE

Mr. Chairman, Congressman Smith, and Members of the Committee on the Judiciary:

I appreciate the opportunity to testify at this hearing about the investigation conducted by the Department of Justice Office of the Inspector General (OIG) and Office of Professional Responsibility (OPR) into the removal of nine U.S. Attorneys in 2006.

The 358-page report issued earlier this week described how each of the U.S. Attorneys was selected for removal and the process used to remove them. Our joint investigation also focused on the reasons for the removal of each of the U.S. Attorneys, and whether they were removed for partisan political considerations, to influence an investigation or prosecution, or to retaliate for their actions in any specific investigation or prosecution. In addition, we investigated whether Department officials made false or misleading statements to Congress, to the public, or to us concerning the removals.

I. OVERVIEW

U.S. Attorneys are appointed by the President and confirmed by the Senate. Like other presidential appointees, they can be removed by the President for any reason or for no reason, as long as it is not an illegal or improper reason. Historically, however, U.S. Attorneys generally have not been removed except in cases of misconduct or when there was a change in Administrations. Prior to the events described in this report, the Department had never removed a group of U.S. Attorneys at one time because of alleged performance issues. However, on December 7, 2006, seven U.S. Attorneys were told to resign from their positions: David Iglesias, Daniel Bogden, Paul Charlton, John McKay, Carol Lam, Margaret Chiara, and Kevin Ryan. In addition, two other U.S. Attorneys, Todd Graves and Bud Cummins, had been told to resign earlier in 2006.

Our investigation concluded that the process that Department officials used to identify the U.S. Attorneys for removal was fundamentally flawed. In particular, we found that former Attorney General Alberto Gonzales and former Deputy Attorney General Paul McNulty failed to adequately supervise or oversee the removal process. Instead, Kyle Sampson, Gonzales's Chief of Staff, designed and implemented the process with virtually no oversight.

We found that neither Gonzales, McNulty, Sampson, nor anyone else in the Department carefully evaluated the basis for each U.S. Attorney's removal or attempted to ensure that there were no improper political reasons for the removals. Moreover, after the removals became public the statements provided by Gonzales, McNulty, Sampson, and other Department officials about the reasons for the removals were inconsistent, misleading, or inaccurate in many respects.

We believe our investigation was able to uncover most of the facts relating to the reasons for the removal of most of the U.S. Attorneys. However, as described more fully in our report, there are gaps in our investigation because of the refusal of key witnesses to be interviewed by us, including former White House officials Karl Rove, Harriet Miers, and William Kelley; former Department of Justice White House Liaison Monica Gooding; Senator Pete Domenici; and Steve Bell, his Chief of Staff. In addition, the White House declined to provide us internal documents related to the removals of the U.S. Attorneys.

Our report recommended that a counsel specially appointed by the Attorney General assess the facts we have uncovered, work with us to conduct further investigation, and ultimately determine whether the evidence demonstrates that any criminal offense was committed with regard to the removal of any U.S. Attorney or with regard to the testimony of any witness related to the removals. After issuance of our report, Attorney General Mukasey appointed Nora Dannehy, a career federal prosecutor who currently serves as Acting U.S. Attorney in Connecticut, to further pursue this investigation.

A. Related Reports

Our report on the removal of the nine U.S. Attorneys, issued on September 29, 2008, was the third of four reports of joint investigations conducted by the OIG and OPR into the U.S. Attorney removals and allegations of politicized hiring at the Department. Our first report in June 2008 examined hiring practices in the Department's Honors Program and Summer Law Intern Program and found that committees used by the Department to screen applications for the programs inappropriately used political or ideological affiliations to "deselect" candidates in 2006 and in 2002.

In July 2008, we issued a second joint report that examined the actions of Monica Goodling, the Department's former White House Liaison, and other staff in the At-

torney General's office regarding allegations that they inappropriately used political or ideological affiliations in the hiring process for career Department positions. Our investigation found that Goodling, Sampson, and other staff in the Office of the Attorney General improperly considered political or ideological affiliations in screening candidates for certain career positions at the Department, in violation of federal law and Department policy.

The OIG and OPR also jointly investigated allegations that former Civil Rights Division Acting Assistant Attorney General Bradley Schlozman and others used political or ideological affiliations in hiring and personnel decisions in the Department's Civil Rights Division. Because this investigation is ongoing, I should not comment on it at this time. However, I want to assure the Committee that this important investigation is being aggressively pursued, and we plan to report on this matter as soon as possible.

B. Organization of the U.S. Attorney Removal Report

The report we issued on September 29 is a detailed description of our investigation into the removal of nine U.S. Attorneys in 2006. The 358-page report contains 13 chapters. Chapter One provides an introduction and the scope and methodology of our investigation. Chapter Two provides background on the selection and evaluation of U.S. Attorneys, and background on the senior Department officials whose conduct was at issue in this investigation.

Chapter Three contains a lengthy chronology of the removal process and the aftermath of the removals. It discusses the genesis of the plan to remove the U.S. Attorneys, how the U.S. Attorneys were selected for removal, the evolution of Sampson's lists recommending which U.S. Attorneys should be removed, the approval and implementation of the final removal plan, and the aftermath of the removals, including statements by Department officials to Congress and the public about the reasons for the removals.

Chapters Four through Twelve provide detailed descriptions of the removal of each of the nine U.S. Attorneys in 2006, the reasons the Department offered for their removals, and our analysis and conclusions regarding why each U.S. Attorney was removed.

Chapter Thirteen provides our overall conclusions, as well as our assessment of the conduct of the senior Department officials involved with the removals.

In my testimony today, I will summarize the major findings from the report. The remainder of my statement is organized into three parts. The first part describes our findings on the removal process and the reasons for the removal of each of the U.S. Attorneys. The second part of my testimony analyzes the conduct of Department leaders. The final part discusses the basis for our recommendation—adopted by the Attorney General—that a prosecutor be appointed to assess the evidence and conduct additional investigation.

II. THE U.S. ATTORNEY REMOVAL PROCESS

Our investigation concluded that the process the Department used to select the U.S. Attorneys for removal was fundamentally flawed, and that Attorney General Gonzales delegated the entire project to Sampson with little direction or supervision. We found that Gonzales eventually approved the removal of a group of U.S. Attorneys without inquiring about the process Sampson used to select them for removal, or why each name was on the removal list. Instead, Gonzales told us he "assumed" that Sampson engaged in an evaluation process, that the resulting recommendations were based on performance, and that the recommendations reflected the consensus of senior managers in the Department. Each of those assumptions was faulty.

Gonzales also said he had little recollection of being briefed about Sampson's review process as it progressed. He claimed to us and to Congress an extraordinary lack of recollection about the entire removal process. In his most remarkable claim, he testified that he did not remember the meeting in his conference room on November 27, 2006, when the plan was finalized and he approved the removals of the U.S. Attorneys, even though this important meeting occurred only a few months prior to his congressional testimony on the removals.

This was not a minor personnel matter that should have been hard to remember. Rather, it related to an unprecedented removal of a group of high-level Presidential appointees, which Sampson and others recognized would result in significant controversy. Nonetheless, Gonzales conceded that he exercised virtually no oversight of the project, and his claim to have very little recollection of his role in the process is extraordinary and difficult to accept.

We found that Deputy Attorney General McNulty had little involvement in or oversight of the removal process, despite his role as the immediate supervisor of U.S. Attorneys. McNulty was not even made aware of the removal plan until the

fall of 2006. When McNulty learned about the plan, he thought it was a bad idea. However, he deferred to Sampson and did not raise his concerns with regard to the plan itself or, except in a couple of cases, the evaluation of specific U.S. Attorneys to be removed. Rather, he distanced himself from the project, both while it was ongoing and after it was implemented.

Moreover, we found that there was virtually no communication between Attorney General Gonzales and Deputy Attorney General McNulty about this important matter. Even when McNulty learned about the plan in the fall of 2006 (more than a year after Gonzales and Sampson initiated the removal process), he did not discuss any of his concerns with Sampson or Gonzales.

We also found no evidence that Gonzales, McNulty, or anyone else in the Department carefully evaluated the basis for each U.S. Attorney's removal or attempted to ensure that there were no improper political reasons for the removals. Neither Sampson nor anyone else involved in the removal process reviewed the performance evaluations of U.S. Attorneys' Offices conducted by the Executive Office for U.S. Attorneys, except in the case of one U.S. Attorney, Kevin Ryan.

Moreover, as discussed in detail in the chapters on the individual U.S. Attorneys, we found conflicting testimony about the reasons most of the U.S. Attorneys were recommended for removal. In some cases, neither Sampson nor any other Department official acknowledged recommending that the U.S. Attorney be placed on the removal list. In other cases, the Department's senior leaders did not even know why Sampson placed the U.S. Attorney on the list.

The most serious allegations that arose in the aftermath of the removals were that several of the U.S. Attorneys were forced to resign based on improper political considerations. Our investigation found substantial evidence that partisan political considerations did play a part in the removal of several of the U.S. Attorneys. The most troubling example was the removal of David Iglesias, the U.S. Attorney for New Mexico. As we describe in detail in the report, we concluded that complaints from New Mexico Republican politicians and party activists to the White House and the Department about Iglesias's handling of voter fraud and public corruption cases led to his removal.

Specifically, we found that New Mexico Senator Pete Domenici and other New Mexico Republican Party officials and activists complained to Iglesias, the Department, and the White House about Iglesias's alleged failure to initiate voter fraud prosecutions and his alleged failure to aggressively prosecute public corruption cases prior to the November 2006 elections. Yet, the Department never objectively assessed these complaints. Rather, based upon these complaints and the resulting "loss of confidence" in Iglesias, his name was placed on the removal list and in December 2006 he was told to resign along with six other U.S. Attorneys.

With regard to several other removed U.S. Attorneys, we found that Department officials made misleading statements to Congress and the public by asserting that their removals were based on "performance." In fact, Sampson acknowledged that he considered whether particular U.S. Attorneys identified for removal had political support. Sampson stated that a U.S. Attorney was considered for removal not if the U.S. Attorney was considered "mediocre," but if the U.S. Attorney was perceived as both mediocre and lacking political support. Conversely, Sampson acknowledged deleting from his removal list the names of several U.S. Attorneys who he considered "mediocre" because he believed they had the political support of their home-state Senators and he did not think the Administration would want to risk a fight with the Senators over their removal.

While U.S. Attorneys are Presidential appointees who may be dismissed for any lawful reason or for no reason, they cannot be dismissed for an illegal or improper reason. U.S. Attorneys should make their prosecutive decisions based on the Department's priorities and the law and the facts of each case, not on a fear of being removed if they lose political support. If a U.S. Attorney must maintain the confidence of home state political officials to avoid removal, regardless of the merits of the U.S. Attorney's prosecutorial decisions, respect for the Department of Justice's independence and integrity will be severely damaged and every U.S. Attorneys' prosecutorial decisions will be suspect. Moreover, the longstanding tradition of integrity and independent judgments by Department prosecutors will be undermined, and confidence that the Department of Justice decides who to prosecute based solely on the evidence and the law, without regard to political factors, will disappear.

In sum, our report found that senior Department officials—particularly Attorney General Gonzales and the Deputy Attorney McNulty—abdicated their responsibility to safeguard the integrity and independence of the Department by failing to ensure that the removal of U.S. Attorneys was not based on improper political considerations.

III. FINDINGS ON REASONS FOR REMOVAL OF THE U.S. ATTORNEYS

Our report devotes a separate chapter to each of the nine U.S. Attorneys removed in 2006, describing in detail the reasons the Department offered for their removal and our analysis and conclusions regarding why each U.S. Attorney was removed.

The first U.S. Attorney removed in 2006 was Todd Graves from the Western District of Missouri. The evidence indicates that, contrary to the Department's stated reasons, the primary reason for Graves's removal was complaints from the staff of Missouri Senator Christopher S. "Kit" Bond. Bond's staff urged the White House Counsel's Office to remove Graves because he had declined to intervene in a conflict between Senator Bond's staff and the staff of Graves's brother, a Republican congressman from Missouri. However, no Department official involved in the process could explain why Graves was forced to resign, and no Department official accepted responsibility for the decision to remove Graves. Each senior Department official we interviewed claimed that others must have made the decision.

We believe the manner in which the Department handled Graves's removal was inappropriate. Although U.S. Attorneys serve at the pleasure of the President and can be removed for no reason, the Department should ensure that otherwise effective U.S. Attorneys are not removed because of an improper reason. While U.S. Attorneys are often sponsored by their state Senators, when they take office they must make decisions without regard to partisan political ramifications. To allow members of Congress or their staff to obtain the removal of U.S. Attorneys for political reasons, as apparently occurred with Graves, severely undermines the independence and non-partisan tradition of the Department of Justice.

In June 2006, Arkansas U.S. Attorney Bud Cummins was the second U.S. Attorney instructed to resign. Contrary to Gonzales's initial statement that the U.S. Attorneys were removed for performance reasons, the main reason Cummins was removed was to provide a U.S. Attorney position for Tim Griffin, the former White House Deputy Director of Political Affairs.

The other seven U.S. Attorneys were all told to resign on December 7, 2006, and they were not given the reasons for their removal. The most controversial of these removals was Iglesias, the U.S. Attorney for New Mexico. As discussed previously, we were unable to uncover all the facts pertaining to his removal because of the refusal by key witnesses to be interviewed, including Rove, Miers, Goodling, Domenici, and Domenici's Chief of Staff. However, the evidence we uncovered showed that Iglesias was removed because of complaints to the Department and the White House by Senator Domenici and other New Mexico Republican political officials and party activists about Iglesias's handling of voter fraud and public corruption cases in New Mexico.

We concluded that the other reasons proffered by the Department after Iglesias's removal—that allegedly he was an "absentee landlord," that allegedly he delegated too much authority to his First Assistant, and that allegedly he was an underperformer—were disingenuous after-the-fact rationalizations that did not actually contribute to his removal.

We also found no evidence that anyone in the Department examined any of the complaints about Iglesias's prosecutive decisions through any careful or objective analysis. Moreover, no one in the Department even asked Iglesias about these complaints, or why he had handled the cases the way he did.

Rather, because of complaints by political officials who had a political interest in the outcome of voter fraud and public corruption cases, the Department removed Iglesias, an individual who had previously been viewed as a strong U.S. attorney. We believe that the actions by senior Department officials with regard to the removal of Iglesias—particularly Gonzales, McNulty, and Sampson—were a troubling dereliction of their responsibility to protect the integrity and independence of prosecutorial decisions by the Department.

With regard to Nevada U.S. Attorney Daniel Bogden, we found that he first appeared on Sampson's removal list in September 2006, shortly after Sampson received complaints from the head of the Department's Obscenity Prosecution Task Force that Bogden would not assign a prosecutor to a Task Force obscenity case. However, neither Sampson nor any other senior Department official asked Bogden for his response to this complaint. Moreover, none of the senior Department officials we interviewed said they recommended that Bogden be removed, and Gonzales stated that he did not know why Bogden was removed.

We found no evidence, as some speculated, that Arizona U.S. Attorney Paul Charlton was removed because of his office's investigation of Arizona Congressman Rick Renzi. Rather, we found that the Department was unhappy with Charlton's unilateral implementation of a policy in his district that required that interrogations be tape recorded. However, the most significant factor in Charlton's removal was his

actions in a death penalty case in his district. Charlton advocated against the Department's decision to seek the death penalty in a homicide case, and Department leaders were irritated when Charlton sought a meeting with the Attorney General to urge him to reconsider his decision. We believe an issue of this magnitude warrants full and vigorous examination and debate within the Department, and that Charlton's request to speak directly to the Attorney General about this matter was neither insubordinate nor inappropriate.

We had difficulty determining the real reason for the removal of John McKay, the U.S. Attorney for the Western District of Washington. While there is some evidence that McKay was placed on Sampson's initial removal list because of complaints from Washington State Republicans about his handling of voter fraud investigations, based on the available evidence we believe the main reason McKay's name was placed on the removal list was his clash with Deputy Attorney General McNulty over an information-sharing program that McKay advocated. However, the Department's varying explanations for why McKay was removed severely undermined its credibility when it tried to explain its actions.

McKay's inclusion on the removal lists also underscores the fundamental problem with the entire removal process: the Department's failure to use consistent or transparent standards to measure U.S. Attorney performance and to determine whether a U.S. Attorney should be recommended for replacement. Instead, Sampson talked to a few people about who they thought were strong or weak U.S. Attorneys, and he used their impressions and comments about various U.S. Attorneys, without any attempt to corroborate the comments, seek alternative views, systematically evaluate the U.S. Attorneys' performance, or even allow the U.S. Attorneys to respond to any concerns about their actions. The ad hoc nature of Sampson's lists of attorneys to be removed demonstrated the fundamentally flawed and subjective process he used to create these lists.

We found no evidence to support speculation that Carol Lam, the U.S. Attorney for the Southern District of California, was removed in retaliation for her prosecution of certain public corruption cases. Rather, we found that she was placed on the removal list because of the Department's concerns about the low number of gun and immigration prosecutions undertaken by her office. However, we also found that the Department removed her without implementing a plan outlined by Sampson, at the direction of the Attorney General, to address with Lam the Department's concerns about her prosecutorial priorities.

We recognize it is the President's and the Department's prerogative to remove a U.S. Attorney who they believe is not adhering to their priorities or not adequately prosecuting the types of cases that the President and the Department decide to emphasize. This is true for any U.S. Attorney, even one like Lam who was described as "outstanding," "tough," and "honest," and whose office evaluation stated that she was "an effective manager . . . respected by the judiciary, law enforcement agencies, and the USAO staff." However, what we found troubling about Lam's case was that the Department removed her without ever seriously examining her explanations or even discussing with her, as the proposed plan had suggested, that she needed to improve her office's statistics in gun and immigration cases or face removal.

Finally, we concluded that the Department had reasonable concerns about the performance of U.S. Attorneys Margaret Chiara from the Western District of Michigan and Kevin Ryan from the Northern District of California and the management of their offices, and that they were removed for those reasons.

IV. FINDINGS ON THE CONDUCT OF DEPARTMENT LEADERS

The final chapter in our report analyzes the conduct of senior Department officials in the removal of the U.S. Attorneys and its aftermath.

A. Attorney General Gonzales

We concluded that Gonzales bears primary responsibility for the flawed U.S. Attorney removal process and the resulting turmoil that it created. This was not a simple personnel matter that should have been delegated to subordinate officials. Rather, it was an unprecedented removal of a group of high-level Department officials that was certain to raise concerns if not handled properly. Such an undertaking warranted close supervision by the Attorney General, as well as the Deputy Attorney General. We found that Gonzales was remarkably unengaged in the process, did not provide adequate supervision, and did not ensure that Deputy Attorney General McNulty also provided necessary oversight. Moreover, Gonzales failed to take action even in the case of Iglesias when he had notice that partisan politics might be involved in the demand for Iglesias's removal. We believe that Attorney General Gonzales abdicated his responsibility to safeguard the integrity and inde-

pendence of the Department by failing to ensure that the removal of the U.S. Attorneys was not based on improper political considerations.

Gonzales also made a series of statements after the removals that we concluded were inaccurate and misleading, including his remarks at a March 13, 2007, press conference at which he said that he "was not involved in seeing any memos, was not involved in any discussions about what was going on" and "I never saw documents. We never had a discussion about where things stood." In addition, Gonzales repeatedly claimed to us and to Congress an extraordinary lack of recollection about the entire removal process.

B. Deputy Attorney General McNulty

We found that McNulty had little involvement in the removal process and was not even informed about the removal plan until the fall of 2006. Although McNulty told us that he was surprised by the plan when he learned of it, he did not object to the plan and did not question the methodology used to identify U.S. Attorneys for removal. Instead, he deferred to the Attorney General's office. We believe that the Deputy Attorney General, the second in command of the Department of Justice and the immediate supervisor of the U.S. Attorneys, should have raised his objections forcefully about the removal plan and should not have been so deferential about such a significant personnel action involving U.S. Attorneys under his supervision. Instead, McNulty distanced himself from the removals, both before and after they occurred, and treated it as a "personnel matter" outside of his "bailiwick." As with Attorney General Gonzales, we believe that Deputy Attorney General McNulty abdicated his responsibility to safeguard the integrity and independence of the Department by failing to ensure that the removal of the U.S. Attorneys was not based on improper political considerations.

C. Kyle Sampson

We found that Sampson, Gonzales's Chief of Staff, was the person most responsible for developing the removal plan, selecting the U.S. Attorneys to be removed, and implementing the plan. Yet, after the controversy over the removals erupted, Sampson attempted to downplay his role, describing himself as the "aggregator" of names for the removal list and denying responsibility for placing several of the U.S. Attorneys on the removal list.

We believe that Sampson mishandled the removal process from start to finish. In addition, we found that he had inappropriately advocated bypassing the Senate confirmation process for replacing U.S. Attorneys by using the Attorney General's authority to appoint Interim U.S. Attorneys and "run out the clock" while appearing to act in good faith to submit names through the regular Senate confirmation process.

We also found that Sampson made various misleading statements about the U.S. Attorneys' removals. We concluded that Sampson engaged in misconduct by making misleading statements and failing to disclose important information to the White House, members of Congress, congressional staff, and Department officials concerning the reasons for the removals of the U.S. Attorneys and the extent of White House involvement in the removal process.

