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PRESERVING PROSECUTORIAL INDEPENDENCE: IS THE DEPARTMENT OF JUSTICE POLITICIZING THE HIRING AND FIRING OF U.S. ATTORNEYS?

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

MARCH 6, MARCH 29, MAY 15, JUNE 5, JULY 11, AND AUGUST 2, 2007

Serial No. J–110–14

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PRESERVING PROSECUTORIAL INDEPENDENCE: IS THE DEPARTMENT OF JUSTICE POLITICIZING THE HIRING AND FIRING OF U.S. ATTORNEYS?—PART II

TUESDAY, MARCH 6, 2007

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC

The Committee met, pursuant to notice, at 10:02 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Charles E. Schumer presiding.

Also present: Senators Leahy, Feinstein, Feingold, Schumer, Cardin, Whitehouse, Specter, Kyl, Sessions, and Graham.

Also present: Carol Lam, Former U.S. Attorney, Southern District of California; David C. Iglesias, Former U.S. Attorney, District of New Mexico; John McKay, Former U.S. Attorney, Western District of Washington; and H.E. "Bud" Cummins, III, Former U.S. Attorney, Eastern District of Arkansas.

OPENING STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. This hearing will come to order. The procedure we'll use today, because we do have limited time, is I'll give an opening statement, Senator Specter, Senator Feinstein, because of her active role here, and one other, if someone is here from the Minority side.

We will then have one opening statement. Carol Lam is representing the four U.S. Attorneys in the opening statement. Then we will have 10-minute rounds and we will try to get two rounds in. I want to thank all of you for attending.

Four weeks ago, this Committee had its first hearing to investigate the unprecedented firing of more than half a dozen Presidentially appointed U.S. Attorneys. At that time I said I was deeply concerned about the politization of the Justice Department, and about allegations that our top prosecutors were victim of a political purge.

Since our last hearing, my concerns have only grown, public confidence has only diminished, and the plot has only thickened. Almost every day it seems there is another twist, turn, or revelation that calls into question the Justice Department's abrupt and unprecedented firing of at least eight of our country's top Federal prosecutors.

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Federal prosecutors are supposed to be heroic soldiers in the fight against crime and corruption, not hapless casualties of political warfare. Federal prosecutors are supposed to be bedrock, neutral servants of the law, not temporary tools in the service of some political end.

And yet, it seems all too likely that some in the administration were seeking to turn U.S. Attorneys into political operatives. What are we to think when there is virtually no documentary evidence of any performance problem on the part of the fired U.S. Attorneys?

What are we to think when there are allegations of retaliation based on cold political calculations leveled by Federal prosecutors of unimpeachable integrity? What are we to think when prosecutors appear to have been fired for no reason, or worse, as part of a political vendetta? Our work, it seems, is far from over and may only be just beginning.

Let me take a minute to recap what has transpired over the past month. The Deputy Attorney General admitted, in a stunning revelation, that one U.S. Attorney who is here today, Bud Cummins, had not been fired for any performance-related reason, but only to provide an opportunity to an inexperienced former aide to Karl Rove.

Second, a week after our hearing we received a closed-door briefing from the Department of Justice. That briefing was supposed to put our minds at ease, but instead left many of us scratching our heads. The argument that all of the remaining U.S. Attorneys were fired for performance-related reasons simply does not add up when you read their statements.

Then a week after that briefing, we actually received the actual performance evaluations of the six fired U.S. Attorneys. Those evaluations showed unequivocally that every single prosecutor received an "Excellent" evaluation. That left us shaking our heads.

Indeed, just last 1 week, one fired U.S. Attorney, David Iglesias from New Mexico, who is here today, was described by former Deputy Attorney General Jim Comey, not as an underperformer, but as, rather, "one of the best we had".

Yesterday, Michael Battle, head of the Executive Office of the U.S. Attorneys and the official who personally called to fire a half-dozen U.S. Attorneys last December 7th, announced his own resignation. Was he fired? Did he resign in protest? We do not know yet.

Today, the McClatchie newspapers report that at least one of the fired U.S. Attorneys believes he was threatened with retaliation by a top Justice Department official if he complained publicly or came to testify before Congress.

Also today, the New York Times reports that another U.S. Attorney who has not been mentioned in our process before, another U.S. Attorney in Baltimore, may have been fired for political reasons in 2004.

Most disturbing, of course, are the shocking allegations that Mr. Iglesias, far from being fired for performance reasons, was dismissed because he didn't "play ball" after two Members of Congress allegedly tried to pressure him into rushing indictments against a local Democrat just days before the election.

We don't have answers to any of these questions yet, but this hearing is intended to get us there. We will not rest until we get the answers we seek and the American people get the explanations they deserve.

Here are the questions that we are concerned with, among others: was any U.S. Attorney removed because he or she was bringing too much heat on Republican elected officials, as in the case of Carol Lam?

Was any U.S. Attorney removed because he or she was not bringing enough heat on Democratic elected officials, as in the case of David Iglesias?

Who in the administration was responsible for this ill-advised purge? Was the purge orchestrated solely by the Department of Justice or was the White House involved?

In our efforts to get answers to these questions we have now heard twice from the Department of Justice. Today, we begin to hear the other side of the story. We have four extraordinary witnesses here, four of the fired U.S. Attorneys.

On behalf of the entire Committee I want to thank the witnesses for coming here today. I know it is neither easy, nor pleasant. I know that most of you would wish that these circumstances had not occurred.

As all four of you know, the issuance of subpoenas is on the Senate Judiciary Committee agenda for this Thursday, so refusing to come here this morning would have been just delaying the inevitable.

We will get, I trust, important information today and I expect today's testimony will generate more questions for the Department of Justice, which we will pursue. If so, we will not hesitate to call as many Department officials before us as is necessary to get to the bottom of this.

There is one thing, however, we should do right now without waiting for any more testimony: we should pass the bill that Senator Feinstein and Senator Specter have authored, which I have cosponsored, to provide a check and a balance on the U.S. Attorney's power to name interim U.S. Attorneys.

Twice now that common-sense reform has been blocked. I can't understand that, especially since no Senator will even admit to knowing that the change was made in the first place. So we'll keep fighting to get this legislation passed. Meanwhile, we will be vigilant in asking questions and conducting oversight. That's part of our job.

I look forward to all the testimony and call on my colleague, Senator Specter, who has been fully cooperative in us having these hearings.

Senator Specter?

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman. I agree with you totally that if the allegations are correct, that there has been serious misconduct in what has occurred with the termination of these U.S. Attorneys. I think it is very important to withhold judgment on the

allegations until we have worked through this very complex Senate hearing.

I have first-hand experience with what a prosecuting attorney does, having been the District Attorney of Philadelphia, and before that an Assistant District Attorney, I have been on that firing line for some 12 years.