D. Monica Goodling

Goodling's refusal to be interviewed by us also created gaps in our investigation of the reasons for the removal of certain U.S. Attorneys. As the Department's White House Liaison, Goodling had significant contact with White House officials about Department personnel matters, and the evidence shows that Goodling was involved to some extent in the selection of the U.S. Attorneys for removal.

Based on our investigation, we found that Goodling, like Sampson, failed to fully disclose to Department officials what she knew about the White House's involvement in the removals and that her failure to do so contributed to Department officials making inaccurate statements to Congress. We concluded that Goodling engaged in misconduct by failing to correct Department officials who were providing what she knew to be misleading information to Congress and the public concerning the extent and timing of White House involvement in the U.S. Attorney removal process.

V. RECOMMENDATION AND CONCLUSION

Our report recommended that the Attorney General appoint a counsel to assess the facts we have uncovered, work with us to conduct further investigation, and ultimately determine whether the evidence demonstrates that any criminal offense was committed with regard to the removal of Iglesias or any other U.S. Attorney, or the testimony of any witness related to the U.S. Attorney removals.

We made this recommendation for several related reasons. First, we believe it is important to ascertain the full facts relating to why the U.S. Attorneys were removed. As we describe in the report, we were unable to fully develop all of the facts regarding the removal of Iglesias and several other U.S. Attorneys because of the refusal by certain key witnesses to be interviewed by us (including Rove, Miers, Goodling, Domenici, and Domenici's Chief of Staff), as well as by the White House's decision not to provide us with internal White House documents related to the removals.

Second, we believe such a counsel should consider whether Department officials made false statements to Congress or to us about the reasons for the removal of Iglesias or other U.S. Attorneys.

Third, we believe a full investigation is necessary to determine whether other federal criminal statutes were violated with regard to the removal of Iglesias or any other U.S. Attorney, including the obstruction of justice or wire fraud statutes.

It is important to note that our report did not conclude that the evidence we have uncovered thus far establishes that a violation of any criminal statute has occurred. However, we believe that the evidence collected in this investigation is not complete and that serious allegations have not been fully investigated or resolved. We believe that this matter should be fully investigated, the facts and conclusions fully developed, and final decisions made based on all the evidence.

As noted above, in response to our recommendation Attorney General Mukasey appointed a career prosecutor, the Acting U.S. Attorney for Connecticut, to pursue this investigation. We expect the Acting U.S. Attorney to move aggressively and expeditiously to obtain additional evidence and to make a determination as to whether any criminal offense was committed with regard to the removals or their aftermath.

The Department's removal of the U.S. Attorneys and the controversy it created severely damaged the credibility of the Department and raised doubts about the integrity of Department prosecutive decisions. We believe that our investigation, and final resolution of the issues raised in this report, can help restore confidence in the Department by fully investigating and describing the serious failures in the process used to remove the U.S. Attorneys and by providing lessons for the Department in how to avoid such failures in the future.

This concludes my statement, and I would be pleased to answer any questions.

Mr. CONYERS. Chris Cannon, the Ranking Member, is recognized.

Mr. CANNON. Thank you, Mr. Chairman. This has been a long process. I wish it had come out more cleanly either way, but it really hasn't. Mr. Fine, you have made a particular point of David Iglesias' firing. I would like to pursue that a little bit.

Are you familiar with the characterization by Mr. Margolis of the way David Iglesias reported his contact with Mr. Domenici?

Mr. FINE. Yes, I am. He was concerned about that and upset that he did not report contact to the Department as he was required to do by the U.S. Attorneys' Manual. In fact, we point out in our report that that was improper and he should have, when he got that contact from Senator Domenici, reported it to the Department and it was misconduct for him not to.

Mr. CANNON. David Margolis is the senior career employee at the Department; isn't that correct?

Mr. FINE. Yes.

Mr. CANNON. He actually used the word "unforgivably." He said that Iglesias "unforgivably" violated the Department policy in that instance. He actually said to this Committee—we had several people testify about how they contacted their superiors when contacted by Members of Congress, and they all pointed out that they had sent a letter or made a phone call immediately after the contact.

I asked Mr. Iglesias if he had contacted the Department about the contact with Mr. Domenici. He acknowledged that he was intimidated. He waited some period of time but that he did in fact contact the Department of Justice. I was a little surprised. I asked him how he contacted the Department. He said through his press

conference. In other words, instead of using telephone or e-mail or flying out saying, "Look, I am concerned, I have got this horrible message," he acknowledged that he had been cowed by what he said was the contact. I think that has been disputed. The content of what the contact was clearly disputed by Mr. Domenici who I have known for years and who I don't believe would say the kinds of things that Mr. Iglesias said he said. But that is he said/she said. The unforgivable thing was to say that he used a press conference to communicate to his superiors in main Justice. Don't you think that is like a little ridiculous?

Mr. FINE. It was wrong. It was misconduct. We pointed that out. He should have contacted the Department when he got that call, as he was required to do by the U.S. Attorneys' Manual. And we think that that was not proper.

Mr. CANNON. Do you also think it as ridiculous as I think it that he claimed to have done that, claimed to have complied with the rules, by talking at a press conference?

Mr. FINE. Talking at a press conference does not comply with the rules. He should have contacted the Department at the time that it occurred.

Mr. CANNON. This all suggests that in the mind of Mr. Iglesias at least—now there are many other people involved in this whole process, and I have great respect for many of them. But in this particular case, doesn't that raise the specter of the usefulness of replacing the occasional U.S. attorney?

Mr. FINE. I am not sure that that is the conclusion I would draw because Mr. Iglesias did not properly contact the Department. And we looked into Mr. Iglesias' performance. This was something that was not correct and he should have done that. But that was not a reason why he was removed, and that had nothing to do with the reason for his removal. So I am not sure that that could have an impact.

Mr. CANNON. Well I think that the reason he was removed was that he was not competent. There were many reports and many issues that related to his lack of prosecution of cases, not just those that related to the supposed phone calls from Members of Congress from New Mexico.

So that the point here—I am not making the point that he was removed because he made the improper contact with the Justice Department. I am suggesting there was something missing in Mr. Iglesias that was reflected in his work.

Mr. FINE. We didn't find that that issue rose to the Department and that was the reason the Department removed him. The Department removed him, we determined, because of the loss of confidence that New Mexico political activists and officials had in him, and they relayed that to the Department, to the White House, to others. And as a result, the Department removed him. What our concern was, was the Department didn't look into that, didn't ask him about it, didn't assess the actions that he had taken in those cases.

Mr. CANNON. Pardon me, Mr. Fine.

Mr. FINE. I am sorry.

Mr. CANNON. It was a little more complicated than that. Mr. Iglesias actually said, Quite frankly, I wanted to run for office after

my term as U.S. attorney and I knew that if I reported them, there would be no chance I would get any support. I mean this is not a guy who just uses the press instead of a telephone. This is a guy who is himself posturing before he got squeezed and posturing after.

Mr. FINE. Mr. Iglesias should have made that contact, there is no question. But that did not impact the removal. And from our determination, the Department didn't even look into the allegations about his handling of the voter fraud cases or the public corruption case. They simply accepted that because there were these complaints, there was a loss of confidence and then he was removed.

Mr. CANNON. But Mr. Fine, many people at main Justice knew Mr. Iglesias. Could they not just have said among themselves, "This guy is weak. He is weak-minded. He is not a competent U.S. attorney. We think we can do better"?

Mr. FINE. That is not what they said though. That is not what we found that they said. We did not find that as the reason that was proffered by the Department for his removal. We didn't find evidence that that was on their minds, and it just—we didn't see the evidence for that.

Mr. CANNON. Let's shift gears to partisan and political and what is appropriate in that context. Clearly the U.S. attorneys are political. They are appointed by the President. They are confirmed by the Senate. And we have had from the very beginning, from the second Presidency in the United States, we have had a debate about what that means. Can a President remove an official that has been confirmed by the Senate? We have agreed entirely, consistently, and overwhelmingly ever since John Adams that it was appropriate for a President to replace political appointees.

As we go after this issue here today, are we not—and I realize we don't have lights on, Mr. Chairman. So let me just lay this question out and I think perhaps we can come back to it. Is it not appropriate for the President to fire a U.S. attorney for any reason he may deem or the Attorney General may deem sufficient?

Mr. FINE. The President can fire a U.S. attorney for any reason, or no reason, but can't do it for an illegal reason. The concern that we have about this—and as we state in the report—is that, yes, politics does affect who is appointed as U.S. attorney. They are considered when the home State senators and officials recommend, who gets appointed. But once you become the U.S. attorney, you leave your politics and your political considerations at the door. And if it were that you have to maintain political support to keep your job, every prosecutorial decision of the Department of Justice would be suspect. And people would believe that they are making these decisions in order to maintain political support, and if they don't do it this way, they will be removed.

It was unprecedented in the Department's history to have this group of U.S. attorneys removed. And the reason that they were told—or that was said that they were removed—was for under performing. We didn't find that to be the case for many of them. And therefore, we think that this is—it undermines the independence and integrity of the Department of Justice if you have to maintain political support as a way to keep your job.

Mr. CANNON. Let me say first of all, I think what you are saying is vitally important and I agree with what you have said. And it is without question improper for a Congressman or a Senator to call a U.S. attorney and intervene in the prosecution. And that is the kind of thing which I think you are really focusing on.

On the other hand, while bungled, what we have here is an attempt to upgrade with all the cycle of discussions that we have had about that, and reasons which may not have proven out. I just don't—I think that it is very important that we be clear about where we make that demarcation.

A Congressman should not call and interfere in a case. But the President has the authority to say, I think somebody can do this job better, can fulfill my priorities better. And I think in many of the cases where U.S. attorneys were fired, that became clearly the case in the testimony we had here.

I am going to yield back but I think that——

Mr. FINE. Can I respond to that?

Mr. CANNON. Respond.

Mr. FINE. I understand your point. I don't think it was the case with many U.S. attorneys. And I also think that it is the Department's responsibility, when they get those calls or when there is that concern, to actually look into it, to actually investigate it, to actually determine whether this U.S. attorney is making the appropriate prosecutorial decisions based on the Department's priorities, the facts, and the law of each case. And if there is a problem, then they should inquire about that and take action, but not simply to accept these complaints and that is the basis for the removal of a U.S. attorney. It undermines the independence and integrity of the Department, I believe.

Mr. CONYERS. Thank you very much. Chairwoman Linda Sánchez.

Ms. SÁNCHEZ. Thank you, Mr. Chairman. And I want to thank you, Mr. Fine, for your testimony today and for the very thorough report.

Is it fair to say that based on the information contained in that report you couldn't completely investigate all of the issues because certain witnesses would not make themselves available to you?

Mr. FINE. It is true that there were gaps in our investigation. We uncovered, I believe, most of the facts. We went a long, long way to uncovering then, but there were some gaps based on the refusal of certain witnesses to talk to us.

Ms. SÁNCHEZ. And those witnesses that refused to cooperate with your investigation were Karl Rove, Harriet Miers, and Monica Goodling; is that correct?

Mr. FINE. Among others.

Ms. SÁNCHEZ. Okay. Obviously AG Mukasey has appointed Ms. Dannehy, and I am not here to question her qualifications. But I am a little concerned about the issue that she has not been appointed a special counsel. She has been appointed as the acting U.S. attorney for the District of Columbia. And I find that interesting, given that currently this Committee is challenging the Administration's privilege and immunity claims in Federal court; and the Justice Department is defending those claims and asserting that White House documents should not be provided outside the

White House, and that Harriet Miers and Karl Rove cannot be compelled to provide on-the-record statements.

My question to you is, how can a Justice Department prosecutor, under the supervision of the Attorney General, attack such claims to get access to White House information at the same time that the Department is in court defending the claims of immunity and privilege? Isn't that a conflict of interest?

Mr. FINE. Not necessarily. I think what the Department would say—and you have to talk to the Department about this—but those are different—separate issues, whether documents should be provided in connection with the Department of Justice criminal investigation, whether documents should be provided in connection with congressional inquiry. And there are different privileges and case law that applies to it.

So it is not necessarily a conflict of interest to seek it in one, and have a different position in another. But that is for the Department to let you know its reasoning.

Ms. SÁNCHEZ. I just want to bring your attention to the fact that under DOJ special counsel regulations, the Attorney General should not appoint a special counsel who is not within—pardon me—should appoint a special counsel who is not within DOJ to pursue a matter when a criminal investigation is warranted, when DOJ pursuing the matter would present a conflict of interest, and what it would be in the public interest. In your opinion, are those criteria met in this particular case?

Mr. FINE. It is a difficult question and a close question. There are pros and cons of appointing a special counsel under 28 CFR, part 600, the Special Counsel Regulations of the Department. It would have to be someone from outside the Department. On the other hand, the report would still go to the Department and remain confidential. So the concerns that you had stated in your opening statement would also be in effect there.

The issue is whether the Department is appointing—specially appointing Nora Dannehy as a counsel to look into this can get to the bottom of this, can aggressively, thoroughly, and expeditiously investigate this. I think that is possible. We will have to see whether she does that. But there are pros and cons of each way, and the Department has taken the position to appoint someone especially for this to move forward with our investigation, and we look forward to seeing what she does.

Ms. SÁNCHEZ. I understand your answer, and I respect it. I just am a little bit troubled by the fact that in your investigation, you were seeking documents and testimony that the White House was unwilling to provide, certain witnesses were unwilling to provide. We have tried in our oversight role as a Committee to receive those same documents and testimony from witnesses. And we are battling, in essence, the Attorney General who refuses to enforce our contempt request. And at the same time he is the person appointing the person who will be in charge of doing the full investigation and trying to get to the bottom of this.

Doesn't that inherently seem odd to you? Or don't you think that the public might lose confidence or—I think better put, not regain their confidence in the Department of Justice if that is the case?

Mr. FINE. It is not necessarily odd. It is not necessarily in conflict. There are different forums and different considerations in obtaining the documents in the different ways that are being pursued. I think it is important that this go forward and go forward aggressively and expeditiously. And the ultimate judgment will be and should be how this happens and how she and the Department pursues this—whether they pursue it aggressively and seeks all the information that is necessary to fully explain what happened here.

Ms. SÁNCHEZ. Let me ask you this, Mr. Fine. Do you think that the findings in your report should preclude Congress from continuing its investigation and oversight into this matter? Or do you think that Congress has an appropriate role in continuing their investigation?

Mr. FINE. Well, I am always cognizant of Congress' appropriate role, and I think Congress ought to make that determination. I am not saying they should or shouldn't. I don't think it necessarily obviates the need for it, but that is your decision to make.

Ms. SÁNCHEZ. Thank you. And just two last questions. As this Administration leaves office, one of the concerns that I have is the potential for documents to disappear and witness intimidation to occur. And your report establishes ample evidence of this type of conduct having occurred. Department officials still don't seem to understand some of the gravity of what has happened here. And even as recently as a week ago Monday, senior DOJ officials, specifically David Margolis, who has joked about the U.S. attorney firings as the quote-unquote "recent unpleasantness" and I would allege it is a little bit more than unpleasantness—was continuing to intimidate career employees by warning them that they should not communicate with the press if they are concerned about wrongdoing.

I want to know what steps will you take as IG to ensure that all DOJ employees are aware of their rights as whistleblowers, including their rights to communicate with Congress, if they learn of documents being destroyed or other interference with the special prosecutor's investigation.

Mr. FINE. We have made clear that we are available for any complaints about that; that they have their rights. We do get complaints of whistleblowers. We take it very seriously. If there is such an allegation, we have a hotline on our Web site. We have a button on our Web site. People know who we are. We are very public about our role. And we take those responsibilities seriously.

Ms. SÁNCHEZ. So you have already communicated that information to both political appointees and career officials?

Mr. FINE. We haven't given a separate document now. But we are regularly communicating our role in detecting and deterring waste, fraud and abuse, and receiving any complaints of misconduct and taking them seriously.

Ms. SÁNCHEZ. I would make a suggestion that it might behoove you to at least communicate to all employees within the Department that they have those rights as whistleblowers and what their rights are. I think that that would be most helpful.

Finally, the last question that I have for you is, what would be the effect on the pending investigation if President Bush were to

grant a pardon to Karl Rove, Harriet Miers, or others who are being investigated in this matter?

Mr. FINE. First of all, I have heard no indication or evidence of that. If he granted a pardon, it would prevent any criminal prosecution from going forward. But if one was warranted, a pardon would have that impact.

Ms. SÁNCHEZ. If there were—if say they were called before the Committee to provide testimony after the Bush administration leaves office and they had been pardoned for any activity but refused to appear, would that preclude us finding them in contempt and ordering them to appear?

Mr. FINE. I haven't really analyzed that hypothetical scenario. So I am not sure what the answer to that one is. I would doubt it, but I am not in a position to make a legal judgment on that particular set of facts.

Ms. SÁNCHEZ. I will submit some additional written questions, and I thank the Chair and yield back my time.

Mr. CONYERS. Thank you. The Chair is pleased to recognize the gentleman from California, an important Member on the Constitution Subcommittee, Darrell Issa.

Mr. ISSA. Thank you, Mr. Chairman. I think bringing closure with this report is extremely important.

And Mr. Fine, I commend you for a significant and sufficient report. When I read it, I have to tell you, I was only intimately familiar with one of the U.S. attorneys. And so today if you don't mind, I am going to primarily focus on that.

But before I do, I would like to follow up on Congresswoman Sánchez's line of questioning very, very quickly.

As an independent investigator who looks for the ultimate right or wrongdoing of the actions of a bureaucracy, can you answer just a few questions related—if Karl Rove or anyone else were granted a pardon, by definition, wouldn't that preclude any claim or resistance of—other than, you know, the White House asserting things which are undeniable in their authority—but wouldn't that essentially cause them to have to tell us truthfully, without using the fifth as a claim, everything they did or knew? Wouldn't it in a sense—although they couldn't be prosecuted for it—by definition release them to have to answer fully and have no personal ability to escape answering the questions?

Mr. FINE. Off the cuff, I would think so. If the pardon covered the full scope of their criminal exposure, then it would obviate any fifth amendment privilege that they would have.

Mr. ISSA. Okay. I wanted to establish that because some people want to make it seem like a pardon is inherently wrong; when, in fact, if all we are interested in is the nonpartisan truth of what occurred, then the seeking of the truth is often a plus by a pardon, not a negative. Or a limited immunity, as often happens in your investigations.

You grant immunity as part of your investigations—the U.S. attorney's office grants immunity as part of their investigations, don't they?

Mr. FINE. We can, in conjunction with U.S. attorney offices or prosecutors that we work with, grant use immunity for witnesses. But we only do it in certain circumstances.

Mr. ISSA. Sure. I understand that. I would hope that on both sides of the aisle if what we are seeking is the truth, we won't fear any tool that ultimately enables us to get answers to questions that we might otherwise not get.

Moving to Carol Lam, you know there is an old expression you know—at least in the Boy Scouts. And that is, if you light a fire, you have to take credit for lighting the fire. And you also have to put out the fire, tend the fire, and be responsible for it.

Well, I am very, very, very proud that I saw Carol Lam as someone who is not working within the guidance of the U.S. attorneys guidance from the Administration, was inconsistent in her enforcement with the President's stated public goal of enforcing the border, and ultimately leading to a successful guest worker program and the like.

So let's go through Carol Lam. Your report says that there was no evidence that Carol Lam was removed because of the investigation of former Congressman Duke Cunningham or a CIA official, Dusty Foggo, right?

Mr. FINE. Correct.

Mr. ISSA. Okay. And both of those people are currently convicted successfully, right?

Mr. FINE. Correct.

Mr. ISSA. And the investigation or the complaint about Carol Lam as to her enforcement on both immigration and firearms began before anyone here knew about Duke Cunningham; is that correct?

Mr. FINE. I don't know when people here knew about Duke Cunningham. They initially appeared in connection with an evaluation at an early stage, I would say.

Mr. ISSA. Mr. Chairman, I ask unanimous consent to be able to put some of the letters I wrote concerning Carol Lam into the record at this time.

Mr. CONYERS. Without objection, so ordered.

[The information referred to follows:]

February 2, 2004

Ms. Carol C. Lam
United States Attorney
880 Front Street, Room 6293
San Diego, California 92101

Dear Ms. Lam:

I write to request information concerning an incident that reportedly occurred on November 20, 2003. According to news reports, Antonio Amparo-Lopez was arrested on suspicion of alien smuggling and held at the Temecula, California, interior checkpoint while border patrol agents contacted your office for guidance.

According to recent reports, Mr. Amparo-Lopez (Alien #A76266395), a known alien smuggler with a long criminal record, was released after your office declined to prosecute.

I respectfully request that your office provide me with information about the facts surrounding the alleged incident of November 20, 2003, and, if applicable, the rationale behind any decision made by your office to decline or delay prosecution of Mr. Amparo-Lopez or any other action that may have contributed to his release.

I look forward to your response. If you have any questions, please feel free to contact me or my Legislative Assistant Josh Brown at (202)-225-3906. Thank you for your attention to this important matter.