The prosecuting attorney, accurately, you said, has the keys to the jail. The prosecuting attorney has a quasi-judicial function, part judge to decide whether cases ought to be brought, and once having made that decision, to be an advocate, so that people in the position of U.S. Attorneys have to be allowed to do their job in an unfettered way.

Now, as you accurately said, Mr. Chairman, two Members of Congress allegedly tried to pressure Mr. Iglesias, and I think we need to hear from Mr. Iglesias and we need to find out what is the other side of the conversation.

Both of those Members of Congress have issued statements denying that there was pressure, so let's keep it in perspective, as you say, of an allegation and let's find out what was said. And if there is a conflict in testimony, that's a matter for this Committee to determine.

When you have the allegation of a threat by a Department of Justice official against some individual if that individual testified, that may well be obstruction of justice. You can't threaten someone and stop them from testifying in a duly convened procedure. That's obstruction of justice. Now, that's a crime and obviously a matter of enormous seriousness.

When the reference was made to the New York Times story this morning by Senator Schumer about the Baltimore prosecutor, that's another matter which we have to inquire into. What frequently happens in matters like this, once something surfaces, other people may come forward, putting having the matter before the public in analogous circumstances.

But the story which appears in the New York Times is a complicated story. It is a story which may show inappropriate political pressure for the Baltimore attorneys pursuing an investigation relating to gaming, which implicated subordinates of the Governor, or it may be explained by what the story refers to as his "pressure tactics" and "performance rating". So there are a lot of nuances, and that's only a newspaper story and just the beginning of what we have to inquire into.

I think it is important to note at the outset that the President does have the authority to replace U.S. Attorneys. May the record show that some of the replaced U.S. Attorneys nodded in agreement with that.

Senator SCHUMER. The record will show.

Senator SPECTER. The record will show we questioners, perhaps even prosecutors, use that technique from time to time to move ahead on what is occurring. But the authority of the President to replace U.S. Attorneys does not mean that you can replace a U.S. Attorney if the U.S. Attorney is moving into sensitive ground, or if the U.S. Attorney is being replaced because of being too close to political leaders, or if political leaders are asking for the U.S. Attorney. That's an improper matter.

With respect to Ms. Lam, the suggestion was made that there may have been a termination because of her successful prosecution of former Congressman Duke Cunningham, and it may go to other matters which she was bringing. This may implicate the question of pending investigations.

That may be something which this Committee will have to take up, not in a public session. But we have authority to look into pending investigations, especially when there are collateral matters involved such as the one here.

So we have a weighty responsibility so we do not tamper with the established right of the President to replace U.S. Attorneys, but deal with the question of whether they're being replaced because they're doing a job which is politically sensitive, or going after corruption, or being replaced for some improper motive.

One concluding comment. That is, it would be helpful if the Department of Justice would be a little more sensitive about what they're doing. To replace seven U.S. Attorneys all at once is not exactly a discrete thing to do.

To replace U.S. Attorneys without having a record in detail for the reasons which could be responded to on what is an obvious Judiciary Committee inquiry is something that the Department of Justice ought to take into account in terms of their future conduct.

Mr. Chairman we are starting on a pretty long road and we are dealing with many individuals, two Members of Congress and a former Governor, and many other individuals who have been implicated in the public press, whose reputations are on the line. We share a joint determination to find out exactly what happened as best we can.

We're a very busy Committee and this may take a lot of time and a lot of hearings. But if we are going to find out if there was wrongdoing, and if we're going to clear people who have been publicly identified with alleged wrongdoing one way or another, we've got a big job to do in addition to all the other responsibilities we have in this committee, and in the Congress.

Thank you.

Senator SCHUMER. Thank you, Senator Specter.

Senator Feinstein?

STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Thank you very much, Senator Schumer and Senator Specter. Thank you both for your leadership on this.

I learned on January the 6th that several U.S. Attorneys had been told to resign by a date certain in mid-January and without cause. I was told that this was highly unusual and had never happened before, and that I should look into it.

While early rumors were circulating, I began to ask questions and expressed concern. However, as I did this the administration pushed back hard. Almost immediately I received an angry call from the Attorney General, who expressed his strong displeasure with what I was saying and told me I clearly had my facts wrong.

On January 18th, the Attorney General came before this Committee and vigorously denied that the firings were politically moti-

vated. He stated, "I would never, ever make a change in the U.S. Attorney position for political reasons."

Yet, almost immediately the Department had to start backtracking. Soon it became evident that Mr. Cummins from Arkansas, here today, was asked to resign for no other reason than to put in place a politically connected young lawyer, Tim Griffin. However, at that point the Justice Department maintained that Bud Cummins was the only victim of politics.

On February 6th, Deputy Attorney General Paul McNulty stressed that this was an isolated case by saying before the Judiciary Committee, "When I hear you talk about the politicizing of the Department of Justice it's like a knife in my heart." He went on to say that the others were asked to resign for "performance reasons."

However, here we are, a month later, and again the Department is changing its tune. Now DOJ has begun to argue that these U.S. Attorneys did not follow Department priorities and therefore main Justice had concerns about their policy decisions.

This Saturday in the Washington Post, the Department of Justice stated that "the ousters were based primarily on the administration's unhappiness with the prosecutors' policy decisions."

However, every witness sitting before this Committee today was judged by a team of independent evaluators to have a strategic plan and appropriate priorities to meet the needs of the Department and their districts. Once again, the Department of Justice's answers don't hold up.

The Department has used the fact that I wrote a letter on June 15th to the Attorney General concerning the San Diego region, and in that I asked some questions, what are the guidelines for the U.S. Attorney, Southern District of California, how do these guidelines differ from other border sections nationwide. I asked about immigration cases.

Here is the response I got, under cover of August 23rd in a letter signed by Bill Moschella. And I'd ask that both these letters be added to the record, if I might.

Senator SCHUMER. Without objection.

Senator FEINSTEIN. Thank you.

"That office," referring to Ms. Lam's office, "is presently committing fully half of its Assistant U.S. Attorneys to prosecute criminal immigration cases. Prosecutions for alien smuggling in the Southern District under U.S.C. Section 1324 are rising sharply in fiscal year 2006.

As of March 2006, the halfway point in the fiscal year, there were 342 alien smuggling cases filed in that jurisdiction. This compares favorably with the 484 alien smuggling prosecutions brought there during the entirety of fiscal year 2005." The letter goes on to essentially say that Ms. Lam is cooperating, that they have reviewed it, the Department is satisfied.

Surprisingly, the administration also claimed on Saturday that a few days before the firings, administration officials began the traditional process of calling lawmakers in the affected States to inform them about the decisions and to gather early input on possible successors. Two of those U.S. Attorneys were in my State.

This, too, is not accurate. I don't know who the administration called, but it wasn't me. And I checked, and it wasn't any of the other home State Democratic Senators. Every week since I first raised the issue, more information has continued to come out and, amazingly, each revelation is more shocking than the one before.

I think this hearing is extremely important. I think we need to get to the bottom of what precipitated the calls in December, and I think we need to ensure that this kind of politization of U.S. Attorneys Offices does not happen ever again.

For over 150 years, the process of appointing interim U.S. Attorneys has worked well, with virtually no problems. Now, just 1 year after receiving unchecked authority in a little known section added to the Patriot Act last spring, the administration has significantly abused its discretion. If there ever was any question why our system of government relies on checks and balances, I think that question has been answered.

The Judiciary Committee has reported out a bill with bipartisan support that would allow the Attorney General to appoint interim U.S. Attorneys, however, it would limit that time to 120 days. That is to create an incentive to go to the Senate for confirmation.

Then if that appointment had not been made, the appointing power would resort to a District Court judge, who would have the power to replace an interim U.S. Attorney. This is exactly the way the law was before it was changed in the Patriot Act.

I would like to point out that there are currently 13 vacancies pending; there are only 3 nominees. Why is the administration leaving these positions in that manner? By returning the law to what it was prior to reauthorization of the Patriot Act, the balance of power is returned and an important incentive is created to ensure the administration will work with the Senate to get the best candidate confirmed.

That bill is on the floor right now. That bill can be passed by the U.S. Senate tomorrow or the next day. That bill was heard in this committee. That bill was reported out by a majority of this committee. I really urge that we pass this bill and take that first step to assuring that this can never happen again.

I thank you.

Senator SCHUMER. Thank you, Senator Feinstein.

And Senator Kyl wishes to make a brief statement.

STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator KYL. Thank you, Mr. Chairman.

Just one brief comment about the legislation Senator Feinstein just mentioned. I have one objection to that bill and would like the opportunity to offer an amendment to it.

If I have that opportunity to offer an amendment, whether it's passed or not, would have no objection to the bill proceeding. The amendment is simply to remove the Federal District Courts from the nomination process.

I'd be curious about the views of the panel, all of whom are distinguished lawyers with a lot of experience, as to whether it is a good idea for Federal District judges to be appointing U.S. Attor-

neys or whether it is preferable to have those appointments from the executive branch.

Whether 120 days is the right period of time or not, it seems to me that we have to require that the President or the executive branch do the appointing, or nominating, I should say, and the Senate do the confirming, and to take this out of the realm of the courts.

I appreciate the fact that that's the way it was done for about 100 years in our history, but it hasn't been a particularly good experience. In any event, it's an opportunity for us to correct it now. So, it seems to me that at least we ought to have an opportunity to offer an amendment to that effect.

Second, there's been a suggestion here that somehow or other the removal of U.S. Attorneys was done for the purpose of replacing. Except in one situation, the situation with Mr. Cummins, the administration has denied that that's the case.

It seems to me that since the administration has not come forward with nominations to replace the individuals who were removed, it suggests that that was not the reason for the removal. Therefore, this effort to change the statute in order to prevent an abuse, is to prevent an abuse that did not occur.

So there's a disconnect between the remedy here, which is to change the statute, and the allegation that somehow this was done for political purposes, to replace one person with another. As I said, except for the case in Arkansas, that's simply not true.

Senator SCHUMER. Thank you, Senator Kyl.

Now we'll proceed to introduce and hear from our witnesses. Carol C. Lam served as U.S. Attorney for the Southern District of California from November, 2002 until this year. She's a graduate of Yale University and Stanford Law School, served as a law clerk to Judge Irving R. Kaufman on the Second Circuit Court of Appeals.

After clerking, she returned to the West Coast to become an Assistant U.S. Attorney in San Diego, where she was the recipient of many Department of Justice Special Achievement awards. She was named Superior Court judge in 2000, and is currently the senior vice president and legal counsel for Qualcomm, Inc.

David C. Iglesias served as U.S. Attorney for the District of New Mexico from 2001 until recently, and has had a distinguished career as a U.S. Navy Reserve officer, and captain in the Judge Advocate General's Corps.

He earned his B.A. at Wheaton College in Illinois and his J.D. at the University of New Mexico School of Law. While serving as a lieutenant in the Navy, he was criminal defense counsel in the court-martial that served as the basis for the play and film, "A Few Good Men". Mr. Iglesias was, of course, the inspiration for the Tom Cruise character in that movie.

John McKay was named U.S. Attorney for the Western District of Washington State in 2001, served there until recently. He's a graduate of the University of Washington, and began his professional career right here on Capitol Hill as a legislative assistant to Congressman Joel Pritchard of Washington State.

After earning his J.D. at Creighton University's School of Law, he returned to Seattle to work in private practice, eventually as Chief Litigation Partner at the firm of Cairncross & Hempelmann.

Mr. McKay was a White House fellow, working as Special Assistant to the Director of the FBI in 1989, and later continued his work as a distinguished public servant by serving as president of the Legal Services Corporation. He's currently Visiting Professor of Law at Seattle University's School of Law.

And H.E. "Bud" Cummins, III served as U.S. Attorney for the Eastern District of Arkansas from 2001 until 2006, in December. He earned his undergraduate degree from the University of Arkansas in 1981, and his J.D. from the University of Arkansas Law School.

Mr. Cummins clerked for the U.S. Magistrate Judge John Forster, Jr., and also for Chief U.S. District Judge in the Eastern District of Arkansas, Judge Stephen M. Reasoner.

He then entered private practice in Little Rock before serving as Chief Legal Counsel to Governor Mike Huckabee. Currently, Mr. Cummins is a consultant to a biofuel company.

Now we will administer the oath. Will all witnesses please stand to be sworn? Raise your right hand.

[Whereupon, the witnesses were duly sworn.]

Senator SCHUMER. Please be seated.

Ms. Lam, you may proceed.

JOINT STATEMENT OF CAROL LAM, FORMER U.S. ATTORNEY, SOUTHERN DISTRICT OF CALIFORNIA, SAN DIEGO, CALIFORNIA; DAVID C. IGLESIAS, FORMER U.S. ATTORNEY, DISTRICT OF NEW MEXICO, ALBUQUERQUE, NEW MEXICO; JOHN MCKAY, FORMER U.S. ATTORNEY, WESTERN DISTRICT OF WASHINGTON, SEATTLE, WASHINGTON; AND H.E. "BUD" CUMMINS, III, FORMER U.S. ATTORNEY, EASTERN DISTRICT OF ARKANSAS, LITTLE ROCK, ARKANSAS

Ms. LAM. Thank you. Good morning, Mr. Chairman and members of the committee. My name is Carol Lam, and until recently, I was the U.S. Attorney for the Southern District of California.