Sincerely,

Darrell Issa
Member of Congress

U.S. Department of Justice

Carol C. Lam
United States Attorney
Southern District of California

(619) 557-5690
Fax (619) 557-5782

San Diego County Office
Federal Office Building
880 Front Street, Room 6293
San Diego, California 92101-8893

Imperial County Office
321 South Waterman Avenue
Room 204
El Centro, California 92243-2215

March 15, 2004

Via Facsimile and Federal Express

The Honorable Darrell E. Issa
Representative in Congress
211 Cannon House Office Building
Washington, D.C. 20515

Attn: Josh Brown

Dear Congressman Issa:

Thank you for your correspondence dated February 2, 2004, regarding Antonio Amparo-Lopez. My office has researched the incident you referred to in order to provide accurate information. As we previously informed Mr. Brown from your office, Department of Justice policy prohibits us from responding directly to legislative inquiries; therefore, this matter has been referred to the Office of Legislative Affairs (OLA) in Washington, D.C. OLA will be responding to your request regarding this matter.

Again, thank you for your letter and I expect you shall receive a reply soon.

Very truly yours,

Carol C. Lam

CAROL C. LAM
United States Attorney

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 24, 2004

The Honorable Darrell Issa
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Issa:

This is in response to your letter of February 2, 2004, to Carol C. Lam, United States Attorney for the Southern District of California, regarding the arrest of Antonio Amparo-Lopez. We apologize for any inconvenience our delay in responding may have caused you.

Based upon all of the facts and circumstances of his arrest, the United States Attorney's Office declined to prosecute Mr. Amparo-Lopez.

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

Sincerely,

William E. Moschella
Assistant Attorney General

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 24, 2004

The Honorable Darrell Issa
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Issa:

This is in response to your letter of February 2, 2004, to Carol C. Lam, United States Attorney for the Southern District of California, regarding the arrest of Antonio Amparo-Lopez. We apologize for any inconvenience our delay in responding may have caused you.

Based upon all of the facts and circumstances of his arrest, the United States Attorney's Office declined to prosecute Mr. Amparo-Lopez.

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

Sincerely,

William E. Moschella

William E. Moschella
Assistant Attorney General

Congress of the United States
Washington, DC 20515

July 30, 2004

The Honorable John Ashcroft
Attorney General
United States Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Attorney General Ashcroft:

We write to express our concern with the Department of Justice's current policy of not prosecuting certain alien smugglers. At this time, we ask that you adopt a zero-tolerance policy for alien smuggling. We believe that all cases of alleged immigrant smuggling referred to the Department of Justice by the Department of Homeland Security should be fully pursued and, if the case could reasonably result in a conviction or plea agreement, prosecuted.

It is our understanding that on numerous occasions when the Department of Homeland Security has apprehended alien smugglers and have requested guidance from the U.S. Attorney's office, they have been told to release these criminals. It is unfortunate and unacceptable that anyone in the Department of Justice would deem alien smuggling, on any level or by any person, too low of a priority to warrant prosecution in a timely fashion. In our view, a lack available resources for prosecution is not a valid reason for a decision not to prosecute and, in fact, would signify a mismanagement of your Department's priorities.

Alien smugglers place the safety and well-being of border region communities, Border Patrol officers, local authorities, and illegal immigrants in jeopardy. Smugglers stand at the root of our nation's immigration problem and any failure to prosecute these offenders represents a failure in our nation's current border security strategy.

The House Judiciary Committee is currently requesting information on a known alien smuggler Antonio Amparo-Lopez, who was last arrested on suspicion of alien smuggling and held at the Temecula, California, interior checkpoint. In this particular case, Border Patrol agents contacted the Office of the U.S. Attorney for the Southern District of California for guidance on how to proceed with alien Amparo-Lopez (Alien #A76266395), who has a long documented record that includes multiple deportation proceedings and numerous arrests. He was released after your office declined to prosecute.

Alien smugglers, including Amparo-Lopez, should not be given a second, third, or unlimited number of chances before the Department of Justice decides to purse

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The Honorable John Ashcroft
July 30, 2004
Page 2

charges. Alien smuggling is indefensible and when continued unchecked will ultimately lead to far greater taxpayer expenditures than the costs of prosecution and incarceration.

We strongly urge you to consider our request for a zero tolerance alien smuggling policy. If you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

Darrell Issa
Randy "Duke" Cunningham
Dana Rohrabacher
Ken Calvert
Elton Gallegly
Howard P. "Buck" McKeon
John T. Doolittle
Anna G. Eshoo
Ed Pastor
Mary Bono
David Dreier
Doris Cox
Ed Royce
Jerry Lewis

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General — *Washington, D.C. 20530*

BEST IMAGE AVAILABLE JAN 25 2005

The Honorable Darrell Issa
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Issa:

This responds to your letter, dated July 30, 2004, regarding the prosecution of alien smugglers by the Department of Justice. We apologize for any inconvenience our delay in responding may have caused you or your colleagues, to whom we are sending identical responses.

We appreciate your interest in the Department's prosecution of alien smuggling offenses, and share your concern about alien smugglers who place the safety and well-being of law enforcement and the public in jeopardy. Every year, nearly one million illegal aliens are apprehended along our nation's border with Mexico. The United States Attorneys' Offices along the Southwest Border (which includes the Districts of Southern Texas, Western Texas, New Mexico, Arizona, and Southern California) face an enormous challenge in trying to enforce our criminal immigration and narcotics laws along that border. Since the Border Patrol began Operation Gatekeeper ten years ago, those districts have encountered sudden explosions in the number of apprehensions and cases, as illegal immigrants and smugglers have probed the expansive border for more vulnerable points of entry. The District of Arizona, for example, saw apprehensions grow from approximately 100,000 a year to nearly 600,000 a year.

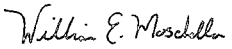
The United States Attorneys' Offices along the Southwest Border place the highest priority on prosecuting alien smuggling cases, focusing first and foremost on those cases that (a) present a potential threat to national security (e.g., the smuggling of aliens from countries with ties to terrorism); (b) present the greatest threat to the health and safety of the community (e.g., where the illegal aliens have prior records for murder, rape, and other violent crimes); and (c) demonstrate willful or reckless disregard for human life. These offices have also reviewed and revised their own policies for prosecuting illegal aliens by, for example, ensuring that felony immigration charges are brought, instead of misdemeanors, against illegal aliens with serious criminal histories.

These strategic approaches to prioritize cases and focus on the most serious offenders have yielded tangible results. For example, crime rates in many cities near the border have fallen during the past decade. The Southwest Border Districts have collectively experienced significant increases in the prosecution of alien smuggling offenses in the past three years. The number of alien smuggling offenses in violation of 8 U.S.C. § 1324 charged by the United States Attorneys' Offices in the Southwest Border Districts in fiscal year 2004 represents an approximate increase of 49 percent from the number of alien smuggling offenses charged in fiscal year 2001.

Although these increases are significant, the Department is committed to improving further its law enforcement role along the border and we continue to develop additional policies and procedures to address the alien smuggling problem. Despite the heavy caseload of immigration offenses confronting the Southwest Border United States Attorneys, they recognize the need to always find better ways to keep this country safe, and they continue to reexamine their responses to immigration violations. Toward this end, the Southwest Border United States Attorneys will be meeting in Arizona in January 2005 to discuss ways to better address the broad range of conduct that includes alien smuggling, as well as other offenses involving the circumvention of our immigration laws. Representatives from the Bureau of Immigration and Customs Enforcement will participate in the meeting, as well. The United States Attorneys are also committed to working jointly with the Civil Rights Division on immigration offenses which involve human trafficking.

We hope this information about our efforts to maintain border security through criminal prosecutions, as well as the challenges we face in those efforts, is helpful and we appreciate your interest in this matter. We will, of course, respond to the House Judiciary Committee inquiry regarding Mr. Amparo-Lopez. Please do not hesitate to contact the Department of Justice if we can be of assistance in other matters.

Sincerely,

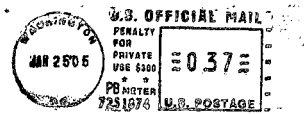


William E. Moschella
Assistant Attorney General

U.S. Department of Justice

OFFICE OF LEGISLATIVE AFFAIRS
OLA/70001
Washington, D.C. 20530

Official Business



The Honorable Darrell Issa
U.S. House of Representatives
211 Cannon House Office Building
Washington, DC 20515-0549

20515-0549

Congress of the United States
Washington, DC 20515

September 23, 2005

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

There is a crisis along the Southwest border that needs your immediate attention. We are writing to encourage the dedication of resources toward the increased prosecution of human smugglers known as "coyotes." The Justice Department has stated that they lack the necessary resources to prosecute a number of "coyotes," a situation that must change.

Illegal immigration poses one of the greatest dangers to our national security. Many immigrants who enter illegally are dangerous criminals. Smugglers, who assist the entry of such criminals into the country, deserve the same prosecution as the criminals they transport. Additionally, "coyotes" often endanger the lives of those they transport both during and after transit through harsh travel conditions and lack of food, water or other basic necessities. Human smugglers also hold many individuals captive after their arrival to the United States to extract greater fees from relatives abroad. It is unfathomable that these smugglers who risk the lives of others for profit be allowed to go free.

The U.S. Attorney's Office is responsible for the prosecution of smugglers, but they have had insufficient funds to prosecute these criminals to the fullest extent in the past. For example, the Border Patrol was instructed to release known coyote, Antonio Amparo-Lopez, an individual with 21 aliases and 20 prior arrests. Border Patrol agents have stated on numerous occasions that they find such occurrences demoralizing. Why should they put their lives at risk to apprehend "coyotes" when the system has turned into a catch-and-release fiasco?

Further illustrating the problem, the U.S. Attorney's Office in San Diego stated that it is forced to limit prosecution to only the worst "coyote" offenders, leaving countless bad actors to go free. Again, this means they are free to smuggle more criminals into the United States.

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There are many demands for prosecutorial funding today. However, eliminating the multi-layered threat posed by "coyotes" is a priority for the Southwest region. We ask that you dedicate additional resources and direct U.S. Attorneys in the Southwest region to make the prosecution of human smugglers a priority.

Sincerely,

Lamar Smith

Dana Rohrabacher

Duncan Hunter

Mary Bono

Ken Calvert

Wally Herger

Dave Camp

Daniel E. Lungren

Bob McKeon

Daniel Dreier

Jerry Lewis

Devin Nunes

Gwen Brown-Waite

Thelma Drake

Steve King

Michael T. McCaul

Pete Sessions

DARRELL E. ISSA
49TH DISTRICT, CALIFORNIA

WASHINGTON OFFICE:
211 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3906
FAX: (202) 225-3303

DISTRICT OFFICE:
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VISTA, CA 92081
(760) 599-6000
FAX: (760) 599-1178
SOUTHWEST RIVERSIDE COUNTY
(951) 699-2447

www.issa.house.gov

Congress of the United States
House of Representatives
Washington, DC 20515–0549

COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEES:
ENERGY AND RESOURCES—CHAIRMAN
FEDERAL WORKFORCE & AGENCY ORGANIZATION

COMMITTEE ON
INTERNATIONAL RELATIONS
SUBCOMMITTEES:
INT'L TERRORISM & NONPROLIFERATION—VICE-CHAIRMAN
EUROPE & EMERGING THREATS
MIDDLE EAST & CENTRAL ASIA

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEES:
COURTS, THE INTERNET & INTELLECTUAL PROPERTY
IMMIGRATION, BORDER SECURITY & CLAIMS

HOUSE POLICY COMMITTEE

October 13, 2005

Ms. Carol C. Lam
United States Attorney
880 Front Street, Room 6293
San Diego, California 92101

Dear Ms. Lam:

I write concerning yet another apparent instance of discretionary non-prosecution of criminal illegal aliens by your office. ~~This reoccurring situation absolutely must~~ change.

I urge you to reconsider your decision not to prosecute Alfredo Gonzales Garcia, a.k.a. Isidro Gonzales Alas, FBI # 180566JA5, a criminal alien who was apprehended by the Border Patrol and remains in their custody. Mr. Garcia has been convicted on narcotics charges on at least two previous occasions and has an outstanding warrant out for his arrest. Nonetheless, I am told that the U.S. Attorney's Office has opted not prosecute Mr. Garcia. Criminal alien repeat offenders pose a significant danger to our citizens, and must be dealt with more severely than a 24-hour detention and release.

Your office has established an appalling record of refusal to prosecute even the worst criminal alien offenders. Your handling of Mr. Garcia is hardly different than the treatment of Antonio Amparo-Lopez, another criminal illegal alien who your office failed to prosecute. Every time one of these criminals is released, our communities become more dangerous.

I implore you to prosecute criminal illegal aliens such as these to every extent possible. If there is some barrier to the prosecution of these criminals that I am unaware of, please communicate it so we can make sure you have the resources and policies in place needed to allow you to bring these criminal aliens and repeat offenders to justice.

Sincerely,

Darrell Issa
Member of Congress

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Congress of the United States
Washington, DC 20515

October 20, 2005

The Honorable Alberto Gonzales
Attorney General
United States Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Dear Attorney General Gonzales:

We write to request a meeting with you to discuss our frustration with the current policies within the Administration related to the prosecution of criminal aliens. To date, many illegal aliens, who deserve jail time, fall instead into the current practice of "catch and release." The recidivism rate among criminal aliens is high, and your Department's lack of action aggravates rather than remedies this problem.

The Border Patrol recently arrested illegal alien, Alfredo Gonzales Garcia, near the border in San Diego. Even though Mr. Garcia had at least two prior arrests for selling drugs and was incarcerated on two separate occasions for these offenses, the U.S. Attorney's Office in San Diego declined to prosecute him. Prior to that event, the U.S. Attorney's Office chose not to prosecute Antonio Amparo-Lopez, a human smuggler and illegal alien with multiple prior convictions. In each instance, under the Immigration and Nationality Act, they were both eligible, upon conviction, for a two-year prison sentence, at minimum.

The U.S. Attorney in San Diego has stated that the office will not prosecute a criminal alien unless they have previously been convicted of two felonies in the district. This lax prosecutorial standard virtually guarantees that both of these individuals will be arrested on U.S. soil in the future for committing further serious crimes.

There is one simple reason why "catch and release" cannot continue: it endangers our citizens. It is the responsibility of the Department of Justice to punish dangerous criminals who violate federal laws, and this includes criminal aliens. When we meet, at the very least we encourage you to be prepared to discuss the current policies used by the U.S. Attorneys to determine when to prosecute criminal aliens, including providing us with a copy of the prosecution guidelines that are applied to such cases in the Southern District of California.

Again, we would like to meet to discuss the disparity between crimes committed and prosecutions conducted at your earliest convenience. Please contact us at 202-225-3906 to schedule this meeting.

Sincerely,

Ed Royce

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[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	Buck McKeon
[illegible]	Mary Bono
[illegible]	Wally Herger
[illegible]	[illegible]
[illegible]	[illegible]
Richard Pombo	Randy "Duke" Cunningham
Bill Thomas	

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D C 20530

October 31, 2005

The Honorable Darrell Issa
U S House of Representatives
Washington, DC 20515

Dear Congressman Issa

The Department of Justice has received your letter dated October 13, 2005 We appreciate hearing from you

Your inquiry has been referred to the proper Department component to prepare an appropriate response If you have any questions in the interim, you or your staff may call the Office of Legislative Affairs Please reference workflow number 890960 when inquiring about your letter For your convenience, we have included a copy of your original correspondence

Again, thank you for writing

Sincerely,

Jens H. Olive /DAAG

for William E Moschella
Assistant Attorney General

Enclosure

DARRELL E. ISSA
49TH DISTRICT, CALIFORNIA

WASHINGTON OFFICE:
211 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3906
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VISTA, CA 92081
(760) 599-5000
FAX: (760) 599-1178
SOUTHWEST RIVERSIDE COUNTY
(951) 693-2447

www.issa.house.gov

Congress of the United States
House of Representatives
Washington, DC 20515–0549

COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEES:
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FEDERAL WORKFORCE & AGENCY ORGANIZATION

COMMITTEE ON
INTERNATIONAL RELATIONS
SUBCOMMITTEES:
INT'L TERRORISM & NONPROLIFERATION—VICE-CHAIRMAN
EUROPE & EMERGING THREATS
MIDDLE EAST & CENTRAL ASIA

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEES:
COURTS, THE INTERNET & INTELLECTUAL PROPERTY
IMMIGRATION, BORDER SECURITY & CLAIMS

HOUSE POLICY COMMITTEE

May 24, 2006

Ms. Carol C. Lam
United States Attorney
880 Front Street, Room 6293
San Diego, California 92101

Dear Ms. Lam:

In response to your comments on the Border Patrol internal memo my office obtained and released, your statement misses the mark and exhibits a willful disregard to the documented 251 incidents in fiscal year 2004 where the Border Patrol at the El Cajon station apprehended smugglers but led to smuggling charges for roughly 6% of the cases. The memo I released contains a specific enforcement number for each of the 251 incidents that you or the Department of Homeland Security can confirm by simply typing the number into a computer database.

Your failure to address the substantive issues raised in the memo is consistent with previous news reports and comments that I have repeatedly heard from Border Patrol agents who work closely with your office. You have previously disregarded my requests for information that can help me understand the extent of the problems associated with prosecuting alien smuggling cases and the resources you would need to adopt a zero tolerance policy for trafficking in human beings.

In the case of the memo I released, the fact that you have chosen to focus on unspecified alterations to what you freely admit is an "old Border Patrol document" and your assertion that this document was not seen or approved by Border Patrol management does not dismiss the verifiable facts and details in the memo. I can readily understand that the internal memo, written by a Border Patrol employee, is an embarrassment to your office as the memo speaks with such candor about barriers to prosecution that it could not be embraced and released publicly as a report representing the views of Border Patrol management.

On Monday, my office requested your assistance in obtaining a copy of the report you referenced in your statement but your office has not returned that phone call. I find your statement that "all dialogue and debate should be based on well-informed and accurate data" incredibly disingenuous considering your record in response to my past requests for information on criminal aliens and alien smuggling.

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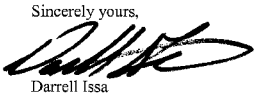
The last correspondence I sent to you was October 13, 2005, concerning an alien by the name of Alfredo Gonzales Garcia, a.k.a. Isidro Gonzales Alas, FBI # 180566JA5. In this letter I asked that if there is some barrier to the prosecution of criminal aliens, including smugglers, that I am unaware of, to please communicate it so we can make sure you have the resources and policies in place needed to allow you to bring these criminal aliens and repeat offenders to justice.

Finally, as the representative of a Congressional district that is greatly impacted by border crimes and as a Member of Congress who sits on the Judiciary Committee, the Intelligence Committee, and the Government Reform Committee that collectively have oversight responsibilities for the Department of Justice and the Department of Homeland Security, your lack of cooperation is hindering the ability of Congress to provide proper oversight over your office and to make informed policy decisions. I am asked to craft and vote on legislative policies that determine your legal authority and the resources you receive and having full and correct information on an issue like the challenges of stopping alien smugglers is essential.

I request a joint meeting with you and the Chief Patrol Agent of the San Diego Border Sector to discuss the prosecution of alien smugglers and what resources are needed to establish a zero tolerance policy for prosecuting individuals who traffic in human beings. My office will contact your office to try and arrange a meeting time.

Sincerely yours,



Darrell Issa
Member of Congress

Mr. ISSA. Thank you, Mr. Chairman.

And after Carol Lam's removal did you find any indication from, I guess, yesterday or the day before when former CIA official Foggo was convicted, that there was any relief in the prosecution related to wrongdoing?

Mr. FINE. We didn't look into that specifically. We saw no evidence that the prosecution wasn't handled in a normal and appropriate way.

Mr. ISSA. Okay. And just for the record, I think Dusty is right now packing up his goods and reporting to prison, having pled guilty.

The underlying claim for dismissal in one of your other paragraphs it says: Rather, the evidence in our investigation demonstrated that Lam was removed because of the Department's concerns about her office's gun and immigration prosecution statistics.

And isn't it true that those statistics, as compared to other border officials, were less? I mean, she simply underperformed or refused to bring as many people in. You don't bring them in the front end, you don't get them out the back end in prosecutions, right?

Mr. FINE. Well, we did find the Department's concerns about her immigration and gun prosecutions is what led to her removal. The concern that we had is that she had a response to that. She had reasons why in her district they weren't at the same level, that she was bringing bigger cases, that there was enforcement of this on the local level. And the problem was, the Department never really seriously and objectively analyzed those concerns. And, in fact, they had outlined a plan to address it, a reasonable plan we thought to address it; that is, discuss it with her, come up with a plan to address these concerns, have a heart-to-heart talk with her. If she balks or if she doesn't do it, we should remove her.

Mr. ISSA. Isn't it true that plan never actually got to her?

Mr. FINE. That was the problem. That plan never actually happened and the Attorney General and Kyle Sampson said okay to the Deputy Attorney General's Office, let's implement that plan. She responded to a request about, are these statistics accurate? Yes, they are accurate, but explain why they occurred. And the Deputy Attorney General's Office turned this over to an intern. The intern said, I don't have the expertise to evaluate this. And then nobody evaluated it. And then she was removed. So we——

Mr. ISSA. Okay. But let's go back again, because you mentioned the local control. I never wrote any letters about her enforcement of firearms. And firearms do have dual jurisdiction. But as to coyotes, human traffickers, bringing people over the border, that is an exclusive right of hers. There is no local remedy.