In the interest of conserving time, I will be making introductory remarks on behalf of all the former U.S. Attorneys before you on the panel today, with whom I have the great privilege of serving as a colleague from the following districts: Bud Cummins, Eastern District of Arkansas; David Iglesias, District of New Mexico; and John McKay, Western District of Washington.

Each of us was subpoenaed to testify this afternoon on the same subject matter before a Subcommittee of the House Committee on the Judiciary, and we were informed that in short order we would be receiving subpoenas to testify before this committee. So, we are making our appearances before both committees today.

We respect the oversight responsibilities of the Senate Committee on the Judiciary over the Department of Justice, as well as the important role this Committee plays in the confirmation process of U.S. Attorneys.

Each of us is very appreciative of the President and our home State Senators and Representatives who entrusted us 5 years ago with appointments as U.S. Attorneys.

The men and women in the U.S. Attorney's Offices in 94 Federal judicial districts throughout the country have the great distinction of representing the United States in criminal and civil cases in Federal court.

They are public servants who carry voluminous case loads and work tirelessly to protect the country from threats, both foreign and domestic. It was our privilege to lead them and to serve with our fellow U.S. Attorneys throughout the country.

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

As the first U.S. Attorneys appointed after the terrible events of September 11, 2001, we took seriously the commitment of the President and the Attorney General to lead our districts in the fight against terrorism.

We not only prosecuted terrorism-related cases, but also led our law enforcement partners at the Federal, State, and local levels in preventing and disrupting potential terrorist attacks.

Like many of our U.S. Attorney colleagues across this country, we focused our efforts on international and interstate crime, including the investigation and prosecution of drug traffickers, human traffickers, violent criminals, and organized crime figures.

We also prosecuted, among others, fraudulent corporations and their executives, criminal aliens, alien smugglers, tax cheats, computer hackers, and child pornographers.

Every U.S. Attorney knows that he or she is a political appointee, but also recognizes the importance of supporting and defending the Constitution in a fair and impartial manner that is devoid of politics. Prosecutorial discretion is an important part of the U.S. Attorney's responsibilities.

The prosecution of individual cases must be based on justice, fairness, and compassion, not political ideology or partisan politics; we believed that the public we served and protected deserved nothing less.

Toward that end, we also believed that within the many prosecutorial priorities established by the Department of Justice, we had the obligation to pursue those priorities by deploying our office resources in the manner that best and most efficiently addressed the needs of our districts.

As Presidential appointees in particular geographic districts, it was our responsibility to inform the Department of Justice about the unique characteristics of our districts. All of us were long-time, if not lifelong, residents of the districts in which we served.

Some of us had many years of experience as Assistant U.S. Attorneys, and each of us knew the histories of our courts, our agencies, and our offices. We viewed it as a part of our duties to engage in discussion about these priorities with our colleagues and superiors at the Justice Department.

When we had new ideas or differing opinions, we assumed that such thoughts would be welcomed by the Department and could be freely and openly debated within the halls of that great institution.

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

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

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

The members of the panel today regret the circumstances that have brought us here to testify. We hope those circumstances do not in any way call into question the good work of the U.S. Attorney's Offices we led and the independence of the career prosecutors who staffed them.

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

We welcome the questions of the Chair and members of the committee. Thank you.

[The prepared joint statement of Ms. Lam, Mr. Iglesias, Mr. McKay, and Mr. Cummins appears as a submission for the record.]

Senator SCHUMER. Thank you, Ms. Lam. I know the statement is on behalf of your three colleagues.

Before we get to questions, our Chairman, who has been extremely supportive of what this Committee is doing with these hearings, will make an opening statement.

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Well, thank you very much, Senator Schumer. Thank you for chairing this hearing.

There have been very few things I have heard over the past that has concerned me as much as this, as much as these sudden firings. I felt very privileged to have been a State prosecutor, not a Federal prosecutor. Many prosecutors serve on this committee, Senator Specter, and others.

I remember when Senator Feinstein and others first came to me and talked about it. At first, I thought there had to be some mistake. But these actions we've heard of from the administration, I really believe they threaten to undermine the effectiveness and professionalism of U.S. Attorney's Offices around the country.

Not since the Saturday night massacre when I was a young lawyer, when President Nixon forced the firing of the Watergate prosecutor, Archibald Cox, that we witnessed anything of this magnitude. The calls from a number of U.S. Attorneys across the coun-

try last December who were forced to resign were extraordinary. I don't know of any precedent for it.

What is more disconcerting is, unlike during Watergate, there is no Elliott Richardson or William Ruckelshouse seeking to defend the independence of the prosecutors. Any of us who have ever been a prosecutor know, independence is the most important thing you have.

But instead, in this case the Attorney General, the Deputy Attorney General, the Executive Office of the U.S. Attorney, and the White House all collaborated in these actions. I think that's wrong.

U.S. Attorneys around the country are the chief Federal law enforcement officers in their States and they are the face of Federal law enforcement. They have enormous responsibility for implementing any terrorism efforts, bringing important and often difficult cases, and taking the lead to fight public corruption.

It's vital that those holding these positions be free from an inappropriate influence, an importance reflected in the fact that these appointments are, traditionally and currently, subject to Senate confirmation. The U.S. Senate has to actually vote on the confirmation just to determine that these are going to be independent positions.

Among that independence, of course, is the ability to use your own discretion in not only the cases you bring, but one of the most important things a prosecutor can do is discretion when you either don't bring a case or when you use your resources for what you feel is the most important.

There's been a series of shifting explanations and excuses from the administration, and a lack of accountability or acknowledgement of the seriousness of the matter makes it all the worse.

The Attorney General's initial response at our January 18th hearing when we asked about these matters was to brush aside any suggestion that politics and interference with ongoing corruption investigations were factors in the mass firings. Well, now we know that wasn't so.

We know these factors did play a role in these matters. The question now arises, where is the accountability? For 6 years, accountability has been lacking. In this administration, loyalty to the President is rewarded over all else. I think this lack of checks and balances has to end. We don't need another commendation for a heck of a job done by somebody.

I was pleased, on the side, when Defense Secretary Gates went out to Walter Reed and said, "This is wrong," and took responsibility. He started moving things. I told him publicly, it was refreshing to see somebody actually acknowledge what happens.

But there's no accountability for this action by the Justice Department, and that's why we have to have these hearings. You can't just create vacancies on a time line, where you're then going to put in people—in one case, we found out, a political acolyte of a major White House person. Did not necessarily have the qualifications, but was put in there for his political qualifications. And the interesting thing is, every one of the people asked to resign were nominated by this President and confirmed by the Senate.

Now, we can fix this thing in the Patriot Act. We've reported a bill to the Senate to reverse that mistake. Senator Feinstein, Sen-

ator Specter, Senator Schumer and I have all co-sponsored it and it's being blocked in the Senate by Republican objections. I hope that after these hearings it will move forward and we will not see this kind of a scandal happen again.