Let's just focus for a moment on her refusal to prosecute human traffickers who were bringing over illegals, even publishing a document that became known to coyotes; that if you didn't basically shoot somebody, that you could come over and be caught month after month after month with a half a dozen illegals and you would be released. Now, you did find that, correct?

Mr. FINE. We found that—there were concerns about her decisions. And then she would state that she prosecuted the most serious offenders with the longest sentences. And it took more re-

sources to do that. Now, what we didn't do and it wasn't our goal to say who is right or who is wrong.

Mr. ISSA. Sure, I understand that.

Mr. FINE. What our goal is, is to look at the process that they used, and they didn't really analyze that.

Mr. ISSA. Did you analyze the President's stated policy? So you didn't analyze whether or not there was a policy that she was flagrantly ignoring or disagreeing with?

Mr. FINE. No. We did not do that. We did not make the underlying determination. We looked at the process that was used to address those concerns.

Mr. ISSA. Switching back to Congress. At that time Jim Sensenbrenner was Chairman of this Committee. Were you made aware that both Congressman Sensenbrenner and myself both went down and held hearings and had a face-to-face meeting with Carol Lam?

Mr. FINE. Yes. I think it is in the report.

Mr. ISSA. I just wanted to make sure that it gets into this part of the record.

So it is not going to surprise you that in that meeting, she told us about her early days as an assistant U.S. attorney and the fact that she thought these were pretty useless because she was forced to do these cases, actually personally have these coyotes come before her and get these de minimis sentences, as she viewed it.

And even as we asked, well, if you do them multiple times you get stronger ultimate penalties, eventually you can get real penalties, she said, yeah, but that just takes too long and they usually get time served and it is 60 days the first few times and I have bigger fish to try.

Does any of that surprise you based on your interview with her?

Mr. FINE. Again, we did not look into the substance of the dispute that she was having with these issues. And the Department certainly has a right and an obligation to look into this and to assess this and to determine whether or not a U.S. attorney is adequately pursuing the Department's priorities.

Mr. ISSA. Mr. Fine——

Mr. FINE. The important point.

Mr. ISSA [continuing]. As an IG, you look at two things. And I sit next door on Government Reform and Oversight. So nobody could respect not just your role, but the IGs in every part of the many bureaucracies of government. Ultimately when you have a political appointee who serves at the pleasure of—and you fill in the blanks—but ultimately the President, is there any reason at all as an IG that they cannot be terminated simply for saying, I disagree with that policy, and I will not enforce it or don't believe I should or believe that my job says I should be able to ignore that polic?

Is there any reason to believe that immediate termination is not appropriate based on that one statement by a political appointee who serves at the privilege—the pleasure of the President and who disagrees with stated policy and says they don't believe they should enforce it?

Mr. FINE. I think if a political appointee is insubordinate and says I am not going to enforce the policy, unless there is an illegal reason that is being stated why she should do it, but if it is not

an issue, it is simply I am not going to enforce a priority of the Department, then she can be terminated. Absolutely.

Mr. ISSA. Finally, if—as I will assert here while taking your testimony—in front of Jim Sensenbrenner and myself she said exactly that; that she felt that she was an independent entity confirmed by the Senate and, as such, did not have to look at the policies ultimately of the President except as advisory, and that she made those independent decisions of her priorities and that she would continue to do so, would you say that since she said it to two Members of Congress, including the Chairman of the Committee of jurisdiction, that congressional activity making the Administration aware of that and of this inconsistency—at least in our understanding—of her freedom of movement within policy, would you say that was correct for us to convey that back to the Administration? Not what gets done with it. But is it appropriate when we hold a field hearing on this problem at the border and she tells us that, is it appropriate for us to inform the Administration and ask them to take what they think is an appropriate response?

Mr. FINE. I think that is appropriate. I think that is fine for Members of Congress to relay that to the Administration and the Department and the President, and that the Department has an obligation to look into it and to assess this, and to ask her, what did you say and why are you doing this? And what is the situation here? So I don't think there is anything wrong with bringing that information to the attention of Department of Justice.

By the same token, the Department of Justice has an obligation to look into it and to assess it and to ask, in my view, ask her for her response to this. Did you actually say that and why? My problem with this is, that never happened at the Department of Justice level.

Mr. ISSA. I certainly would——

Mr. CANNON. Would the gentleman yield?

Mr. ISSA. I would yield to the Ranking Member.

Mr. CANNON. I think the gentleman knows, because we have talked about this—I have the greatest respect for U.S. Attorney Carol Lam. I think she was marvelous. She has gone on to do great things in her career. I don't think she has been hurt by this process. So this is, in my mind, not so much about her as it is about your expectations. And you have been talking about, you know, maybe on guns there is dual jurisdiction, and maybe there is some reason not to fire her there; but maybe there was reason to fire her because she didn't pursue immigration issues the way the Administration wanted to. Mr. Margolis indicated in his testimony that she was probably insubordinate.

Those things are not important in my mind. What is important is you are holding the President to a standard that says that he needed to follow up with serious and objective review of her response to the shortcomings. So she is told, you are not doing these things. We are unhappy. She responds. And instead of being able to fire her, you expect to put on the President, or on the Administration, this standard.

Where do you have imputed in the law a responsibility to review the performance of a political appointee on a serious and objective

standard instead of just saying, we don't like what she is doing, we want to replace her?

Mr. FINE. It is not illegal to do that. I will grant you that. But what the issue here is, if you are getting complaints about a U.S. attorney for a certain reason, we believe it is an appropriate practice and a better practice—and I believe the Department would even say this—that it makes sense to ask her about it, to assess this, not simply to accept as true something that is as common as a complaint with her.

And as we talk about, the Department actually got this and put out a reasonable plan, in our view, that they thought should have been followed. And it wasn't followed. And I will also point out that Deputy Attorney General Comey, when he was Deputy Attorney General, did talk to her about this and they did have a discussion. And he discussed the reasons why. And she told him the reasons why. And he did not say, you are being insubordinate. They moved forward.

Now, is there a legal obligation to ask a U.S. attorney for a response to a serious complaint that will lead to her dismissal? I don't think it is in the law. I certainly think it is appropriate management practice.

Mr. CANNON. But I think that you have missed—you are talking not about asking her questions but about her response and explaining why she hasn't done things, and then the response by the Administration to that. Does the Administration have to implement—with a political appointee—the same kind of activity that you would expect in a private company or at a lower level of employment? In other words, the biggest problem I have with your report is that it presumes, it creates a standard for the ability to dismiss someone. Granted, you can't do it for improper reasons. But you are creating a standard that I think is out of whole cloth, it is not founded in law.

Mr. FINE. We are not saying that this has to be done by law. We are saying that this is certainly a management practice that the Department of Justice should implement. And in fact the Department of Justice, even after this occurred, said they should have done it.

Mr. CANNON. Before I yield back, let me just point out that there is good management practice and there is constraint on the political process in America. And I think that you are looking—you are overstepping the line by applying management practice to a political environment. And I yield.

Mr. ISSA. Reclaiming my time. I want to follow up on that just very briefly.

Mr. Fine, at the beginning of the Clinton administration and now next the Bush II administration, isn't it true that basically virtually all U.S. attorneys were summarily dismissed.

Mr. FINE. Yes——

Mr. ISSA. Okay. And isn't it true then that that doesn't follow any good management practice that you know of?

Mr. FINE. I think that is a separate issue——

Mr. ISSA. No. No. Wait a second. I apologize but let's go back to management practice. You are making it a separate issue. If you are trying to change the direction of an organization, and you ter-

minate everybody and for a period of time you have basically no U.S. attorneys, they are all acting, some subordinate that is elevated to acting, and you have to go through the process for several months to replace them, is that a good management practice as opposed to the pleasure of the President and a direction change that is political, not quote management?

Mr. FINE. I think it is a fine management practice. It is not unprecedented. It happens all the time when an Administration changes for wholesale replacement of political appointees.

Mr. ISSA. So if in fact a group of U.S. attorneys, 1, 2, 10, 12, cumulatively represent a group of people that for whatever reason by terminating them and replacing them with other people, would signal various changes in directions or emphasize certain policies, that would be equally reasonable if you are firing your own people as if you are firing the previous people because in both cases you are making a statement, potentially, with absolutely no reason whatsoever for the termination, simply wanting to make a statement because of what you are going to do going forward, isn't that true?

Mr. FINE. In my view, the problem is the statement that these were underperforming U.S. attorneys——

Mr. ISSA. No, I understand that. I'm not asking about these specific ones. I'm saying does the President through his Administration have the right to pick half a dozen, 20, 30 of anything and choose to make a termination, not were they muddied in—I think all us on both sides of the aisle can agree that this was pretty muddied and muddled as to why you are terminating people, what makes them different. I'm not going to talk about the communications here. It clearly was not good. Isn't it true that just as when President Clinton fired all but one of Bush I's U.S. attorneys summarily and then had a period of time with nobody and then put his people in, that he was making a policy statement, and it is common, as you said.

At any time in the middle of an Administration if you ask Secretary Rumsfeld to leave and replace him with Secretary Gates or anything you don't need a reason to terminate them. You only have to want to make a change for whatever your internal purposes are to make a statement. Isn't that true within the political—I don't want to confuse good management practices with the absolute right of this President and obviously the next President.

Mr. FINE. There are two separate issues, one, can you do that? Yes, as long as there is not an illegal reason, and we talk about the issues related to that, whether——

Mr. ISSA. And you found no illegal issues?

Mr. FINE. Well, we said our investigation is not complete and that the issues regarding David Iglesias need to be fully investigated and whether that was to interfere with a actual prosecution of a particular case, that is an issue. But as to your statement can you simply say I want 10 of them gone, you are out, without giving any reason without giving any notice, it is not illegal to do that.

Mr. ISSA. Thank you, Mr. Chairman. I think we have made the points that can be made once again, and I thank you for the leniency to make those points.

Mr. CONYERS. I would usually thank you for that.

Mr. ISSA. And you are very welcome, Mr. Chairman.

Mr. CONYERS. The Chair is pleased to recognize the Chair of the Crime Committee, the distinguished gentleman from Virginia, Bobby Scott.

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Fine, we have heard that the firings would be a function of who is doing what the Department wants. Could you remind me if there is any difference between the routine political replacements at the beginning of an Administration and firing U.S. attorneys for failing to file frivolous charges against Democrats to affect an upcoming election?

Mr. FINE. That would be, in our view, a potentially illegal reason because it would potentially interfere with a prosecution of a particular case.

Mr. SCOTT. And we were told at first that the reason this group of U.S. attorneys was fired was for cause and performance as a group. Are there any in that group for whom no credible case can be made that they were fired for performance? Were there any in the group?

Mr. FINE. Were there any in the group? We looked at the situation of all of them and I think even the Department would admit now that Mr. Cummins had nothing to do with performance. It was to replace him to give someone else a chance to serve in that office. They made claims about performance issues with regard to several of the others. We didn't find them to be accurate. And with regard to some, we did find performance issues.

Mr. SCOTT. And you found statements not to be accurate. Were these misleading statements that were made crimes? Let me ask it another way. Could they be the basis of criminal investigations for which, if proven, could be crimes?

Mr. FINE. If somebody makes a false statement with the intention, knowing that it is false and makes that false statement to a tribunal or investigator or Congress, that is a crime. We are not saying that that occurred here. We are simply—we haven't established that. We described what we found in the report.

Mr. SCOTT. Now you said that you could not fire them for illegal purposes. I assume you are talking about if someone was fired because they didn't give a kickback, that would be an illegal purpose, is that right?

Mr. FINE. That would be one illegal purpose.

Mr. SCOTT. And obstruction of justice. What other allegations of crimes are you talking about, allegations that need to be investigated?

Mr. FINE. We talk about this in the chapter on David Iglesias. We talk about the potential issue of false statements and we talk about the issue of his removal and whether that was intended to interfere with the prosecution of a particular case.

Mr. SCOTT. And what kind of crime would be implicated in that case?

Mr. FINE. Potentially we raised the obstruction of justice statute and a wire fraud statute. We are not saying it is. I want to be clear about that.

Mr. SCOTT. Right. Did they cooperate? Did you get good cooperation from the Department of Justice in your investigation?

Mr. FINE. Yes.

Mr. SCOTT. Did you get good cooperation from all of the witnesses in your investigation?

Mr. FINE. Not all of them.

Mr. SCOTT. Which ones did not cooperate?

Mr. FINE. The main ones that we talk about are Harriet Miers, Karl Rove, Monica Goodling, Mr. Kelley at the White House, Mr. Klingler at the White House, Senator Domenici, his Chief of Staff. Those would be the main ones.

Mr. SCOTT. And how did their failure to cooperate affect the investigation?

Mr. FINE. It did not allow us to fully investigate all of the reasons for the removal of the U.S. attorneys and to fully develop all the facts.

Mr. SCOTT. And with the potential criminal acts floating around, you were not able to get to the facts to ascertain whether or not crimes had been committed?

Mr. FINE. We were not able to uncover all of the facts, and we believe that a prosecutor ought to look at them, yes.

Mr. SCOTT. Now, a prosecutor has been appointed. What would be the difference between the appointment of an acting U.S. attorney and a special prosecutor not in the chain of command of the Department of Justice? Would there have been a difference?

Mr. FINE. There would have been some differences. The regulations, 28 CFR, Part 600, describe what the duties are of a special counsel appointed under that special regulation as opposed to somebody appointed especially for this case within the Department of Justice as this attorney was. So there are differences in terms of who can be appointed and the reporting requirements of those two scenarios.

Mr. SCOTT. And what are some of those differences?

Mr. FINE. Part of the difference is who can be appointed. Under the special counsel regulations it could be only somebody outside the Department of Justice.

Mr. SCOTT. And what is the disadvantage of appointing someone within the Department of Justice chain of command? Are there any conflict of interest potential or any other limitation that may occur if you are appointed from within the Department of Justice trying to investigate the Department of Justice?

Mr. FINE. Well, from within the Department of Justice it would typically report in the typical chain through the Deputy Attorney General and the Attorney General. They have the authority of the Department of Justice and one of the benefits of it could be that you don't start up a whole new investigative body but use the experience and the resources of the Department of Justice. With the special counsel provisions there are some restrictions on what can happen to the report and the confidentiality of the report. So there are pros and cons each way. The Department decided to appoint Nora Dannehy, the acting U.S. attorney in Connecticut.

Mr. SCOTT. And does the prosecutor in this case have subpoena power?

Mr. FINE. The Department of Justice has subpoena power. I would assume this prosecutor has the subpoena power based upon her judgment about where this evidence would lead her.

Mr. SCOTT. Is she able toempanel a grand jury?

Mr. FINE. I would believe that she has full authority to investigate this as she deems fit.

Mr. SCOTT. Can she immunize witnesses?

Mr. FINE. I would believe she has the authority of the U.S. attorney in the District of Columbia, which would include that.

Mr. SCOTT. Can she subpoena documents from the White House?

Mr. FINE. Same answer. I believe she has the full authority.

Mr. SCOTT. Can a U.S. attorney subpoena documents from the White House?

Mr. FINE. The Department of Justice can subpoena any documents that it believes is relevant to its investigation.

Mr. SCOTT. Can they issue subpoenas to witnesses like Karl Rove and Harriet Miers and require testimony?

Mr. FINE. The Department of Justice can do that.

Mr. SCOTT. Does she need approval to do any of those things and, if so, from whom?

Mr. FINE. The precise direction and reporting requirements of this acting U.S. attorney I think are being developed. She has just been appointed. She was appointed on Monday, and I think she is getting her arms around this and will determine where to go and determine how this will be structured.

Mr. SCOTT. If she decides that she wants to subpoena documents or subpoena witnesses, can the Attorney General overrule her.

Mr. FINE. How this is structured within the Department I think is being assessed, and it is really not for me to describe at this stage and in this forum the exact reporting relationship. But I do believe that she needs to aggressively and thoroughly investigate this.

Mr. SCOTT. What are the issues within the scope of her investigation? Is she limited at all in her scope by virtue of her appointment?

Mr. FINE. Again, as to the scope of the investigation, I believe she will have full authority to take this where she believes it is appropriate.

Mr. SCOTT. And so that would include all of the substantive crimes related to the firings, false statement, obstruction of Congress, obstruction of justice also?

Mr. FINE. I believe she will have the authority to take this after her assessment of it in an appropriate fashion.

Mr. SCOTT. And if she decided to prosecute someone could that be overruled by the Attorney General?

Mr. FINE. The exact reporting relationship and scope of the authority and how that is structured I will just have to leave it for another day for them to discuss.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. CONYERS. Thank you very much. The Chair is pleased to recognize the distinguished Member of the Committee, Mel Watt, who is a Subcommittee Chairman of the Finance Committee as well.

Mr. WATT. Mr. Chairman, I think I will pass in favor of somebody who was here earlier than I, if you choose to pass over me.

Mr. CONYERS. Do you care to name that person?

Mr. WATT. Well, I don't know who was here earlier than I. So I will let you make that choice.

Mr. CONYERS. Well, let them make the choice.

Mr. WATT. Were you here earlier than I?

Ms. LOFGREN. I wasn't taking attendance, but I will be happy to go.

Mr. WATT. I will defer to the gentlelady from California.

Mr. CONYERS. The Chair recognizes Zoe Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman. Mr. Fine, we have gone through this looking at this U.S. attorney scandal for some time now and throughout this Republicans have been intoning, and we heard it here today, that because U.S. attorneys are political appointees who can be removed for any reason there is nothing wrong or remarkable with respect to these firings. But your report basically I think charges the Department of Justice for removing attorneys for improper political reasons.

What makes a political motivation improper and what improper political motivations were at play in these firings?

Mr. FINE. I think there were several instances of this that troubled us and caused us concern. First and probably most serious was David Iglesias, his removal and the allegation that it was intended to interfere with, or retaliation for, his prosecutive decision in a particular case and to influence that particular case. I think that would be improper.

The second one we talked about, Mr. Graves, who was removed, based upon our investigation because he declined to get involved with a partisan political fight within the State of Missouri among political officials. He was told his job would be protected and then he was subsequently removed.

We also saw that another official, Mr. Cummins, was removed to make a place for somebody else.

And then the third and final thing that I would say is we talked to Mr. Sampson. Mr. Sampson said his analysis was not whether a U.S. attorney was mediocre, was simply mediocre. It was were they mediocre and didn't have political support. And so he even said he took some of those off the list because of their lack of political support. That, as I stated earlier, troubled us, and in our view threatened to undermine the independence and integrity of the Department of Justice if the message is that in order to maintain your position as a U.S. attorney you have to maintain political support, regardless of whether you are making appropriate prosecutive decisions based on the Department's priorities, the laws and the facts. If somebody, politically powerful people in your State, doesn't like that, you are subject to being removed and the Department of Justice is not going to look into this, support you, if you have been following its priorities, if you have been making appropriate prosecutive decisions, then that is what troubled us.

Ms. LOFGREN. Basically I think what you are saying is legally you could use a trivial reason. I don't like the cut of your jib but you can't use an improper reason that, you know, you are going to get fired unless you use the full weight of the Federal Government to prosecute my political enemies.

Mr. FINE. You can't use an illegal reason.

Ms. LOFGREN. My understanding is that you are continuing the investigation in the Civil Rights Division, is that correct?

Mr. FINE. That investigation is ongoing.

Ms. LOFGREN. So I imagine you are unable to comment on it at this time.

Mr. FINE. That is correct.

Ms. LOFGREN. So I won't ask you to. But I am concerned that there is a cloud over the Civil Division especially as it relates to voting and we have a very important election coming up. It would be ideal if we could dissipate that cloud before Election Day. Do you anticipate the report being done before then?

Mr. FINE. I don't want to predict when it will be done. I have been here for 8 years. When I do that, I am often wrong. And we recognize the importance of this matter.

Ms. LOFGREN. I don't want to abuse the time, but I do have one final question. I have many questions. But I know other Members do as well. You have noted in your investigation in the firing of Mr. Iglesias that you were hampered by a lack of cooperation from key witnesses, and we are familiar with that obstacle in this Committee. With Miers and Rove that doesn't surprise me, and we are pursuing their testimony here through contempt citations. But what surprised me was Senator Domenici and his Chief of Staff. It is my understanding they refused to be interviewed. And there is no executive privilege that they could assert. I am curious what the reasons were that they gave, if any, for refusing to cooperate.

Mr. FINE. There was a series of reasons with Senator Domenici, through his counsel. Initially it was the pendency of the Senate ethics investigation and that they would cooperate with us after that. When the ethics investigation ended, we renewed our request, and then there were concerns expressed by the Senator's counsel about whether they had oversight over the budget of the Department of Justice. We didn't think that was a legitimate reason not to cooperate with us. And the other concern was about wanting to know the conditions of the interview. And we had done it a certain way with others. We were willing to discuss that and waive them. Eventually, they offered to provide responses to written questions through counsel which we declined to go forward with. We wanted to interview Senator Domenici and not ask written questions and receive written answers.