Mr. Chairman, I will submit questions, but I think that the questions that you and others are going to ask are pretty well going to reflect what I would ask. Thank you.

Senator SCHUMER. Thank you, Mr. Chairman. Again, thank you for your support and help on this, and so many other issues.

All right. My first series of questions are directed to Mr. Iglesias. First, I want to thank you for agreeing to testify here today, Mr. Iglesias.

I know this is not easy or pleasant for you. You caused quite a stir by your public allegations last week about potentially inappropriate contacts you've had with two Members of Congress last October.

You've been quoted as saying that the calls made you feel "pressured to hurry the subsequent cases and prosecutions" in a public corruption case involving local Democratic officials in New Mexico.

Some of the questions that I have to ask may be awkward and difficult for you to answer. Some are certainly awkward and difficult for me to ask, as they involve a colleague in the Senate. But I think everyone will agree that all the facts have to come out, and we would not be doing our job if we did not try to make an accurate record of what happened.

These hearings were initiated long before we knew any colleagues might be involved, and when we initiated the hearings I promised that we would take this (inaudible) to its logical conclusion, which is our duty as legislators. At all times we will be fair and responsible, but we must get to the bottom of this issue.

So, Mr. Iglesias, you have said publicly that you received two calls from Members of Congress in October of 2006 about pending public corruption investigations. Who made those calls?

Mr. IGLESIAS. Mr. Chairman, Mr. Ranking Member, honorable members of the Senate, thank you for the opportunity for me to set the record straight. And Senator Schumer, thank you for pronouncing my name correctly the first time.

[Laughter.]

The first call was made on or about October the 16th. I was here in Washington, DC on DOJ business. We were here for several days on Subcommittee work and I had just returned to my hotel.

I received a call from Heather Wilson, U.S. Representative from New Mexico, District 1. The call was quite brief. Senator, shall I go into the contents or shall I just give you the name of the individual who called me?

Senator SCHUMER. Yes. I'll go through the questions and then give you a chance to fill in the details. OK?

Mr. IGLESIAS. OK.

Senator SCHUMER. So who was the second call from?

Mr. IGLESIAS. The second call was approximately 2 weeks later, when I received a call at home from Senator Pete Domenici.

Senator SCHUMER. OK.

And do you remember the date and the day of the call, the day of the week?

Mr. IGLESIAS. It was approximately the 26th or 27th of October.

Senator SCHUMER. Right.

And did someone place the call for the Senator or did he call you directly?

Mr. IGLESIAS. Initially, his Chief of Staff, Steve Bell, called and indicated that the Senator wanted to speak with me.

Senator SCHUMER. OK.

And approximately how long was that phone call in total?

Mr. IGLESIAS. Very brief. One to 2 minutes, at the tops.

Senator SCHUMER. OK.

At the time, were there public reports about a corruption investigation involving Democrats in New Mexico?

Mr. IGLESIAS. Yes, sir.

Senator SCHUMER. Please describe for the Committee now, as best you can, your entire recollection of that communication. Please tell us what Senator Domenici said and what you said.

Mr. IGLESIAS. Thank you, sir. I was at home. This was the only time I had ever received a call from any Member of Congress while at home during my tenure as U.S. Attorney for New Mexico.

Mr. Bell called me. I was in my bedroom. My wife was nearby. And he indicated that the Senator wanted to speak with me. He indicated that there were some complaints by some citizens, so I said, "OK." And he says, "Here's the Senator."

So he handed the phone over and I recognized the voice as being Senator Pete Domenici. And he wanted to ask me about the corruption matters or the corruption cases that had been widely reported in the local media. I said, "All right."

He said, "Are these going to be filed before November?" And I said I didn't think so, to which he replied, "I'm very sorry to hear that." Then the line went dead.

Senator SCHUMER. So in other words, he hung up on you?

Mr. IGLESIAS. That's how I took that. Yes, sir.

Senator SCHUMER. And he didn't say goodbye or anything like that?

Mr. IGLESIAS. No, sir.

Senator SCHUMER. Now, did you take that as a sign of his unhappiness with your decision?

Mr. IGLESIAS. I felt sick afterward. So, I felt he was upset that—at hearing the answer that he received.

Senator SCHUMER. Right.

And so is it fair to say that you felt pressured to hurry subsequent cases and prosecutions as a result of the call?

Mr. IGLESIAS. Yes, sir, I did. I felt leaned on. I felt pressured to get these matters moving.

Senator SCHUMER. And as you say, it was unusual for you to receive a call from a Senator at home while you were the U.S. Attorney.

Mr. IGLESIAS. Unprecedented. It had never happened.

Senator SCHUMER. OK.

How long after that contact with Senator Domenici were you fired?

Mr. IGLESIAS. Approximately 6 weeks later, five—5 weeks later, thereabouts.

Senator SCHUMER. Thank you.

Let's go on to the call with Heather Wilson. Did the call with Congresswoman Wilson occur before or after your conversation with Senator Domenici?

Mr. IGLESIAS. The call from Congresswoman Wilson was approximately 2 weeks prior to the call from Senator Domenici.

Senator SCHUMER. Do you remember the day or date of that one?

Mr. IGLESIAS. It was on or about the 16th of October.

Senator SCHUMER. And please describe for the Committee as best you can your entire recollection of that communication. Tell us what Congresswoman Wilson said and what you said.

Mr. IGLESIAS. That was also a very brief conversation. She mentioned—well, I mentioned I was just coming in to Washington, DC and she joked, "Well, I'm sorry to hear that." She then asked me about, she'd been hearing about sealed indictments. She said, "What can you tell me about sealed indictments?"

The second she said any question about sealed indictments, red flags went up in my head because, as you know, we cannot talk about indictments until they're made public, in general.

We specifically cannot talk about a sealed indictment. It's like calling up a scientist at Sandia Laboratories and asking them, let's talk about those secret codes, those launch codes. So, I was evasive and non-responsive to her questions. I said, "Well, we sometimes do sealed indictments for national security cases, sometimes we have to do them for juvenile cases."

And she was not happy with that answer. Then she said, "Well, I guess I'll have to take your word for it." And I said—I don't think I responded. "Goodbye." That was the substance of that conversation.

Senator SCHUMER. Did you feel pressured during that call?

Mr. IGLESIAS. Yes, sir, I did.

Senator SCHUMER. OK.

Did you feel as sick as you did after the second call?

Mr. IGLESIAS. Not as sick, because I didn't think there's be any more communications.

Senator SCHUMER. Got you. OK.

Let me now go to—we have limited time. I'll want to come back to you, Mr. Iglesias, in the second round.

But I want to go, now, to Mr. McKay. Our committee's interest in these matters are serious and, of course, any attempt to intimidate a witness into not testifying or not being cooperative would be very troubling. Let me ask this question.