Ms. LOFGREN. Of course not. I don't think those are valid reasons personally. You don't need to give your opinion, but certainly the U.S. attorney reviewing this will have her own opportunity to compel testimony next year. And I thank the Chairman for yielding.

Mr. CONYERS. The Chair recognizes the gentleman from Massachusetts, himself a State prosecutor for many years before coming to the Congress, Bill Delahunt.

Mr. DELAHUNT. Thank you, Mr. Chairman. Mr. Fine, once more an excellent piece of work. You are to be commended. You have made a significant contribution, I believe, to the Department of Justice and to the American people. This is all about restoring confidence in the integrity of the Department.

And I also want to acknowledge the two U.S. attorneys that are here. Their reputations are superb. Their credentials are superb, and I think it is fair to say that they have been victims, and that is sad but their reputations I would suggest have been enhanced with the attention that this particular issue has received from this

Committee. So I think the truth is out, and I think the truth will continue to come out.

I just want to make a comment. Maybe one question. As the Chair indicated, I was a State prosecutor. Grand juries in the States or at least in the Commonwealth of Massachusetts can issue a report if not an indictment. Is the same true in the Federal system?

Mr. FINE. I believe it is possible in extraordinary circumstances. I think it is. I don't know whether this actually happened. I know the Rocky Flats case is one that comes to mind. I don't know the exact outcome of that, but I think in extraordinary cases that is permissible with permission of the court.

Mr. DELAHUNT. I see someone who has the answer.

Mr. FINE. He says I am generally correct. It may have to be preapproved by a court. There has to be certain conditions. I am not saying it is a certainty or an easy thing to do.

Mr. DELAHUNT. What I glean from your report and not just this report, I think what you have done is at least for me you have connected the dots by alluding to the other reports that you have issued. And the conclusion I reach is that the Department of Justice, this Department of Justice, particularly under the tutelage of Attorney General Gonzales, was permeated with crass partisan politics. And I am not naive. Obviously, U.S. attorneys secure their position because they are politically connected. I understand that. And I think you addressed that well. They are to leave the politics at the door after they take their oath. But that didn't occur under the tutelage of that particular Attorney General. And because it became an order of magnitude that infected every single aspect of the Department of Justice, it wasn't just about the removal of the U.S. attorneys about which we had hearings. The other report was the hiring practices for the honors program and summer internships also had a political filter, a program that is highly regarded and well respected and clearly something that most young law students or even young lawyers look at as a resume builder, as something to compete for, and yet even there it was about politics and whether you passed the political and ideological litmus test.

And then it came to hiring practices, hiring practices for career prosecutors. Again your report corroborates that crass, ideological and partisan political considerations just infected the Department of the Attorney General under Alberto Gonzales.

There was a test, a political test, it would appear to be, for every function within the Department of Justice, and I find that deplorable. And I think it is important that we speak to that issue because I know many of the career people in the Department of Justice were disappointed and were disgusted with what was happening. And I think it is important that the American people know that the career people that serve this country so well in the administration of justice as members of the Department of Justice had nothing to do with what was occurring at the political level and that their confidence in the Department should remain because of the career people that make it, I believe, something that is a shining example, if you will, particularly for young lawyers who are looking for a career of public service.

It is an excellent department, and under the tutelage of Alberto Gonzales, he undermined that reputation at every level for summer jobs, for hiring professionals, for the removal of U.S. attorneys. It is a legacy that is disgraceful, and I feel badly for the professionals in the Department of Justice.

But I think you have connected the dots, because we take a look at each of these reports in a silo view, if you will, but with each report that is issued by your office it is the same story. There was a political and ideological aspect that just jumps out at you. It might have been true in other Administrations, but it would appear the arrogance of this particular Administration in their hubris didn't even care, didn't care. A lot is said here about Attorney General Gonzales and his Deputy Attorney General Paul McNulty, who many of us knew here and I found Paul McNulty to be a man of integrity, someone that worked well with Democrats on this side of the aisle. I think he, as far as I know, conducted himself very well as a U.S. attorney. But I had a sense when Monica Goodling testified here that there was testimony that Paul McNulty was—that she and others in the White House were instructed via e-mail to circumvent the Deputy Attorney General, to keep him out of the loop. It is as if they set up their own group, if you will, within the Department, to make sure that things were going well in their very narrow political and ideological view of how justice is administered.

We have seen it elsewhere in this Administration.

I think of the DOD, Department of Defense. They had their own intelligence shop that clearly found information or saw information vastly different than other agencies within the intelligence community, and it has led to disaster after disaster.

But in any event I don't have any questions, but I just wanted to make that observation because I think what you did in your opening remarks, in your written remarks, that you connected the dots. And what we have here is a mosaic that I think is sad and deplorable, and let me conclude by saying thank you for the work that you and the members of the inspector general's staff have done for all of us. And with that I yield back.

Mr. CONYERS. Thank you, Mr. Delahunt. I hope you are feeling better.

Mr. DELAHUNT. Much better.

Mr. CONYERS. The Chair recognizes the distinguished gentleman from Georgia, himself a former magistrate in the court of that State, Hank Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Fine, was there any evidence uncovered in your report or in your investigation indicating that any of the U.S. attorneys were pressured to investigate and/or prosecute public corruption cases involving Democrats?

Mr. FINE. We talked about the allegation in regard to Mr. Iglesias, and the allegation was that he was pressured regarding the timing of a public corruption investigation called the Courthouse case in New Mexico which involved Democrats.

Mr. JOHNSON. In my own State of Georgia, former State Senator Charles Walker may have been subjected to a selective prosecution. Mr. Walker was a high profile Democrat. He made history by being elected the first African American to become majority leader of the

Senate in the country. His efforts to change the Georgia State flag and success at beating the current Governor of Georgia, Sonny Perdue, for the position of Senate majority leader has led many to believe that those events led to his downfall. During the current Governor's campaign he vowed to create an inspector general's office to investigate corruption and cronyism. Concurrently the Georgia Republican leadership openly pressured former U.S. Attorney Richard Thompson to go after prominent Democrats, a fact which was confirmed through a subsequent internal investigation by the Department of Justice. The DOJ investigation ultimately concluded that U.S. Attorney Thompson, quote, abused his authority and violated the public trust for the purpose of benefiting a personal and political ally, unquote. After the internal investigation, U.S. Attorney Thompson resigned. Thompson's successor continued the investigation against Senator Walker. The resulting investigation ended in the indictment filed against Senator Walker on 142 counts of mail fraud, tax fraud and conspiracy. Despite the pending indictment, Senator Walker was reelected but he was later convicted on 127 counts and sentenced to serve 10 years and 1 month. He was also fined and assessed a $1 million fine. Mr. Walker currently sits in a medium security prison. There are real concerns that Senator Walker might have been prosecuted based primarily on politics rather than on misdeeds. Selective prosecution does not necessarily negate any crime that may have taken place, but it does bring into question why some may be pursued and others not.

Did your investigation, sir, uncover any evidence that perhaps prosecutions or investigations involving Republicans as the target were—that any U.S. attorneys were pressured to end those investigations?

Mr. FINE. No, we did not see that. Although our report addressed the removal of these nine U.S. attorneys, it was not an exhaustive review of prosecutorial decisions by the Department of Justice.

Mr. JOHNSON. Switching directions now, I want to ask you some questions about Harriet Miers and her refusal to speak to your investigators. The report that you have issued says that the White House encouraged aides to speak to you. Is that correct?

Mr. FINE. Yes, they did. The White House Counsel's office, we had discussions with them, and they did encourage both current and informer White House officials to speak to us, and there were a number of current White House officials who did speak to us.

Mr. JOHNSON. Was Harriet Miers one of those who the White House encouraged to speak to you?

Mr. FINE. She was one who we requested to be interviewed, and my understanding is that all the witnesses were encouraged by the White House Counsel's office to speak to us.

Mr. JOHNSON. So am I correct that she said that she would not talk to your investigators because she did not want to risk having to appear before this Committee?

Mr. FINE. The reason that she gave—at least her attorney gave—was that an interview might undermine her ability to rely on the instruction she had received from the White House directing her not to appear for congressional testimony. So it did have potentially, in her attorney's view, an impact on that position.

Mr. JOHNSON. Now this is very confusing. Harriet Miers' lawyer told us that she would be happy to testify but the President had ordered her not to. So it seems to me that they are playing games. To us, Ms. Miers says she is willing to testify but the White House won't let her and to you she says that she won't testify even though the White House says it is okay. What is your reaction to that?

Mr. FINE. Well, I think the White House encouraged her to but her attorney believed it might have an impact on her ability to rely on instructions from the White House. So while the White House was saying we encourage current and former White House officials to talk, I think her attorney made an independent judgment about that.

Mr. JOHNSON. All right. I have no further questions. I will yield back.

Mr. CONYERS. Thank you, Mr. Johnson. The Chair recognizes Mr. Mel Watt.

Mr. WATT. Thank you, Mr. Chairman. And I appreciate the Chairman coming back to me in the rotation since I just arrived when my time first came up. I want to follow up on my good friend and colleague, Mr. Johnson's, Representative Johnson's questions in this way. There is an ongoing investigation that you are continuing to do and then there is the special prosecutor, is that correct?

Mr. FINE. No. The special prosecutor has been assigned to pursue our investigation. So it is not an independent, or two different, investigations. She is, my understanding is, going to take what we have done, look at that, and pursue the investigation.

Mr. WATT. So her, the parameters of her authority would be the things that you have already investigated or you have done some preliminary work on?

Mr. FINE. I believe that she would, in the first instance, rely upon that and take it wherever it leads.

Mr. WATT. And the scope of what you continue to do is what?

Mr. FINE. We are not doing something separate and independent from what we have done and what the special prosecutor will continue to take. Our report is complete and we are not going forward with an alternative investigation to what the special prosecutor is pursuing.

Mr. WATT. Would it be within your purview if additional allegations of politically motivated prosecutions were brought to your attention, or are you restricted to the cases that you have already done?

Mr. FINE. No, we are not restricted. If we receive allegations that warrant investigation, we have the authority to do that. I will say, though, we do not have the authority to investigate prosecuted decisions made by Department of Justice prosecutors. That is within the jurisdiction of the Office of Professional Responsibility. As you probably know, we have restrictions on our jurisdiction within the Department of Justice. We can investigate everything except for attorneys in the exercise of their legal duties to investigate, litigate, and provide legal advice. That is for the Office of Professional Responsibility to investigate. That is the carve-out for our jurisdiction. And I have talked about that and suggested that it be amended, and that has not happened yet.

Mr. WATT. And who would have to amend that?

Mr. FINE. The Congress of the United States.

Mr. WATT. Let me be clear on what that dividing line is. Are you saying if there were other cases in which there was a likelihood that a prosecution was pursued, it is already done, prosecution was pursued for political reasons, regardless of the outcome, that would be outside of your jurisdiction to investigate or inside your jurisdiction?

Mr. FINE. That would be outside. That would be within the jurisdiction of the Office of Professional Responsibility because it has to do with a decision by a prosecutor or an assistant U.S. attorney or U.S. attorney to make a prosecutive decision, and the basis for that would be within their jurisdiction to investigate. I do know, it has been publicly stated, they are investigating the Siegelman case, for example. That is within their investigation, not our jurisdiction.

Mr. WATT. When you are talking about improper influence being brought on a prosecutor to prosecute, as opposed to the prosecution itself, where would that lie? Would it be within your jurisdiction or the other jurisdiction?

Mr. FINE. Oh, I see. If the allegation was that there was improper pressure to bring a prosecution but the prosecution didn't happen, the prosecutor resisted it, but you want to look at what the——

Mr. WATT. No, even if the prosecutor didn't resist it, actually prosecuted the case, if there were improper pressures brought on that prosecutor to bring the case, whose jurisdiction would that be in?

Mr. FINE. I would assume it would be within the Office of Professional Responsibility, but these are gray areas, and it seems to me that would be related to an exercise of a Department of Justice attorney's legal responsibilities. So that is within their jurisdiction.

Mr. WATT. That would be within their jurisdiction. Okay. So I guess what you are telling me is if this set of circumstances there was some reasonable belief that improper pressure was brought on a prosecutor, and that the prosecution did proceed, and I had knowledge of that, I should be bringing it to your attention and the ethics people or should I just be bringing it to the attention of the other side and tell me who that other side is, specifically?

Mr. FINE. The other side is the Office of Professional Responsibility, led by Marshall Jarrett, whom we jointly investigated this matter with. There are times where people bring to both of our attention the allegation, and we sort it out, we communicate, and we determine which is——

Mr. WATT. So I would be safer to bring it to both of your attentions, that is what I hear you say?

Mr. FINE. That would be fine to do.

Mr. WATT. All right. A couple of people, and I pursue this right after Representative Johnson pursued his question because. There has been some speculation that outside the purview of all of these cases that you have investigated, there were a lot of very improper, improperly motivated investigations and prosecutions taking place in various jurisdictions. And at least one of those, or one or more of them actually, is—I have become aware of because it was raised with me by constituents of mine. And I am just trying to be trans-

parent and clear on who I should be raising that with if, in fact, substantial enough evidence that seems to me to rise to a real concern about improper conduct, who I should pass that along to.

So I appreciate that. I will let it lay there without even raising the context or the specific case, that case or cases that I am concerned about.

Thank you, Mr. Chairman. I yield back.

Mr. CONYERS. Thank you very much. The Chair recognizes Artur Davis of Alabama, himself a former Assistant United States Attorney.

Mr. DAVIS. Thank you, Mr. Chairman. Let me, Mr. Fine, given the time constraints, we have a vote that is an important one as you know that will be called soon, try to hit three separate areas and get your reactions to them.

The first one, and I want to finally sweep away some of these issues that have been raised by some on the minority side of the aisle. One of my colleagues on the minority side at one point refers to the U.S. attorneys as being a political appointment and talked about the President's ultimate discretion to replace political appointments as he wishes. I hope no one listening in this hearing misses the obvious. A U.S. attorney is not a policy instrument. A U.S. attorney has discretion over whether or not to charge people which could lead to their freedom being taken away. A U.S. attorney has the discretion to launch an investigation which is something that could unravel someone's political career or reputation regardless of what comes of those charges. It is not a policy making instrument. This isn't your Assistant Secretary of HUD for Congressional Relations. That is an important point. I assume you would agree with that, Mr. Fine.

Mr. FINE. I generally agree with it. It is a very important position and they affect the life and liberty of citizens in the United States.

Mr. DAVIS. The second set of observations, you looked at the very specific and very important question of whether certain U.S. attorneys were removed because they lost political favor. That raises a corollary question that has come up in the course of this investigation over and over. If there were U.S. attorneys who got fired because they were making decisions that weren't the best political decisions, it raises the obvious question, were there U.S. attorneys who were under performers who were unsuccessful who somehow stayed on because they made the right political decisions? Did you look at take parallel question?

Mr. FINE. We raised that issue, and that is the harm of this issue; that is, if it is based upon political support, as opposed to an assessment are you making the appropriate prosecutive judgments based on the law of the facts and the Department priorities, that will inevitably be the concern and people may think that, and they will lose confidence in the Department of Justice that they are making decisions based solely on the law and the facts and will believe that they are U.S. attorneys who are doing something to stay off a list, or that a U.S. attorney did something that got them on the list, when in fact they are trying to do their best to assess the law and the facts. And that is the harm that we saw of assessing it based upon political support.

Mr. DAVIS. I was a Federal prosecutor for about 5 years and practiced criminal defense law after that. So I spent about 10 years in and around U.S. attorneys offices. And in my sense there is either a strict wall between politics and prosecutions or there is no wall at all. You can't be a little bit pregnant. Either there is a strict wall that says politics has nothing to do with this or you have an environment in which God knows what comes over the transom.

This is what I am trying to get my hands around, the notion of a United States Senator picking up the telephone and calling a United States attorney about ongoing cases. That would have been inconceivable to me when I was an assistant U.S. attorney. I am trying to get my hands around the idea of a Chief of Staff of a Member of Congress picking up the phone and calling a United States attorney to ask about the status of a case and then going on to say, John, this is important that you guys move on this. I can't have imagined that having happened when I did the work that I did.

I am trying to wrap my hands around the idea of a political party chairman raising questions about why certain cases weren't brought and that person not being thrown out of the office of whomever he raised those concerns with. I am trying to get my hands around the notion of Members of Congress even thinking they could call U.S. attorneys to inquire about cases. Frankly, I am trying to get my hands around the concept of Members of Congress complaining about U.S. attorneys because I can't imagine that. If my party wins in November I can't imagine picking up the phone and calling the Department of Justice and saying you know this U.S. attorney kind of bugs me, I don't like the people they are prosecuting, so that person needs to go. And I suspect if I did that I think it would not be very well received.

Those things happened. Whether or not they influenced cases is an open question. Thankfully, it appears they didn't influence Iglesias and McKay and Graves. That is why Iglesias and McKay and Graves don't have jobs. But it raises the obvious question that so many people have raised in the context of Siegelman and these other cases that are floating around, is it conceivable that political partisans picked up some phone somewhere and called either influential people in DOJ or U.S. attorneys and said this is important to our agenda, go forward.

It also raises a question of atmosphere. Could ambitious U.S. attorneys have thought, you know, what if I bring this particular case and I get this particular notch on my belt, maybe that will allow me to climb the career ladder.

Can you react to how I am looking at that, Mr. Fine?

Mr. FINE. I do think, as I stated earlier, the Department of Justice can't control what everyone does. But if the Department of Justice gets a call like that, particularly an assistant U.S. attorney, needs to report it to the Department of Justice, then the Department of Justice has an obligation not to simply accept it and not to remove a U.S. attorney based upon complaints alone. And it does I think when the Department of Justice doesn't have the responsibility and doesn't take that responsibility to protect the independence and integrity of prosecutive decisions by simply accepting that

and removing U.S. attorneys without any inquiry whatsoever, I think that is harmful to the Department of Justice and the confidence in the Department of Justice. And I hope that through exposure of this, by sunlight on this, the Department of Justice can restore the confidence it has. And I think it will. And I think Mr. Delahunt talked about this.

The career attorneys of the Department of Justice ought to be commended. They have worked hard, and they do tremendous work. But these problems are problems. The Department of Justice is a proud institution that has a longstanding history of impartial justice, and I believe it will get by, get through this, and get over this, and I think it is critical that it does.

Mr. DAVIS. Another observation that flows out of that. You have identified and several questioners have identified various costs of this loss of credibility around the Department of Justice. There is another obvious cost. Virtually any defendant or any target who is a political figure is now able to stand on a soapbox somewhere and say, I was politically prosecuted. Possibly some more a target for political reasons, overwhelming majority probably were not. But what has happened, and this has happened to virtually every Member of this Committee. Almost every one on this side of the aisle has gotten phone calls since this investigation surfaced from someone who says, I am State Senator Smith, I think they got me because I was a Democrat, or I am mayor so-and-so, I think they are after me because I am a Democrat. And the next thing you know, that becomes a regular prevailing argument, and honestly it has more credibility than it would have had before because of these allegations, because the wall between politics and judgment collapsed. That is a cost that we should not lose sight of. It has now created a situation and an atmosphere in which all allegations of political misconduct take on a layer of plausibility. That is something we should worry about.

So I would just simply end, Mr. Chairman, by thanking you. You made the decision which I think has been borne out by the facts to do an aggressive inquiry and investigation and to encourage an aggressive inquiry and investigation into these allegations. There were a number of people, frankly, particularly on the other side of the aisle, who argued that this was much ado about nothing or that when Gonzales left the Department there was no longer a cause clbre, so our interest in the subject should fade. And even now there are people who suggest to you that your interest in obtaining testimony from Rove and Miers and Bolten is, well, it is all spilled milk and a new Administration is coming in, we ought to move on. I thank the Chair for making the correct decision that if there is a taint around the Department of Justice and potential obstructive acts or politically influenced acts around this Department, there is not a statute of limitations around that as a practical matter, and it is something we ought to be concerned about until we ferret out all the facts regardless of what Administration is in power. And I thank you for that, Mr. Chairman.

Mr. CONYERS. I thank the gentleman from Alabama.

Mr. CANNON. Does the Chair know when the next vote is?

Mr. CONYERS. Surely. It is almost pending.

Mr. CANNON. I thank the Chair.

Mr. CONYERS. The Chair is now pleased to recognize Bob Wexler of Florida, author and distinguished Member of the Intellectual Property Subcommittee.

Mr. WEXLER. Thank you very much, Mr. Chairman, for the very kind introduction. I want to echo Mr. Davis' comments in terms of your persistence, Mr. Chairman, with this topic and others. It is critically important, and I thank you.

Mr. Fine, in reviewing the report, like many Americans, I would like to say I was surprised, but I can't. I was more astonished, disgusted to see the results of the Department of Justice's own Office of Inspector General, which essentially if I understand it correctly finds that firings of U.S. attorneys were done in an inappropriate manner and essentially fueled by politics. And I want to echo Mr. Davis and others' comments regarding the essential role that U.S. attorneys have in our judicial system, the critical and serious role that they provide and the fact that Americans regardless of their political ideology must be able to trust that U.S. attorneys are free to prosecute cases in a free and impartial way, without fear, without fear of political retribution, particularly retribution from powerful political figures such as Mr. Rove or others.