I'm going to ask this question of all of you, but I'm going to start with Mr. McKay. After your dismissal, did any of you—first, Mr. McKay—receive any communication from any official at the Department of Justice that you believed was designed to discourage you from testifying or making public comments?

Mr. MCKAY. Senator, a conversation was related to me by one of the panel members, Mr. Cummins, who I believe wants to address that first, if you would like to do that, and I'm prepared to comment on how I received that information.

Senator SCHUMER. Fine. Mr. Cummins, why don't you then talk about that?

Mr. CUMMINS. "Wants to" might be a strong description of my—

[Laughter.]

I'm willing to tell you, truthfully, about a phone call I received.

I believe on February 20th, I received a phone call from Mike Elston, who I believe is the Chief of Staff to the Deputy Attorney General. I had had some previous conversations with Mr. Elston.

In fact, it was Mr. Elston that I contacted, after the Attorney General testified in this committee, to express to him some concerns I had about the way I was being treated in light of the Attorney General's comments.

So—I'd have to think. Over the course of this, Mike Elston and I have talked three or four times. That day was a Tuesday, as I recall, and there had been a Sunday Washington Post article in which I was quoted as saying something to the effect of, "the Department can replace us for any reason or no reason", and also saying that if—if—they were somehow being deceptive about the reasons—about my colleagues because they didn't want to talk about the true agenda behind these other dismissals, that I thought that was unfair and that should be corrected. And I'm paraphrasing. I don't have my exact quote. That was in a Dan Eggen story in the Washington Post, I believe, on February 18th.

Apparently that struck a nerve, that I had given that quote, and partly probably because they felt like they had done me right when the Deputy Attorney General had testified, and to that extent they certainly had. He honestly said what my situation was and cut me out of this other category. So, maybe they felt like they'd been somehow betrayed by me because I should still be in the fold.

And so, you know, I discussed that with Mike and told him that, No. 1, the paragraph right before my quote used—said that "many prosecutors were enraged." I said that's not my—I didn't use the words "enraged". That's the writer's words. Maybe some of the other colleagues are enraged, but that wasn't the context that I made that statement.

I told him, additionally, that—I pointed out to him that none of the U.S. Attorneys had taken any action to stir up any controversy after we'd been dismissed, and it was only once Congress started calling the Department of Justice to task and they endeavored to defend their actions that any of us said anything, because we weren't comfortable with what was being said.

And then finally I pointed out to him that—that all of us at that point had already received a number of phone calls from your staff, and I'm not sure about the House at that point, but we had had many invitations already to come here and do this and testify, which we had all declined.

So I was trying to remind him that we weren't driving this train, that it was really an issue between the administration and Congress, and we were just witnesses. And so—and this was all very congenial. This was not a tense phone call.

But then at one point he did say that there was a feeling in the Department that they had been too restrained in their defense of their actions, mainly concerning my colleagues, and this was after they had had the behind-doors session with the Senate to show whatever materials they showed.

And he indicated that there was a viewpoint held among people—some people in management at the Department that if the controversy continued to be stirred up, that more information, more

damaging information might be brought out. I'm not attempting to quote him here, but the inference was clear. And again, I think it mainly applied to my colleagues, not to me, because I had been separated.

Senator SCHUMER. Right.

Mr. CUMMINS. And so, you know, I'm not trying to characterize that as a threat. It was a very congenial phone call. It might have been a threat, might have been a warning, might have been an observation, a prediction. You can characterize it. I'm going to leave it up to you.

But I thought about it for a while and I felt like it had been a confidential conversation. I didn't feel completely comfortable sharing it with anybody. But on the other hand, I was very concerned about my colleagues, the people that are sitting here, and others that I didn't feel like were being treated fairly. And, of course, I'd been in their shoes just a few weeks before.

And so I felt like I would not be comfortable having one of them give an interview the next day and then have the world fall on top of them without knowing that that message had been delivered.

And I almost felt like it had been delivered for a purpose for me to share it, so I did, in fact, try to convey that to Ms. Lam, Mr. Iglesias, Mr. McKay, Mr. Bogden, and Mr. Charlton.

Senator SCHUMER. How did you convey that to them?

Mr. CUMMINS. I actually sent them an e-mail.

Senator SCHUMER. Right.

And is that e-mail available for the record, should we need it?

Mr. CUMMINS. Yes, sir.

Senator SCHUMER. OK.

Mr. McKay, give us what your feelings were, your interpretation when you received that e-mail.

Mr. MCKAY. Senator, thank you. Mr. Cummins delineated his information down to some fairly direct comments to us. I took those comments to be the following: No. 1, public comments by former U.S. Attorneys were intensely frowned upon by the Department of Justice and we could expect repercussions if we continued to speak publicly. No. 2, any—

Senator SCHUMER. And this was after our investigation had begun.

Mr. MCKAY. That is correct. February 20th is, I believe, the date of the phone call from Mr. Elston. No. 2, he made it clear, at least to Mr. Cummins, who passed it on to us, that any work with the Congress or testimony before the Congress would be seen as an escalation by the Department of Justice and that they would respond accordingly.

I heard both of those messages from Mr. Cummins, and Mr. Cummins related to us fairly and, I think, with courage that he considered Mr. Elston's call to be intentionally delivered to us, not just to him.

So, therefore, Senator, I felt that that was a threat. I felt it was hugely inappropriate coming from a Department of Justice official, particularly with regard to potential Congressional testimony. I do think it was inappropriate. I want to say, while it was a threat, I'm not intimidated, and I don't think my colleagues are, either.

Senator SCHUMER. Thank you.

Relate to us your feelings after receiving the e-mail from Bud Cummins, Mr. Iglesias.

Mr. IGLESIAS. I felt like it was a warning shot across the bow. The message that I took is, you'd better tone it down, stop talking, or there will be other embarrassing things revealed about your record. It didn't intimidate me, it made me angry. So, hence, my presence here.

Senator SCHUMER. Right.

And Ms. Lam?

Ms. LAM. I don't think I have a lot to add to that.

I did receive the message. I think trying to sort out or describe my feelings at any point in time is a little bit difficult at this point, but I think I did have some concern because neither before, during, or after the call of December 7th have I ever been provided directly by the Department with the reason I received the call.

Therefore, it was never known to me whether they were holding some information that they were going to release subsequently that I was not aware of, and therefore some attack that I could not predict. So having not ever been told the reason, I think that did cause me some concern.

Senator SCHUMER. Thank you.

Now, Mr. Cummins or Mr. McKay, but Mr. Cummins, would you please submit that e-mail to the committee? You don't have it right here, do you?

Mr. CUMMINS. Yes, Senator, I have it.

Senator SCHUMER. OK. Well, maybe during recess or at some point we will ask you to just give it to us and we can ask questions about it on the second round.

Mr. CUMMINS. Yes, sir.