The Bush administration's action in targeting U.S. attorneys for inappropriately political reasons clearly has undermined the American people's faith and, as your report indicates, severely undermines the independence and nonpartisan tradition of the Department of Justice. It is clear, if I understand it correctly, that the firings of certain of these U.S. attorneys had a profoundly disruptive impact across the country, particularly Mr. Iglesias, for apparently not bringing up a politically based case in New Mexico, Mr. Charlton in Arizona for daring to question whether a case was strong enough to seek the death penalty. But for me the more I learned, the case that upsets me the most, that ought to send a chill up every American's spine, is the case of former governor Don Siegelman of Alabama, who appeared to have been targeted by Karl Rove and others for what amount to base political and partisan reasons, and then he suffered greatly in the process.

My question, Mr. Fine, to you, essentially is, where do we go from here? This Committee under the Chairman's direction, excellent direction, we have conducted our investigation, we have been blocked too many times by a White House that refuses to allow essentially any oversight over its actions. I understand you had great difficulty getting cooperation from the White House as well. As has been rightfully pointed out, subpoenas for Mr. Rove and Ms. Miers, Mr. Bolten and others by the Judiciary Committee have been ignored.

What do you suggest are the appropriate next steps? And I would also like to ask you, just because I remember so clearly when Mr. Gonzales was before this Committee as the Attorney General and he was asked by many people, including myself, about the case of Mr. Iglesias, and I remember him talking and referring to a report that gave a reason for his dismissal the fact that he allegedly was an absentee landlord, and I was hoping that you could specifically provide for the Committee your finding as to that allegation.

Mr. FINE. We did not find that he was an absentee landlord. We did not find it was even raised prior to his removal. He did have

duties that he had to undertake with the Reserves that brought him out of the office a fair amount. But everyone knew about that and he was in contact with the office, and this was not a reason for his firing we determined. We determined that this was an after the fact rationalization for it, and that was not the reason that actually led to his firing.

Mr. WEXLER. Did you find, I am curious, in terms of the Attorney General himself, Mr. Gonzales at the time, did you have a sense of what his understanding was with respect to the reasons in light of what he provided to this Committee?

Mr. FINE. Our overall finding on that is that he was remarkably unengaged from the process. He had delegated it, with little supervision or oversight to Kyle Sampson. That he approved these removals without inquiring in detail why certain people were on the list and what process had been used. And he called himself the delegator. He delegated this and did not provide sufficient oversight or supervision over a very significant matter, the removal of a group of high-level appointees who had important jobs within the Department. And we thought that he abdicated his responsibilities to ensure that it was appropriate what was happening here.

Mr. WEXLER. Thank you very much, Mr. Fine. I also want to commend you and all the people that work with you. People like you are what allow the American people to have confidence again because you appear to be—and I have no doubt your purpose is to provide the truth to this Congress. And we greatly appreciate yours and the people who work with you, your efforts. Thank you very much.

Mr. CONYERS. Thank you, Mr. Wexler.

I am pleased to introduce our Chairman of the Constitution Committee, Jerry Nadler, who has worked on many of these matters more than perhaps any other Member of the Judiciary Committee.

Mr. NADLER. I thank the Chairman. I thank the inspector general.

Mr. Fine, it has been reported that Ms. Dannehy was appointed to the special counsel who will make a preliminary report to the Attorney General within the next 2 months. Do you know when this report will be made public?

Mr. FINE. I think what it is, is the status of the investigation at that point to the Deputy Attorney General and the Attorney General to see where she is in the process. I don't know if it is sort of a formal report. I think it is more of a status report.

Mr. NADLER. So you are saying that will not be made public then?

Mr. FINE. I don't know what exactly is contemplated with that. So I can't speak for that, other than my understanding is it is really a status report to the Deputy Attorney General and the Attorney General.

Mr. NADLER. And let me ask you one other question on this same topic before turning to another one. Do you know whether she will be precluded by the Federal Rules Criminal Procedure 6(e) from sharing with your office and OPR or disclosing to the public or Congress information that she discovers through any grand jury proceedings?

Mr. FINE. Disclosing to Congress or the public is——

Mr. NADLER. Or to your office and the——

Mr. FINE. Let me address that one first, which is dealt with by rule 6(e). With regard to who is disclosed within the Department, people who are working on the investigation and are on the 6(e), they can have the information.

Mr. NADLER. You are saying they can have the information?

Mr. FINE. They can have the information if they are working on the investigation and put on the 6(e) list by leaders of the investigation.

Mr. NADLER. Okay. Let me ask you one other question now about the U.S. Attorney Charlton. The report says he was—the most significant factor in his removal was his actions in a death penalty case. He consistently opposed the Department's decision to seek the death penalty in a specific case. He irritated Department leaders by seeking a meeting with the Attorney General to urge him to reconsider his decision.

We are troubled that Department officials considered Charlton's action in the death penalty case, including requesting a meeting with the AG, to be inappropriate. We do not believe his actions were insubordinate or they justified his removal. In other words, you are saying that because—given the facts of a given case, whatever they were, and I will say I don't know anything about the case—he thought the death penalty would be inappropriate, that they shouldn't seek it. He was fired for energetically making that case within the Department.

Mr. FINE. We think that that was the precipitating event. The Department had other concerns that they raised, the taping policy of interrogations, a claim that he wasn't appropriately——

Mr. NADLER. But it was a precipitating——

Mr. FINE. We consider this the most significant.

Mr. NADLER. Does not that send a message to other U.S. attorneys to say, regardless of your judgments in a given case, seek the death penalty when in doubt?

Mr. FINE. I think the message it sends, which in my view not appropriate, is that vigorous and firm discussion and debate about a very significant issue had significant consequences for him. And that was——

Mr. NADLER. In other words, don't protect—in other words, when someone higher than you says there should be a death penalty or perhaps something else, don't——

Mr. FINE. I am not sure that is the message they were trying to send.

Mr. NADLER. I didn't say they were trying to send it.

Mr. FINE. I understand that. But I think the message that it sent was, you are being too aggressive about this and you are being too pushy. And I don't think that that was appropriate or right when we are talking about a death penalty case.

Mr. NADLER. Exactly. Let me ask you a different question on a different subject, not this report, but you wrote a report on the politicization of hiring and firing decisions. We had testimony here a few months ago from Monica Goodling—maybe a year ago already, I suppose—from Monica Goodling about the improper and illegal use of political criteria to hire people. And it has been admitted that this happened, obviously. Tens, maybe hundreds, of people

were hired for positions on the basis of improper political—and people were not considered on the basis of improper political considerations.

Well, why would it be wrong to suggest that in order for the consequences of these political hirings to be eliminated, everyone hired under these improper considerations should be subject to reconsideration and they should in effect all be unhired and asked to reapply along with other people, and let a proper and fair and legal hiring procedure in which they would be eligible, because maybe some people who were hired for political reasons were otherwise qualified? But why shouldn't this be done over instead of freezing into place—many people were hired for improper reasons, some of whom may be qualified and some of whom may not be qualified.

Mr. FINE. Let me separate that into two. Of the two reports we did, one was the politicized hiring in the honors program in the Justice Department, and the other was politicized hiring by Monica Goodling and others in the Office of the Attorney General, particularly with regard to immigration judges.

With regard to the honors program, I think people who got through the process, they were qualified. The problem was, people who were deselected for liberal or Democratic indications on their resume were also qualified and didn't get a chance to compete. And that was the problem. I know the Department has now offered them a chance to apply. And if they want to be considered now for an honors program slot, even though in they are more than a year out of law school, that would be considered. And I think that is the appropriate response. I don't think the people who were hired were unqualified. So I think they shouldn't be removed.

With regard to the Monica Goodling case, the most troubling instance of this was immigration judges where Monica Goodling and Kyle Sampson used political considerations to hire them when it is a career slot. They claimed they didn't know that it was a career slot. And they clearly used political considerations.

I also believe it is not appropriate now to go back and strip these people of their civil service protections because they didn't do anything wrong. Those people didn't do anything wrong. And to go back and say whether they are or they are not qualified now, after the fact, is very difficult. I am not sure that is the appropriate thing to do. I think the appropriate thing to do is to supervise them and evaluate them the way you would anybody. And if they are not performing appropriately, they shouldn't have the job. But if they are, I think they should.

It is not hundreds of them. It is probably, I think, around 20 or 30 of them over the course of the period that we had under review. So I think the message is to prevent this from happening again and not necessarily to go and fire people who are in the job if their evaluations show they are performing appropriately.

Mr. NADLER. My last question is—and I hope no one asked this before. I was on the floor for the debate on the bailout bill.

I assume from your report that you concluded that Harriet Miers and Karl Rove and others in the White House played a real role in all the decisions about the U.S. attorney firings.

Mr. FINE. We didn't make a judgment of what role—how big a role they played or what role. There were indications that they

were in communications with the Department of Justice, and that we were not able to uncover the exact role they played.

Mr. NADLER. So we do not know how extensive their involvement was and what role partisan political considerations may have played in what they did?

Mr. FINE. We do not know their precise role.

Mr. NADLER. Well, let me ask you this last question then, although it might follow from the previous questions. Why is it important that on-the-record statements be obtained from the two of them, Ms. Miers and Mr. Rove and other White House officials, and that internal White House documents be reviewed which so far have been refused both to your office and to our Committee. I assume you think it is important that that be done.

Mr. FINE. I think it is important to fully investigate the facts of this case, that we went a long way. We, I believe, uncovered most of the facts, but to determine fully exactly what happened, I think it is important to interview those witnesses.

Mr. NADLER. And in your judgment, is there any valid legal reason which would excuse them from testifying pursuant to your request or subpoena pursuant to this Committee's or a Senate Committee's subpoena?

Mr. FINE. Oh, I think those are two issues. One, is our investigation. The Congress' investigation I am not going to analyze the privilege issues as it relates to Congress. With regard to us, I think that the prosecutor ought to determine whether testimony is appropriate and to seek to obtain it.

Mr. NADLER. Thank you very much.

Mr. CONYERS. Mr. Inspector General, your stamina is as strong as the good work you have been doing across the years. We thank you and your staff. And we also thank Chris Cannon for joining us at what may be his last hearing before the Judiciary Committee.

Mr. CANNON. One can only hope.

Mr. CONYERS. Members will have a week to submit additional questions for you if they may. And the record will be open for another week for submission of additional materials. And we thank you so very much for the good work that you have been doing.

The Committee stands adjourned.

[Whereupon, at 1:02 p.m., the Committee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

RESPONSE TO POST-HEARING QUESTIONS SUBMITTED TO THE HONORABLE GLENN A. FINE, INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE

Questions for the Record,
Hearing on the Continuing Investigations into the U.S. Attorneys Controversy and Related Matters,
October 3, 2008

Introductory note from Inspector General Fine: *It is important to note that in responding to these questions we rely on the investigation conducted by the Office of the Inspector General (OIG) and Office of Professional Responsibility (OPR) that resulted in the report issued on September 29, 2008, entitled "An Investigation into the Removal of Nine U.S. Attorneys in 2006." In light of the ongoing criminal investigation being conducted by Special Attorney Nora Dannehy and members of the OIG and OPR, the answers to these questions do not go beyond the information and report from the OIG/OPR investigation. Moreover, as noted below, in light of the ongoing criminal investigation by Special Attorney Nora Dannehy and members of the OIG and OPR, we do not believe it would be appropriate to comment on some of the questions.*

Chairman Conyers

Questions Regarding the Scudder Memo

1. Please describe the document referred to as the "Scudder Memorandum."

As discussed on pages 3-4 of our report, in the course of our investigation we learned that in early March 2007 Associate White House Counsel Michael Scudder had interviewed Department and White House officials at the request of White House Counsel Fred Fielding in an effort to understand the circumstances surrounding the U.S. Attorney removals and to be in a position to respond to this issue. Based on his interviews, Scudder created a memorandum for Fielding containing a timeline of events, which was provided to the Department's Office of Legal Counsel and to Attorney General Alberto Gonzales.

2. Does this document reflect or contain statements by Karl Rove? Does it reflect or contain statements by any other witnesses who have not been interviewed by your team or the Congress?

As discussed on pages 93-94 of the report, Scudder interviewed several people in the Department and within the White House, including Karl Rove. The White House Counsel's Office agreed to read one paragraph of the memorandum to us, and provide us with two paragraphs of information concerning Rove that had already been reported publicly. However, the White House Counsel's Office declined to provide us with further information from the Scudder memorandum. Eventually, the White House Counsel's Office provided us with a heavily redacted version

of the document. In light of the ongoing criminal investigation being conducted by Special Attorney Dannehy together with members of the OIG and OPR, we do not believe it would be appropriate to provide additional comments on the Scudder memorandum.

3. Was this document used by or available to people within the Department of Justice, including the former Attorney General, before Department officials made statements on the U.S. Attorney matter to the Congress and the public?

Yes. As a result of his interviews and review of documents, in March 2007 Scudder produced at least two drafts of a memorandum setting out a chronology of events related to the removals of the U.S. Attorneys. Scudder provided these drafts to the Department's Office of Legal Counsel (OLC). When OLC prepared its own more extensive chronology of events, it used Scudder's draft memoranda to supplement its effort. According to e-mail records, around March 20, 2007, as part of Attorney General Gonzales's effort to understand the circumstances surrounding the removals, OLC provided Scudder's memorandum to Gonzales. Attorney General Gonzales subsequently testified before the Senate Judiciary Committee in April 2007.

4. Is it correct that neither the Department's Office of Legal Counsel nor the Attorney General nor the White House would allow you to see this full document?

Yes. We asked OLC for a copy of the memorandum and all the drafts, but OLC declined, stating that the White House Counsel's Office had directed OLC not to provide them to us. We thereafter engaged in discussions with the White House Counsel's Office in an attempt to obtain the Scudder memorandum. As noted above, the White House Counsel's Office read one paragraph to us and provided us with a heavily redacted version of the memorandum.

We did not ask the Attorney General to intervene given our independent investigation and the White House's clear position regarding our access to this and other White House documents.

i. What was the reason for not allowing you complete access to this document? Do you think that was a valid reason?

As discussed on page 4 of the report, the White House declined to provide to us a full copy of the memorandum, stating that it has "a very strong confidentiality interest" in not providing documents that were prepared to advise and assist the President and his advisors "in response to a public, ongoing, and significant controversy." As also noted in our report, we did not agree with the White House's position and did not believe it

was a sufficient reason for preventing us from reviewing the full memorandum. This was particularly true given that the full Scudder memorandum had been provided to Attorney General Gonzales for his review.

5. And did the refusal to grant full access to this document hamper your investigation? If so, how?

As noted on page 94 of the report, we believe the refusal to provide us with an unredacted copy of the Scudder memorandum hampered our investigation given what we learned about the memorandum in the course of our investigation.

6. Did anyone from the Department make any efforts to conceal the existence of this document from you and your investigators?

In response to our document request, OLC provided to us its final chronology, deleting all references to the Scudder chronology and all information derived from that document. When we obtained earlier drafts of the OLC chronology from other sources, we saw references to the Scudder memorandum as support for certain propositions in the chronology, including alleged communications between a member of Congress and the White House regarding New Mexico U.S. Attorney David Iglesias. We requested that OLC produce a complete copy of the final Scudder memorandum and all drafts of the memorandum. OLC declined to produce the document, stating that the White House Counsel's Office directed it not to do so. We disagree with OLC's decision not to provide us with the full Scudder memorandum and not to have explicitly told us of the memorandum and the reason for not providing it to us.

i. If so, please explain what happened and identify the persons involved.

See preceding response.

7. Under what circumstances could altering a document to conceal evidence from federal investigators be a violation of the law?

There are a number of circumstances under which altering a document to conceal evidence from federal investigators would be a violation of law. However, we do not believe that OLC's actions violated the law because we do not believe OLC altered any document in an attempt to conceal evidence from us. Having said that, we believe it would have been a better practice for OLC to have initially informed us of the existence of the Scudder memorandum, as discussed in the answer to question 6.

i. Please explain which, if any, of those circumstances are not present in this case.

See answer to Question 7 above.

Questions Regarding Senator Domenici's Calls to Attorney General Gonzales

1. The Report mentions three calls from Senator Domenici to Alberto Gonzales in September 2005 to April 2006. The Report says that these calls were complaints about David Iglesias' performance.

i. You were not able to question Senator Domenici about those calls. On what do you base the conclusion that the calls were complaints about U.S. Attorney Iglesias?

As noted in our report on pages 168-170, Attorney General Gonzales told the Senate Judiciary Committee that Senator Domenici told him that Iglesias "was in over his head." Attorney General Gonzales also testified that Domenici "complained about ... whether or not Mr. Iglesias was capable of continuing in that position." This testimony indicates that Senator Domenici complained about Iglesias.

ii. Have you evaluated the documentary evidence regarding those calls, including Department records indicating that Mr. Iglesias himself was consulted to assist the Attorney General in preparing to respond to questions from Senator Domenici regarding whether Mr. Iglesias' office had adequate prosecutorial resources? Have you considered the testimony of former Principal Associate Deputy Attorney General Will Moschella that he was present during each of these calls and understood them to be focused on the Senator's concern that more resources be provided to Mr. Iglesias, and that the Attorney General never communicated to him that the calls included criticism of Mr. Iglesias?[1]

In reaching our conclusions, we reviewed all of the documentary evidence referenced in our report and considered the testimony of all witnesses, including Mr. Moschella.

iii. Have you evaluated to [sic] accuracy of former Attorney General Gonzales' testimony regarding these calls?

In light of the ongoing criminal investigation being conducted by Special Attorney Dannehy and members of the OIG and OPR, we do not believe it is appropriate to respond to this question.

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[1] Moschella April 24, 2007, Interview at 127-143.

Questions Regarding Firing of Paul Charlton

1. Does your report conclude that senior DOJ officials did not learn of the corruption investigation of Republican Congressman Rick Renzi by then United States Attorney Paul Charlton until October 2006, shortly before the firings, and after Mr. Charlton's name was first put on the firings list?

Our report does not reach that conclusion. Criminal Division Assistant Attorney General Alice Fisher was briefed on the Renzi investigation and other significant investigations when she was appointed in the fall of 2005. However, as our report discusses on page 238, we found that in October 2006 Fisher and her Chief of Staff, Benton Campbell, became aware that the case was being handled jointly by the U.S. Attorney's Office and the Department's Public Integrity Section, and Fisher and Campbell began to focus on the case at that time. Both officials told us, and e-mail records corroborate, that they did not focus on or oversee the investigation until October 2006 when Charlton and attorneys in the Department's Public Integrity Section sought the Criminal Division's approval to use certain investigative techniques.

2. Mr. Charlton has reportedly stated to the Arizona Republic that your Report's timeline is wrong because under DOJ procedures there should have been a memo about the case to the AG and his top aides in 2005.[2] What is your response to this contention?

As noted above, Criminal Division officials Fisher and Campbell first began to focus on the Renzi investigation in October 2006 when they became aware that the U.S. Attorney's Office for the District of Arizona was jointly handling the investigation with the Department's Public Integrity Section. As stated in response to the previous question, Fisher had been briefed on the Renzi investigation and other significant investigations when she was appointed Assistant Attorney General in the fall of 2005.

Our timeline regarding Charlton first mentions the Renzi investigation in the entry for October 2006, which states "DOJ Senior Leadership becomes aware of Renzi investigation." The timeline entry and the discussion of this issue in our report refer to the point at which senior leaders in the Department's Criminal Division began to focus on the Renzi investigation. We recognized, and were aware, that Department leaders were aware of the Renzi investigation prior to that time. However, we determined that

[2] D. Wagner, *Ex-attorney says his ouster may have ties to Renzi case,* Arizona Republic (Oct. 1, 2008).

they did not focus on the case until October 2006 when prosecutors requested the use of certain sensitive investigative techniques. For clarity's sake, the notation on Charlton's timeline entry in our report should have noted that the phrase "senior DOJ leadership" referred to Fisher's and Campbell's involvement in the Renzi investigation. As we noted in our report, Charlton's name did not appear on Sampson's removal list until September 2006, and we found no indication that the Renzi investigation (which began in early 2005) played any role in Charlton's dismissal.

Questions regarding Possible Violations of Law and Other Matters

1. What laws may have been violated by the U.S. Attorney firings and their aftermath?

On pages 197-200, our report discusses laws that possibly may have been violated. In light of the ongoing criminal investigation being conducted by Special Attorney Dannehy and members of the OIG and OPR, we do not believe it is appropriate to comment further on this question.

i. Would this list possibly include violations of the civil or criminal Hatch act?

See answer to Question 1 above.

ii. Would this list possibly include violations of the law prohibiting the deprivations of constitutional rights, such as the right to vote, under color of law?

See answer to Question 1 above.

iii. Would this list possibly include obstruction of judicial or congressional proceedings?

See answer to Question 1 above.

iv. Would the list possibly include violations of the wire fraud laws?

See answer to Question 1 above.

Questions Regarding White House Documents

1. How many pages of documents did you receive from the White House?

We received 1,443 pages of documents from the White House.

2. How many pages of documents has the White House withheld despite your requests?

The OIG/OPR investigation could not determine how many pages of documents the White House withheld.

Congresswoman Linda Sánchez

1. Garry Malphrus was one of the politicized appointees mentioned by name in your July 2008 report titled "An Investigation of Allegations of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General" ("Goodling Report"). Mr. Malphrus was discussed in this report based on the process of his selection as an Immigration Judge (IJ) and his involvement in other politicized appointments (p.88-89, 97-98, 108-111). Mr. Malphrus recently was named to the Board of Immigration Appeals (BIA).

i. What prompted Mr. Malphrus's hiring at the BIA?

We did not investigate the circumstances that led to Malphrus being hired as a BIA member.

ii. Was either the politicized process for his appointment as an IJ or the fact that he participated in the politicized hiring of other IJs taken into account in his hiring at the BIA?

We understand that Malphrus was hired as a BIA member pursuant to the new process for hiring BIA members described on page 115 of our July 28, 2008, report entitled "An Investigation of Allegations of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General." During that investigation, we were informed that the new process under which Malphrus was hired as a BIA member did not include consideration of any political affiliations.

2. Page 111 of the Goodling Report notes that former Attorney General Alberto Gonzales "had no recollection of approving" Mr. Malphrus or the other candidates for the BIA, and "no knowledge of how they were selected," despite Ms. Goodling's announcement that he had approved Mr. Malphrus's hiring as a BIA member.

i. Who, other than Ms. Goodling, was involved in the hiring of Mr. Malphrus as a BIA member?

As discussed in the preceding answer, we understand that Malphrus was hired as a BIA member pursuant to the new process for hiring BIA members that was initiated after Goodling left the Department. We did not investigate his hiring and do not know who was involved in it.

3. Have you reviewed any of the questions being asked in the new interviewing process for IJs?

No. However, we have been informed that the questions do not include political affiliations. Moreover, during our investigation or afterwards we

have not received any complaints about the new interview process or the questions asked during that process.

i. Is it true that one of the questions asked in the new interviews for IJs is whether the candidate would follow a direction/instruction/order of the Attorney General—even if it is contrary to law?

See answer to Question 3 above.

4. Is it true that Rex Ford, one of the three IJs mentioned by name in the Goodling Report as being involved in "coordinated efforts" with two other IJs to identify candidates for IJ vacancies for Monica Goodling in the politicized hiring system is now participating in interviews for IJ candidate positions in the new process? Do you think it is appropriate for Mr. Ford or any of the other officials cited in your report for politicizing hiring to have a role in the Executive Office for Immigration Review (EOIR) hiring process?

We do not know whether Ford is participating in interviews of IJ candidates. We believe that it is essential that anyone who participates in the hiring process follow the law and the new procedures, and not use any improper considerations in the hiring process, including political affiliations.

5. What processes have DOJ put in place to ensure that employees like Kyle Sampson, Jan Williams, and Monica Goodling can't hijack the EOIR hiring process again?

The new hiring process for IJs and BIA members is described on pages 114-115 of our July 28, 2008, report. As stated in the report, the new hiring process for IJs was approved by Attorney General Gonzales on April 2, 2007. Under the new process, EOIR reviews applications submitted in response to public announcements for vacancies and rates each candidate. Three-member EOIR panels interview all top-tier candidates. The EOIR Director (or his designee) and the Chief Immigration Judge select at least three candidates for each vacancy to recommend for final consideration. A second three-member panel, comprised of the EOIR Director (or his designee), a career SES employee designated by the Deputy Attorney General, and a non-career member of the SES designated by the Deputy Attorney General interview as many of the three candidates as they believe appropriate. This panel recommends one candidate for the Deputy Attorney General to recommend to the Attorney General for final approval. Both the Deputy Attorney General and the Attorney General can request additional candidates if they do not approve the candidates forwarded to them.

The revised process for hiring BIA members also requires public

advertisements for these positions. Applications are reviewed by a three-member panel consisting of the EOIR Director (or his designee), a career SES employee designated by the Deputy Attorney General, and a non-career SES employee designated by the Deputy Attorney General. The panel rates each applicant, conducts reference checks, and interviews top-tier candidates. The panel then recommends to the Deputy Attorney General at least one candidate for each vacancy. The Deputy Attorney General forwards the name of at least one candidate for each vacancy to the Attorney General. Both the Deputy Attorney General and the Attorney General can request additional candidates if they do not approve the candidates forwarded to them.

i. Who has the authority to change the new hiring process?

The new hiring process was approved by Attorney General Gonzales. We believe that the current Attorney General, or a future Attorney General, has authority to change the process.

ii. Would a single employee from the Office of the Attorney General or the Deputy Attorney General be able to change the hiring process?

We believe that, unless delegated, such a change would require the approval of the Attorney General.

Full Committee Hearing on the Continuing Investigation into the U.S. Attorneys Controversy and Related Matters
October 3, 2008
Department of Justice Inspector General Glenn Fine

Questions for the Record from Ranking Member Lamar Smith

Introductory note from Inspector General Fine: *It is important to note that in responding to these questions we rely on the investigation conducted by the Office of the Inspector General (OIG) and Office of Professional Responsibility (OPR) that resulted in the report issued on September 29, 2008, entitled "An Investigation into the Removal of Nine U.S. Attorneys in 2006." In light of the ongoing criminal investigation being conducted by Special Attorney Nora Dannehy and members of the OIG and OPR, the answers to these questions do not go beyond the information and report from the OIG/OPR investigation. Moreover, as noted below, in light of the ongoing criminal investigation by Special Attorney Dannehy and members of the OIG and OPR, we do not believe it would be appropriate to respond to some of the questions.*

General Questions

1. Are the following statements about the 2006 U.S. Attorneys dismissals consistent with the findings contained in your report and the information you reviewed in preparing it? Please answer first either "Yes" or "No." Please then state separately any additional explanation you would like to offer.

We do not believe that many of these questions can be fairly answered by a simple "yes" or "no" answer, even with additional explanation.

a. "[T]he assertion that Ms. Lam's failures with regard to immigration and gun crime were not the real reason for her dismissal is clearly refuted by the record."

With regard to this question, as stated in the report on page 335, we believe that Lam was removed because of the Department's concerns about her office's gun and immigration prosecution statistics.

b. "Mr. McKay's insubordination on information-sharing was clear, directly involved Deputy Attorney General McNulty, who had invested a good deal of time in the issue, and was unmistakably troubling to Mr. McNulty, on whose views, Attorney General Gonzales said he most relied. That Mr. McKay's insubordination on this issue would have exposed him to dismissal as an at-will, political appointee is readily apparent."

As stated in the report on 334, we believe that the primary reason McKay

was removed was his clash with McNulty concerning an information-sharing program McKay zealously advocated. McNulty told us that while he did not initiate McKay's removal, he did not object when he learned that McKay was on Kyle Sampson's removal list because he questioned McKay's judgment in handling matters related to the information-sharing program.

c. "Mr. Ryan and Ms. Chiara were both removed for significant management issues[.]"

As stated in our report on page 336, we believe that both Kevin Ryan and Margaret Chiara were removed because the Department had concerns about their performance and the management of their offices.

d. "Mr. Cummins was asked to resign because of a desire to place another individual' in the Eastern District of Arkansas[.]"

As stated in our report on page 332, the main reason for H.E. "Bud" Cummins's removal was to provide a position for former White House official Tim Griffin.

e. "[I]n the case of Mr. Iglesias, based at least on conversations in April and October 2006, it appears that Mr. Gonzales was aware that Mr. Iglesias had lost the confidence of his sponsor, Senator Domenici, who appeared to believe that Mr. Iglesias was in over his head in the post he occupied. Documents in the matter, as well as press reports, suggest that Senator Domenici specifically discussed with Attorney General Gonzales his concerns over Mr. Iglesias's performance."

As stated in our report on pages 192-93, according to Attorney General Gonzales Senator Domenici complained to him about whether Iglesias was capable of continuing as U.S. Attorney. Gonzales stated in Congressional testimony that Domenici had lost confidence in Iglesias, and Gonzales also stated that not having the confidence of the senior senator and the senior leadership in the Department was enough for Gonzales to lose confidence in Iglesias. However, we found that Gonzales, McNulty, Sampson, and those involved in Iglesias's removal accepted at face value that the complaints raised about Iglesias by New Mexico Republicans were a sufficient reason to remove him. As also stated in the report, we concluded these actions were a troubling dereliction of these officials' responsibility to protect the integrity and independence of the Department.

f. "On the whole, the picture that emerges is one of a process that was dormant for long stretches of time, and which the White House allowed to remain dormant, although it checked in on it from time to time."

We were unable to fully assess the role of White House officials in the removals because several former White House officials declined our request for an interview. However, as described on pages 15 to 51 of our report, the process leading to the removal of the U. S. Attorneys was more active at certain times than others. As also stated in our report, in February 2005 the White House first raised with the Department the issue of removing U.S. Attorneys. In March 2005, the White House confirmed with Sampson that the plan was to remove a certain number of U.S. Attorneys whose 4-year terms had expired. The process was then largely dormant until January 2006 when Sampson forwarded to the White House a list containing nine U.S. Attorneys he recommended be removed. Our report stated that aside from Harriet Miers's inquiry to Sampson in spring 2006 as to whether the Department could find a place for Tim Griffin, it appears that the White House did not take any action concerning the removal plan until September 2006 when Miers asked Sampson for his current thinking on "holdover U.S. Attorneys." On September 13, Sampson sent Miers another list containing the names of eight U.S. Attorneys he recommended be removed. On November 15, Sampson sent to Miers a list containing the names of six U.S. Attorneys to be removed.

g. "No formal evaluation was conducted, and no probing examination of any underlying documentation, elicitation of thorough and detailed knowledge from . . . Department officials, or discussions with the concerned U.S. Attorneys themselves about the looming requests for their resignations ever appears to have been undertaken."

We agree that neither Gonzales, McNulty, nor any other Department officials carefully evaluated the basis for each U.S. Attorney's removal or attempted to ensure that there were no improper political reasons for the removals. We also found that the Department did not ask many of the U.S. Attorneys for an explanation about the complaints that allegedly justified their removal.

h. "Attorney General Gonzales himself recognized ... that this process was insufficiently structured and managed[.]"

On May 10, 2007, Attorney General Gonzales testified before the House Judiciary Committee that the removal process was not as rigorous or as structured as it should have been. Gonzales also told us that he had given broad instruction to Sampson to evaluate the U.S. Attorneys, in concert with other Department officials, to determine where improvements could be made. Gonzales told us he assumed that Sampson had engaged in an evaluation process and that the removal recommendations were based on performance issues and reflected the consensus of Department managers. However, Gonzales said that he never asked Sampson or anyone else how

they arrived at their recommendations or why each U.S. Attorney warranted removal. As stated in our report, we concluded that the removal of these U.S. Attorneys warranted close supervision by Gonzales and Deputy Attorney General McNulty.

i. "In hindsight, it certainly seems clear that Attorney General Gonzales and other members of the Department's leadership should have focused more on this process, its execution, its results, and its potential for adverse fallout."

We agree that Attorney General Gonzales and other Department leaders should have focused more on the entire removal process.

j. "Attorney General Gonzales and others in the Department seemed to have taken as a given that the bar for the dismissal of a U.S. Attorney was very low, given that each U.S. Attorney is an at-will, political appointee of the President's."

We concluded that Gonzales and others failed to consider the ramifications of removing these U.S. Attorneys. Their failure to supervise the process was a dereliction of their duties. However, we do not know for certain why they did not exercise sufficient supervision over the process.

k. "Mr. Margolis testified that the Department's review of U.S. Attorney performance was a welcome innovation, about which he was so excited that he did not stop sufficiently to consider whether the methods by which it was conducted were sufficiently rigorous."

As stated in the report on pages 352-54, Margolis told us that he originally endorsed the idea of replacing weak or mediocre U.S. Attorneys because the Department's past practice was to remove U.S. Attorneys only for misconduct or gross incompetence tantamount to misconduct. However, Margolis did not ask Sampson what criteria would be used to consider who should be removed or how the U.S. Attorneys would be evaluated. Margolis also said he did not think to question Sampson about why the six U.S. Attorneys appeared on Sampson's November 2006 removal list because he assumed that Sampson had valid reasons for selecting the six for removal. Margolis conceded that he was not aggressive enough, and said he should have inserted himself into the process to ensure that no one was removed for an improper purpose.

l. "[A]s Mr. Margolis put it, the idea of reviewing the performance of U.S. Attorneys to determine where the Department could do better over the remainder of a Presidential term was a good one that for whatever reason had never before been tried. In their enthusiasm to implement this sound and straightforward idea, it simply did not occur to officials such as Mr. Margolis

that there was a need for additional procedure to strengthen the process and protect it against any potential for corrupt influence or the perception, however erroneous, of such influence."

See response to previous question. We believe that Gonzales, McNulty, and Margolis should have asked Sampson how and why the U.S. Attorneys were selected for removal.

2. Committee Republicans concluded during the Committee's investigation that there was no grand conspiracy between the Department and the White House to remove the eight dismissed U.S. Attorneys to influence cases for partisan purposes. Are your findings consistent with that conclusion?

In light of the ongoing criminal investigation being conducted by Special Attorney Dannehy and members of the OIG and OPR, we do not believe it is appropriate to comment further on this question.

3. Committee Republicans read your report to confirm that the majority of the U.S. Attorney dismissals stemmed from a case-by-case variety of issues in the management, policy, personnel, or similar arenas. Isn't that a correct reading?

For several of the removed U.S. Attorneys, we found that the removals stemmed from a variety of matters related to management issues or policy conflicts. However, we were unable to fully develop the facts regarding the removal of other U.S. Attorneys because of the refusal by certain key witnesses to be interviewed by us, as well as the White House's decision not to provide internal White House documents to us.

4. During this investigation, Members of Congress, members of the press and others leveled a host of accusations that the Department had dismissed U.S. Attorneys for improper political purposes. You found in your report that those accusations damaged the Department. But your report refutes the allegations made concerning all but David Iglesias' dismissal, including, for example, the allegations:

a. that Carol Lam .was dismissed to retaliate against her for the Duke Cunningham prosecution;

b. that John McKay was dismissed because he didn't bring a vote fraud case after Republicans lost a Washington State gubernatorial race;

c. that Paul Charlton was dismissed because of his investigation of Congressman Rick Renzi;

d. that Dan Bogden was dismissed because of his alleged investigation of a Republican governor;

e. that Bud Cummins was dismissed due to his alleged investigation of a Republican governor; and

f. that Tim Graves was dismissed to retaliate against him for not pursuing vote fraud charges against liberal activists.

Moreover, you found that the facts remain incomplete regarding accusations about David Iglesias' dismissal. Thus, you did not offer a final conclusion regarding the reasons for Mr. Iglesias' dismissal.

Do you believe that substantial, unnecessary damage to the Department's reputation and effectiveness could have been avoided if Members of Congress, the press and others had refrained from making unfounded accusations of improper partisan dismissals while the matter of the U.S. Attorneys dismissals was under investigation by your office and the Office of Professional Responsibility?

We attempted to conduct as thorough and complete an investigation as possible given the obstacles we faced. We leave it to others to opine on whether it was appropriate or inappropriate for members of Congress to comment on the underlying issues while our investigation was ongoing.

5. On pages 347-48 of your report, you concluded that even the White House was misled into believing that DOJ's recommendations to remove U.S. Attorneys rested on a "systematic and structured evaluation process." You specifically stated that:

a. Kyle Sampson "misrepresented to the White House how the selections occurred;"

b. "Sampson created the general impression that the EARS evaluations and his 'interviews' of senior Department officials, including officials in the Criminal Division, formed the basis of his identification of specific U.S. Attorneys for removal;" and

c. you "believe[d] that [Kyle] Sampson's misleading statements to [Harriet] Miers gave the impression that the Department had engaged in a far more systematic and structured evaluation process to determine which U.S. Attorneys should be removed."

Don't these conclusions buttress Committee Republicans' belief that there is currently no evidence from which a reasonable and objective observer could conclude that the White House orchestrated the U.S. Attorneys dismissals for some overarching partisan purpose?

In light of the ongoing criminal investigation being conducted by Special Attorney Dannehy and members of the OIG and OPR, we do not believe it is appropriate to comment further on this question.

6. The general bottom line of your report seems to be that the Department's process for determining which U.S. Attorneys to dismiss was "unsystematic and arbitrary;" that the Attorney General, his chief of staff and the Deputy Attorney General should have done a better job supervising and/or carrying out the process; that the dismissed U.S. Attorneys should have been given a fairer chance to make their cases for retention; and that the Department's poor explanation of what it had done opened the door for speculation to run wild about whether partisan political motivations lay behind the dismissals, damaging the Department's reputation. Is that a fair summary?

We believe that the conclusions in your question are accurate, although our report reached additional conclusions. For example, we also found that there was little communication between Attorney General Gonzales and Deputy Attorney General McNulty, the direct supervisor of the U.S. Attorneys, about these matters, either before or in the aftermath of the removals. In addition, we found conflicting testimony about the reasons each U.S. Attorney was recommended for removal, and in some cases neither Sampson nor any other Department officials acknowledged recommending that a particular U.S. Attorney be removed. We also concluded that Department officials made misleading public statements about the removals both during and after the process. Moreover, as noted above, the criminal investigation being conducted by Special Attorney Dannehy and members of the OIG and OPR is ongoing.

7. Committee Republicans agree with you that these U.S. Attorney dismissals were poorly handled. But David Margolis, the Department's top career official, thinks a review of U.S. Attorneys to weed out poor performers is a good idea. What are your three top recommendations for how the Department should conduct that process, if it ever tries again?

- **Ensure that any review process is conducted systematically, according to objective and transparent standards;**
- **Allow the U.S. Attorneys to respond to concerns raised about their performance; and**
- **Ensure that any process is supervised closely by top Department officials who should carefully review the results and any recommendations from the process.**

Questions Concerning the Allegedly "Partisan Political Considerations"

8. Setting aside the case of David Iglesias, did you conclude based on your investigation that any U.S. Attorney was removed to affect or influence particular prosecutions or investigations?

As stated on page 326, we were unable to fully develop the facts regarding the removal of Iglesias and other U.S. Attorneys, such as Todd Graves and John McKay, because of the refusal by certain key witnesses to be interviewed by us, as well as by the White House's decision not to provide internal White House documents to us. Moreover, because the criminal investigation being conducted by Special Attorney Dannehy and members of the OIG and OPR is ongoing, we do not believe that it would be appropriate to comment further on this question.

9. In your report, you concluded that you had found "significant evidence that political partisan considerations were an important factor in the removal of several of the U.S. Attorneys." As it has been used in the matter of the U.S. Attorneys dismissals, the term "political partisan considerations" has generally been meant to imply efforts to wield the Department's prosecutorial machinery improperly to advantage one political party over another in prosecutions or investigations. Yet in your report you

a. found that the facts in every case refuted allegations that the U.S. Attorney dismissals had been carried out to obtain partisan political advantages in prosecutions or investigations, with the possible exception of David Iglesias' dismissal;

b. found that the facts regarding Mr. Iglesias' dismissal were incomplete, and thus could not yield any definitive conclusion as to whether his dismissal had or had not been carried out to achieve a partisan advantage in any cases or investigations;

c. presented no conclusive evidence that New Mexico Republicans had sought Mr. Iglesias' dismissal to obtain partisan advantages in any cases or investigations, but instead generally equated efforts by Republicans to lodge complaints over Mr. Iglesias' asserted laxity it investigating and prosecuting cases in the important areas of vote fraud and public corruption with "partisan" efforts; and

d. found that the only other "political" dismissals were of Todd Graves, whom you found to have fallen victim to internecine Missouri politics, and Bud Cummins, who had been dismissed after the expiration of his term simply so that another individual could serve as U.S. Attorney.

In light of the above, could you please clarify whether your conclusion that you found "significant evidence that political partisan considerations were an important factor in the removal of several of the U.S. Attorneys" should be read to mean: (1) that you found significant evidence that efforts to influence prosecutions or investigations for partisan advantage "were an important factor in the removal of several of the U.S. Attorneys;" or instead (2) that you found significant evidence that political considerations of one kind or another "were an important factor in the removal of several of the U.S Attorneys," and that in only one case did evidence still suggest that those considerations might have included efforts to influence prosecutions or investigations for partisan advantage.

As we stated in response to question 8, we were unable to fully develop the facts regarding the removal of some of the U.S. Attorneys because certain key witnesses refused to be interviewed and the White House refused to provide us with internal documents concerning the dismissals. For example, we were unable to question White House witnesses with knowledge of Graves's removal to confirm what another witness told us about the basis for his removal, and no one at the Department acknowledged placing Graves on the removal list. Also, with regard to John McKay, there is some evidence that state Republican party officials complained to the White House that McKay failed to prosecute voter fraud claims against Democrats in the wake of the contested 2004 Washington state governor's race, and McKay was questioned about this by White House officials in August 2006 before his name appeared on the September 2006 removal list. White House officials who had knowledge of these issues refused our request for an interview. Moreover, because the criminal investigation being conducted by Special Attorney Dannehy and members of the OIG and OPR is ongoing, we do not believe that it would be appropriate to comment further on this question.