Senator SCHUMER. Just one final question for me I want to ask each of these witnesses. And just please answer this one "yes" or "no", because my time has expired.

I want to ask each of you, based on everything you know, sitting here today, do you believe that you were fired for any failure of performance, as alleged by the Justice Department?

Ms. Lam? Just answer that "yes" or "no".

Ms. LAM. I honestly don't know, but I don't think so, Senator.

Senator SCHUMER. Mr. Iglesias?

Mr. IGLESIAS. No, sir.

Senator SCHUMER. Mr. McKay?

Mr. MCKAY. No, Senator.

Senator SCHUMER. Mr. Cummins? We know that that's a fact with you, because they admitted that.

My time has expired. I've gone a little over.

Senator Specter?

Senator SPECTER. Well, Mr. Chairman, for purposes of my round I think it important to note that you were 6 minutes and 58 seconds over. And I don't say that in any sense to say you shouldn't be, just that I would look for the same latitude.

Senator SCHUMER. You will have it, as always.

Senator SPECTER. OK.

May I see the e-mail before my round begins, Mr. Cummins?

Mr. Chairman, may I ask that the clock stop?

Senator SCHUMER. Yes. Would the Clerk get the e-mail and then copy it and distribute it each person? And while we're waiting, since we do have limited time, they have another appointment, do you want to wait until we get it copied?

Senator SPECTER. Yes. I need to see the e-mail so I know what the basis of the communication was.

Senator SCHUMER. Then maybe, can we let Senator Feinstein go for her 10 minutes?

Senator SPECTER. Sure.

Senator SCHUMER. Thank you.

Senator Feinstein? Thanks.

Senator FEINSTEIN. Thank you.

If I may, I'd like to begin with Mr. McKay. Mr. McKay, did any Member of Congress or their staff contact you regarding decisions your office was making whether to conduct an investigation?

Mr. MCKAY. Yes.

Senator FEINSTEIN. Were you ever contacted by a Member of Congress or their staff about the status of the Washington gubernatorial election?

Mr. MCKAY. Yes, Senator.

Senator FEINSTEIN. Who, and what, was the outcome of those contacts?

Mr. MCKAY. Senator, at some weeks following the 2004 Governor's election in the State of Washington, I received a phone call from the Chief of Staff to Representative Doc Hastings of Richland, Washington.

The Governor's election at that time had been certified in favor of the Democratic candidate on a third recount by something around 200 votes out of millions cast. I was told the purpose of the call was to inquire on behalf of the Congressman regarding the status of any Federal investigation into the election.

I advised Representative Hastings's Chief of Staff of the publicly available information, and that was that the Seattle Field Office of the Federal Bureau of Investigation, and my then-office, the U.S. Attorney's Office for the Western District of Washington, was requesting anyone with information about voter fraud to immediately contact the Bureau.

When the Chief of Staff began to press me on any future action by the United States on the election, I stopped him.

Senator FEINSTEIN. Excuse me. Who was the Chief of Staff that called?

Mr. MCKAY. The Chief of Staff name was—it is Ed Cassidy. I understand he's no longer the Chief of Staff.

Senator FEINSTEIN. Thank you. Please proceed.

Mr. MCKAY. Mr. Ed Cassidy. So when Mr. Cassidy called me on future action, I told him that—I stopped him and I told him that I was sure that he wasn't asking me, on behalf of his boss, to reveal information about an ongoing investigation or to lobby me on one, because we both knew that would be improper. He agreed that it would be improper and ended the conservation in a most expeditious fashion.

I was concerned and dismayed by the call. I immediately summoned the first Assistant U.S. Attorney and the Criminal Chief for my office into my office, and I briefed them on the details of the

call. We all agreed that I stopped Mr. Cassidy before he entered clearly inappropriate territory and it was not necessary to take the matter any further.

Senator FEINSTEIN. Do you think this situation had anything to do with the reason you were asked to resign?

Mr. MCKAY. I do not know, Senator. I think that would be something that perhaps Representative Hastings or officials of the Department of Justice would say. Like Ms. Lam, I neither asked for, nor received, any explanation for my forced resignation.

And I actually want to say that I agree completely with Senator Specter. I did serve at the pleasure of the President. When asked to resign, I resigned quietly. I made no statement about my service. I had no intention of defending my time in office. I have no intention of doing that here either. But I did try to go quietly.

I did feel that was my duty to the President of the United States and to the Senate. And the situation changed when they began to mischaracterize the work of the people in my office, and I am here, in part, to defend their work.

Senator FEINSTEIN. Was there any other pressure you received to launch an investigation?

Mr. MCKAY. Not from Members of Congress. It did become a very controversial issue in Seattle and throughout the State of Washington when a Governor's election is that close.

And I want to say that I considered that to go completely and entirely with the territory of being an independent prosecutor whose job it is to do what's right by the law, and not the political thing, and I had felt no pressure in that regard.

Senator FEINSTEIN. Thank you, Mr. McKay.

Now I'd like to turn to Ms. Lam, if I might. As you know, the FBI Chief in San Diego, Dan Dzwilsky, stated that your continued employment, he believed, was critical to the success of a number of ongoing investigations.

I understand this is an ongoing investigation and I don't want you to reveal anything confidential, but is it fair to say that even though there was a conviction in the Duke Cunningham case, there may also be other ongoing investigations that could stem from that case?

Ms. LAM. Well, Senator, as you know, 2 days before I left office on February 15th, the office did bring an indictment against Dusty Fogo and Brent Wilkes, as well as—well, indictments were brought in those two cases. And at that time our office announced that the investigation was ongoing. Beyond that, Senator, I don't really feel that I can—I can comment further.

Senator FEINSTEIN. And has your office filed additional subpoenas, four additional subpoenas?

Ms. LAM. Since that time? I don't know, your Honor. I'm sorry. I don't know, Senator. It's the circumstances.

Senator FEINSTEIN. And could you tell us what Dusty Fogo and Brent Wilkes are being indicted for?

Ms. LAM. They were indicted—it was an investigation that did arise out of facts learned during the investigation of former Congressman Cunningham. One indictment had to do with Mr. Fogo's use of his position at the CIA, his receipt of—his receipt of goods in order to get government contracts for Mr. Wilkes. And the other

indictment involved a conspiracy—a conspiracy to bribe Congressman Cunningham.

Senator FEINSTEIN. Now, Ms. Lam, your office has been criticized for its handling of immigration cases. Was this concern raised with you directly, and if so, what was the outcome?

Ms. LAM. Senator, the first real controversy about the office's handling of immigration cases, I think, arose approximately a year ago when Congressman Isa, in San Diego, began responding to complaints from the Border Patrol Union—not management, but the Border Patrol Union—regarding the office's decision—my decision—to reduce some of our—some of the prosecutions of lower-level "coyotes", or foot guides, in the office.