10. You found that Todd Graves' and Bud Cummins' dismissals had "political" roots, but isn't it correct that those roots were in disputes between Republican political factions, and were not partisan in the sense of attempts by the White House to influence prosecutions and investigations to favor Republicans over Democrats?

See response to question 9 above concerning Graves's removal. With regard to Cummins, we found no evidence to suggest that Cummins was removed in order to influence prosecutions and investigations.

11. Throughout our history, political appointees frequently have been removed after their original terms — or even before then — simply so another individual could have a chance to serve. Please explain why you suggest that a dismissal like that — as in the case of H.E. "Bud" Cummins — is a dismissal for an improper partisan political purpose?

As noted in response to question 10 above, we did not find that Cummins was removed for an improper partisan political purpose. However, as stated on pages 145-147 of the report, we also concluded that Sampson, Monica Goodling, and White House officials Scott Jennings and Chris Oprison considered a plan to bypass the Senate confirmation process by having Griffin appointed to an indefinite term as U.S. Attorney by the Attorney General under the authority that existed in the USA Patriot Act in 2006.

12. To clarify, is it your view that political considerations of the kind that affected Todd Graves and Bud Cummins simply should not be considered with regard to U.S. Attorney appointees, or that what was improper in their cases was the failure of the Department to better vet those considerations and offer Mr. Graves and Mr. Cummins an opportunity to rebut them?

We believe it was inappropriate to remove U.S. Attorney Graves because he refused to intervene in a political dispute involving his brother. As stated above, with regard to Cummins we believe it was improper for the Department and the White House to attempt to use the Attorney General's authority to appoint Interim U.S. Attorneys to bypass the Senate confirmation process in the face of a Senator's opposition to Cummins's replacement.

Questions Concerning the Iglesias Dismissal

13. Doesn't your report find that Mr. Iglesias himself contributed to his problem by failing to report complaints he personally received from Senator Domenici and Representative Wilson to the Justice Department — contrary to the requirements of the U.S. Attorneys' Manual?

As stated on page 194 of our report, we concluded that Iglesias should have promptly reported to EOUSA the phone calls he received from Senator Domenici and Representative Heather Wilson, and that Iglesias's failure to do so violated the requirements in Section 8.010 of the U.S. Attorney's Manual.

14. You concluded in your report that "had Iglesias reported these calls as he should have, it would have made it more difficult for the Department to remove him without first examining the substance of the complaints raised against him." Are you aware that others, such as David Margolis, testified to the same effect during the Committee's interviews of Department officials?

We are aware of Margolis's testimony on this point.

15. Mr. Iglesias recently admitted to a personal political motivation for not reporting the contacts discussed in Questions 13-14. Specifically, Mr. Iglesias was quoted by Emma Schwartz in her article *Looking Back on the Justice Department Scandal: A Conversation with Former U.S. Attorney David Iglesias*, U.S. News & World Report, June 5, 2008, as stating "Quite frankly, I wanted to run for office after my term as U.S. [A]ttorney and I knew that if I reported them there would be no chance I would get any support."

Doesn't this statement provide evidence that David Iglesias himself improperly politicized his position as U.S. Attorney by allowing personal political calculations to determine his compliance or not with mandatory Department policy?

As we concluded in our report, Iglesias should have promptly reported to EOUSA the phone calls he received from Senator Domenici and Representative Wilson, and his failure to do so violated the requirements in Section 8.010 of the U.S. Attorney's Manual.

16. By his failure to report congressional contacts to the appropriate Department officials, didn't David Iglesias deprive the Department of the ability to use its own mechanisms to protect itself from any improper outside political influence?

As we state on page 195 of the report, we believe that had he reported these contacts it would have been more difficult for the Department to remove him without first examining the substance of the complaints raised against him.

17. In addition, didn't Mr. Iglesias' failure to report the contacts also deprive the Department of the ability to use its own mechanisms to take appropriate action in response to Iglesias' use of personal political considerations to determine how to respond to the contacts?

Had the Department been on notice of the contacts, it would have been in a better position to take appropriate action.

18. The admission by Mr. Iglesias quoted in Question 15 is inconsistent with the explanations Mr. Iglesias gave Congress, the Office of Inspector General and the Office of Professional Responsibility for his failure to report the congressional contacts at issue to the appropriate Department of Justice officials. Accordingly, please answer the following:

a. Do you believe that your report addresses Mr. Iglesias' admission? If it does not, please explain why not.

As we state on page 195 of the report, we determined that Iglesias

committed misconduct both in answering Senator Domenici's question about whether there were going to be indictments and in failing to report the contacts from Representative Wilson and Senator Domenici as Department policy required.

b. Have you referred Mr. Iglesias for prosecution for having given Congress, you or OPR false, misleading, incomplete, or otherwise insufficient testimony during your investigation? Please explain why or why not.

In light of the ongoing criminal investigation being conducted by Special Attorney Dannehy and members of the OIG and OPR, we do not believe it is appropriate to comment on this question.

c. Did you contemplate that such a referral was within the scope of the referral to a prosecutor that you requested in your report for the remaining issues in this matter? Why or why not?

See answer to question 18b.

d. Are there any criminal laws that any such false, misleading, incomplete, or otherwise insufficient testimony by Mr. Iglesias may have violated?

See answer to question 18b.

19. Do you believe that it is proper for Members of Congress who are aware of reasons to question the performance of federal officials in their home states – whether in general or in specific areas – to bring those questions to the attention of the White House and/or Cabinet or agency head in whose organization the officials of concern are located? Please explain why or why not. Please also explain whether your key concern with regard to such contacts focuses on whether relevant Executive Branch officials, having received such questions, give the subordinate officials complained of notice of the questions received and an opportunity to respond.

We believe that, in general, it is not inappropriate for members of Congress to raise concerns about the conduct of federal officials to the Attorney General, and the Attorney General must take the appropriate action regarding such complaints. However, there may be exceptions to this general rule depending on the circumstances. In light of the ongoing criminal investigation by Special Attorney Dannehy and members of the OIG and OPR, we do not believe it is appropriate to comment further on this question.

20. Your report recounts how public officials and citizens tried to alert the Administration for a long time about what they believed to be David Iglesias'

serious enforcement lapses in the vote fraud and public corruption areas. Your report also recounts that citizens also brought their concern to Department career officials. Are you suggesting that DOJ should not have acted on that information just because it came from public officials and political activists? Or, instead, does your key concern focus on whether Mr. Iglesias was given notice of the complaints received and afforded an opportunity to respond?

In general, we believe that the Department should review complaints about the conduct of Department officials and take appropriate action, regardless of who makes the complaints. However, because of the ongoing criminal investigation being conducted by Special Attorney Dannehy and members of the OIG and OPR, we do not believe it is appropriate to comment further on what the Department should or should not have done with regard to any complaints about Iglesias.

21. If an administration couldn't receive and act on information from political activists from one party or another, or even from both, couldn't that curtail those citizens' constitutional rights to petition the government and seek better public servants?

We agree that members of the public have the right to petition the government and make known their concerns about public servants, and that the government has an obligation to handle those complaints appropriately. Because of the ongoing criminal investigation being conducted by Special Attorney Dannehy and members of the OIG and OPR, we do not believe it is appropriate to comment further on what the Department should or should not have done with regard to the specific complaints about Iglesias.

22. If it were politically "improper" for an administration to act on information about enforcement issues just because the information came from members of its own party, couldn't that substantially impair an administration's ability to fulfill its law enforcement mission?

See answer to question 21.

23. Vote fraud and public corruption are areas of the law that often pit the interests of one political party against another's. In these areas, members of competing parties often provide checks against each others' excesses by reporting potential violations of law to the relevant law enforcement authorities. Wouldn't a requirement that an administration ignore information from members of its own party about another party's potentially illegal behavior diminish those checks and, as a result, encourage the latter party to violate the law?

See answer to question 21.

24. If all of the facts reviewed in your investigation with regard to David Iglesias and complaints about his failure to bring vote fraud prosecutions had been the same, except that Democrats from New Mexico, not Republicans, had brought those complaints to the attention of the Administration, Members of Congress and Department of Justice career officials and lobbied for Iglesias' dismissal:

a. Would your analysis of allegations of impropriety in Iglesias' dismissal have been the same? Please explain why or why not.

See answer to question 21.

b. Would your recommendation that a prosecutor be appointed based on this issue have changed? Please explain why or why not.

See answer to question 21.

25. Senator Dianne. Feinstein complained to the Department about Carol Lam's failures in immigration law enforcement. Your report, moreover, concludes that Ms. Lam was in fact dismissed for her failures to enforce immigration and gun laws. In addition, Senator Feinstein was Ms. Lam's home state senator. Accordingly:

a. Please state whether you believe it was proper or improper for Senator Feinstein to register her complaints with the Department and for the Department to act upon those and similar complaints. Please also explain the bases for your view.

In general, we believe that members of Congress may bring complaints about the performance of a U.S. Attorney to the attention of the Attorney General, who has an obligation to handle the matter appropriately.

b. Please state whether you believe it would be proper or improper for other Senators to register with the Department similar complaints about other U.S. Attorneys and for the Department to act upon those complaints. Please also explain the bases for your view.

See answer to Question 25a.

26. You agree that it is proper to consider a U.S. Attorney's support from home state Senators at the time of his confirmation. Why isn't it generally proper to continue to consider that question while the U.S. Attorney is serving in office particularly after the U.S. Attorney has passed his full term, creating an obvious opportunity for another person to serve? In answering this question, please bear in mind that:

a. many legitimate Department interests, such as securing the Senate's support for legislative and budget priorities, including with regard to districts in a given Senator's state, can be adversely impacted if the Department refuses to take into account whether a U.S. Attorney's Senate sponsors continue or do not continue to have confidence in the sitting U.S. Attorney;

b. in any given case, a home state Senator may lose his confidence in a sitting U.S. Attorney, not for reasons based on prosecutive decisions, but for reasons related to office mismanagement, ineffectiveness' in advocating for resources from Department headquarters, inability to work cohesively with sister federal and state law enforcement agencies and their officials, and a host of other important reasons; and

c. even if a home state Senator retains confidence in a sitting U.S. Attorney, at any given time a home state Senator may wish to advocate for the appointment of a new U.S. Attorney for any reason that is not improper.

As we state on pages 330-331 of the report, we believe that removing U.S. Attorneys based on their lack of political support could affect the integrity and independence of the Department's prosecutive decisions and the public's confidence that such decisions are insulated from political considerations. U.S. Attorneys should make their prosecutive decisions based on the Department's priorities, the law, and the facts of each case, not on a fear of being removed if they lose the confidence of their home state Senator.

We recognize that U.S. Attorneys are selected in part based on the recommendations of state and federal political officials. However, once they assume office, U.S. Attorneys should leave politics behind and make their prosecutive decisions divorced from partisan political considerations. For Department officials to recommend the removal of U.S. Attorneys because they do not have the confidence of their home state Senator can undermine the public's confidence that Department of Justice prosecutive decisions are based on the facts and the law and not on political considerations.

27. Assume that a new presidential administration had taken office in January 1997 and had held office through January 2004. Assume further that from sometime in 1997 through January 2001, a Senator from New York had pressed that administration to replace a U.S. Attorney for the Southern District of New York whom he had sponsored; that the Senator's complaints were due to the U.S. Attorney's failure to assign a higher priority to anti-terrorist investigations and prosecutions; and that the Senator was from the same party as the administration. Then answer the following questions:

a. If that administration had acted on the Senator's complaints and dismissed the U.S. Attorney between January 21, 2001 and September 10, 2001, would that have been an instance of a dismissal based on improper partisan political considerations? Please explain why or why not.

The answer depends on the facts of the case, including whether the U.S. Attorney was following the Department's priorities and the reasons for the prosecutorial decisions that were made. We believe it would be misleading to answering this hypothetical scenario without additional facts about the reasons for the U.S. Attorney's decisions.

b. If that administration had consistently resisted the Senator's call for the U.S. Attorney's dismissal through September 10, 2001, but had changed its position and dismissed the U.S. Attorney on or after September 11, 2001, following the events of that day in Manhattan, would that have been an instance of a dismissal based on improper partisan political considerations? Please explain why or why not.

See answer to question 27a.

c. Would your answer to Question 20.b change if the dismissal of the U.S. Attorney on or after September 11, 2001 had been based specifically on the U.S. Attorney's failures to investigate or prosecute specific matters in which the terrorists who attacked the World Trade Center towers or their sources of funding and other support had been implicated, and the Senator's complaints had included concerns about those same cases? Please explain why or why not.

See answer to question 27a.

d. Would your answers to Questions 20a-c change if the events of September 11, 2001 had occurred before the U.S. Attorney had served out his first term of appointment as U.S. Attorney? Please explain why or why not.

See answer to question 27a.

28. You state in your report that "[f]or Department officials to recommend the removal of U.S. Attorneys even in part because they do or do not have political support undermines the public's confidence that Department of Justice prosecutive decisions are based on the facts and the law and not on political considerations." Please answer the following questions concerning that assertion.

a. Do an incoming administration's decisions to appoint new U.S. Attorneys based on whether the prospective appointees' political support from home state senators is sufficient to assure confirmation also undermine

the public's confidence that Department of Justice prosecutive decisions are based on the facts and the law and not on political considerations? Please explain why or why not.

We believe that the decision to replace U.S. Attorneys by a new Administration presents a different scenario. Traditionally, U.S. Attorneys are replaced by a new Administration, and it is generally expected by both the U.S. Attorneys and members of the public that this will occur. We do not believe that this historical practice undermines public confidence in Department of Justice prosecutorial decisions.

b. When an administration replaces a sitting U.S Attorney who has lost the confidence of home state senators with a new, well-qualified appointee who has the confidence of home state senators, does the replacement of the sitting U.S. Attorney necessarily undermine the public's confidence that Department of Justice prosecutive decisions are based on the facts and the law and not on political considerations? Please explain why or why not.

It depends on the facts of the case and the reasons that the sitting U.S. Attorney was removed. If the U.S. Attorney was replaced for valid performance or misconduct concerns, after a careful and objective review, and replaced by a well-qualified appointee this may not undermine the public's confidence in the Department's prosecutive decisions.

c. Would your answer to Question 29.b change if the new U.S. Attorney's conduct in office made it promptly and publicly apparent that his office's investigations and prosecutions were not and would not be affected by political considerations? Please explain why or why not.

See answer to 28b.

d. Would your answer to Questions 29.b-c change if the replaced U.S. Attorney were a member of the administration's own party, and the new Attorney were not? Please explain why or why not.

It depends on the facts of the case and the reasons for the removal, as opposed to the party of the appointees.

e. If it were impossible for home state senators to urge the removal of a U.S. Attorney for failure to implement a President's priorities or otherwise answer a state's law enforcement needs, wouldn't the resulting inability to hold the failing U.S. Attorney accountable to the people's elected representatives undermine the public's confidence that the U.S. Attorneys' prosecutive decisions are based on the facts and the law, applicable policy, or other appropriate factors, as opposed to improper political factors or other inappropriate factors? Please explain why or why not.

We do not believe that members of Congress should be prevented from addressing concerns to the Attorney General about a U.S. Attorney's failure to implement a President's priorities or otherwise address a state's law enforcement needs. However, we also believe that the Attorney General has an obligation to carefully and fully assess those complaints, and determine independently whether the U.S. Attorney has in fact failed to implement the Department's priorities or otherwise answer a state's law enforcement needs, and the reasons for the U.S. Attorney's actions. We also believe it is an appropriate management practice, as part of that assessment, to allow the U.S. Attorney to respond to complaints that the Attorney General believes have merit.

f. Can unfounded, public accusations by Members of Congress and the press that U.S. Attorney removals are based on improper political considerations undermine the public's confidence that Department of Justice prosecutive decisions are based on the facts and the law and not on political considerations?

Yes, we can envision some circumstances in which unfounded accusations by Congress can undermine the public's confidence in the Department of Justice.

Questions Concerning Standards and Process for U.S. Attorney Dismissals

29. You state that you agree that a U.S. Attorney, as a political appointee, can be removed for no reason or any reason at all, as long as it is not an illegal reason. But your report could be read to suggest that the Department should have to meet something like the APA's "arbitrary or capricious standard," after something like a notice-and-comment process for the U.S. Attorney, before it can dismiss U.S. Attorney. Please clarify which is the correct reading of your report, and why?

We do not believe that the APA's arbitrary and capricious standard applies, or should apply, to the dismissal of a U.S. Attorney. However, we also believe, as stated in the report, that if the reason for the removal is that the U.S. Attorney was underperforming, the better practice would be to carefully review the overall performance of the U.S. Attorney, address the performance concerns directly with the U.S. Attorney, consider the U.S. Attorney's response, and inform the U.S. Attorney of the outcome of that review prior to being removed.

30. In the wake of the U.S. Attorneys dismissals, former Attorney General Gonzales met with the remaining members of the U.S. Attorney corps. Among other things, he asked them whether they would like a formal U.S. Attorney performance review process to be instituted. They said that they would not.

Accordingly, please answer the following questions.

a. Do you believe that these officials are entitled to any deference regarding this question? Please explain why or why not.

We believe that the views of U.S. Attorneys should be considered by the Attorney General with regard to this issue.

b. Why do you recommend a formalized process for review and dismissal when the U.S. Attorney corps does not?

We believe that what the U.S. Attorneys were referring to during this meeting was a formalized review process for all U.S. Attorneys, on a regular basis, in addition to the EARs evaluation. Our report made no recommendation regarding that. However, we do believe that, in most cases, if a U.S. Attorney is to be removed for performance issues the Department should carefully review that U.S. Attorney's performance, allow the U.S. Attorney to respond to concerns about his performance, and ensure that senior Department officials, including the Attorney General, have carefully assessed the reasons for and against such removal before making a recommendation to the President.

Questions Concerning White House Cooperation

31. The White House has expressed concerns about giving your office unrestricted access to White House information, documents and personnel. The White House did offer you a significant degree of cooperation, however. The White House also has agreed to cooperate with Acting U.S. Attorney Dannehy in her investigation of the remaining questions in this matter. Won't cooperation with the prosecutor be sufficient to conclude this matter?

In light of the ongoing criminal investigation by Special Attorney Dannehy and members of the OIG and OPR, we do not believe it would be appropriate to comment on this question.

Questions Concerning the Preparation and Public Release of the IG/OPR Report

32. Is it unusual for your office or OPR to make public a report that recommends referral to a prosecutor for further investigation, prior to the prosecutor's conclusion of that investigation? If so, please explain why you determined to make this report public before the conclusion of Acting U.S. Attorney Dannehy's investigation. In answering this question, please explain, for example, whether and how you considered the provisions of 28 C.F.R. sec.

50.2(b)(2).

Our normal practice is to await a prosecutorial decision before issuing a report of investigation. However, we did not believe we should do so in this case for several reasons. First, much of the information was already in the public domain as a result of Congressional hearings and media coverage during 2007 and 2008. Second, in light of the significant public interest in the outcome of our investigation, we believed that providing our findings publicly was crucial to restoring public confidence in the Department. Third, much of the report did not involve matters related to prosecutorial decisions.

We also do not believe that releasing the report violated 28 C.F.R. § 50.2(b)(2). We did not release the report for the purpose of influencing the outcome of a defendant's trial, nor do we believe that the report could reasonably be expected to influence the outcome of a pending or future trial, particularly in light of the significant information that was already in the public domain about this case.

33. Did you, the Office of Inspector General or the Office of Professional Responsibility have contacts with Members of Congress or congressional staff concerning the progress or conclusions of your report or the recommendation of a prosecutor contained in the report?

The OIG discussed the general scope of the report, and the general timing of the report, both publicly and with congressional staff, including staff of the Judiciary Committee (both majority and minority staff). However, prior to the report's public release we did not have any discussions about the findings or conclusions of the report, or the recommendation that a prosecutor be appointed, with any members of Congress or any congressional staff.

34. The Office of Inspector General sometimes makes its reports available in draft form to the individuals whom the report concerns. That practice can help to ensure the fairness, accuracy and completeness of the Office's reports. With regard to the use or not of this practice in this instance,

a. please state whether you did or did not make a draft of this report available to any of the individuals whose conduct was reviewed in any way by the report. Please also explain why or why not.

Similarly to how we handled the reports on allegations of politicized hiring in the Department's Honors Program and by Monica Goodling and other staff in the Office of the Attorney General, we did not provide the report on the removal of the U.S. Attorneys to any of the subjects or witnesses whose conduct was discussed in the report. While providing

draft copies of the report to the subject of an investigation can have benefits, in these cases we did not do so because of the large number of subjects and witnesses involved, the fact that most were no longer employees of the Department, and our inability to ensure that information from the draft reports would not be publicly disclosed prior to the completion of the report, notwithstanding any confidentiality agreements.

b. Individuals whom the report concerns, including at least one Member of Congress, have stated that your report failed to present accurately and fairly all of the facts in the matter. Could you have avoided all or part of this criticism, along with its potential to undermine the credibility of the report and Congress's and the public's faith in your Office and the Office of Professional Responsibility, if you had offered the individuals affected by the report an opportunity to review a draft of the report and raise any of their concerns about the draft with you? Please explain why or why not.

See response to question 34a. In addition, based on our experience, we do not believe that allowing all the individuals affected by the report an opportunity to review the draft would have avoided much of this criticism.