I think it's important as a starting ground to note that, in similarly sized U.S. Attorney's Offices throughout the country, one office in the Northeast prosecutes approximately 400 cases a year, another one in the West prosecutes about 800 cases a year, another one in the East, about 1,400 cases a year. The Southern District of California, in any given year, will prosecute between 2,400 and 3,000 cases.

There were some complaints about that and we made it—and I had discussions with the Department of Justice really about those complaints from the Congressman.

And I explained to the Department that what our office was doing was pursuing lengthier sentences, as the Justice Department had asked us to do only about 2 years earlier, to pursue cases and to stick to the sentencing guidelines.

And at that time I had informed the Justice Department that we would likely go to trial more as a result of pursuing those lengthier sentences, but that we would act in conformance with their wishes. And, in fact, between 2004 and 2005, our immigration trial rate double, more than doubled, from 42 to 89 trials.

That took a lot of attorney resources, but I felt that we were complying with the Department's wishes. I thought we were getting good results, putting very bad people, criminal recidivists, away, the costs being more attorney time put into those cases. And, in fact, I think we got good results.

The result was that we did have to cut some filings. And I told the Department that would likely be the result. Their response was, well, we're paid to be trial attorneys, not plea bargain attorneys. I accepted that.

And, in fact, our higher-end sentences on criminal recidivists has increased four-fold, while our low-end sentences has decreased. I think what we have done, is we have eliminated a lot of the revolving-door prosecutions of lower-level alien cases. We have also increased the number of very significant investigations and prosecutions.

We have convicted seven corrupt law enforcement agents along the border who were charged with enforcing the alien smuggling laws. They are very lengthy wire tap investigations. They required a lot of resources. But these are people who waved through hundreds of aliens across the border without detection every week. We get but one criminal statistic for each of those cases.

We prosecuted the Golden State Fence Company, one of the very few criminal employer sanction cases in the country, a $5 million forfeiture, the two owners facing jail time.

And we have been able to dismantle alien smuggling organizations. In August, we received a 188-month sentence on the head of an alien smuggling organization. I don't think that anything that we have done has been inconsistent with the mandates of the Department. We've been very transparent in what we have been doing. And as you noted, Senator, we felt the Department was supportive of those efforts.

Senator FEINSTEIN. Well, thank you. And I'd just like to say for the committee's benefit that you are very well respected by judges, by investigators, and by others in the district.

Could I ask one other question?

Senator SCHUMER. Please go right ahead, Senator.

Senator FEINSTEIN. I'd like to ask the same question of each one of you. That is, how soon after you were told that you were forced to resign did interviews, to the best of your knowledge, begin for your replacement? Could we start with you, Ms. Lam?

Ms. LAM. I don't think interviews began until approximately 2 weeks before I left office. That would have been early February. I can't give you a precise date, but it would have been approximately almost 2 months after I received the phone call.

Senator FEINSTEIN. Mr. Iglesias?

Mr. IGLESIAS. To the best of my recollection, the interviews took place—this is for the interim position—in early to mid-February of this year.

Senator FEINSTEIN. Mr. McKay?

Mr. MCKAY. Senator, I was told to resign on December 7th, and to my knowledge the first request for interviews in my district took place on approximately January 16th. And I recall it because it was about 2 days before the U.S. Attorney testified before this committee.

Senator FEINSTEIN. Thank you.

Mr. Cummins?

Mr. CUMMINS. Well, in my case, Senator, the interim person was already identified—

Senator FEINSTEIN. Prior.

Mr. CUMMINS.—at the time I was asked to leave.

Senator FEINSTEIN. Yes. I think that is—

Mr. CUMMINS. So I don't think there were interviews.

Senator FEINSTEIN. That is significant because the outside person was clearly brought in. In the other four cases, there were no interim interviews begun until the cases became very publicly known. I think that has led us to believe that it was quite probable that outside individuals were going to be brought in to take these positions.

But my time is up.

Senator SCHUMER. Thank you, Senator Feinstein.

Senator FEINSTEIN. Thank you.

Senator SCHUMER. Before we get to Senator Specter, we now all have a copy of the e-mail. First, I'd ask unanimous consent it be read into the record.

Senator SCHUMER. And second, I think it's important, and I'd like it read here so everyone can hear it. Mr. Cummins, would you want to read it? Or if you'd prefer, I'll read it.

Mr. CUMMINS. I'd prefer for you to read it.

Senator SCHUMER. Thank you. OK. I thought that might be the case. OK.

It's from H.E. Cummins, sent Tuesday, February 20th, 2007, 5:06 p.m. to Dan Bogden, Paul K. Charlton, David Iglesias, Carol Lam, McKay, John, Law Adjunct. I'm just reading it exactly as it is.

"Subject: On Another Note. Mike Elston from the DAG's office called me today. The call was amiable enough, but clearly spurred by the Sunday Post article.

"The essence of his message was that they feel like they are taking unnecessary flak to avoid trashing each of us specifically or further, but if they feel like any of us intend to continue to offer quotes to the press or organize behind-the-scenes Congressional pressure, then they would feel forced to somehow pull their gloves off and offer public criticisms to defend their actions more fully.

"I can't offer any specific quotes, but that was clearly the message. I was tempted to challenge him and say something movie-like such as, 'Are you threatening me?' But instead, I kind of shrugged it off, said I didn't sense that anyone was intending to perpetuate this.

"He mentioned my quote on Sunday and I didn't apologize for it, told him it was true, and that everyone involved should agree with the truth of my statement, and pointed out to him that I stopped short of calling them liars and merely said that if they were doing as alleged, they should retract.

"I also made it a point to tell him that all of us have turned down multiple invitations to testify. He reacted quite a bit to the idea of anyone voluntarily testifying and it seemed clear that they would see that as a major escalation of the conflict meriting some kind of unspecified form of retaliation.

"I don't personally see this as any big deal, and it sounded like a threat of retaliation amounts to a threat that they would make their recent behind-closed-doors Senate presentation public.

"I didn't tell him that I heard about the details in that presentation and found it to be a pretty weak threat, since everyone that heard it apparently thought it was weak.

"I don't want to stir you up conflict or overstate the threatening undercurrent in the call, but the message was clearly there and you should be aware before you speak to the press again, if you choose to do that.

"I don't feel like I am betraying him by reporting this to you because I think that is probably what he wanted me to do. Of course, I would appreciate maximum op sec," operational security, I presume that is, "regarding this e-mail and ask that you not forward it or let others read it. Bud."

[Laughter.]

Senator SCHUMER. Without objection, the entire statement is read into the record.

Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman.

Ms. Lam, in your statement you say "each of us was fully aware that we served at the pleasure of the President and that we could be removed for any, or no, reason." Do you think that you were inappropriately removed?

Ms. LAM. Well, Senator, I think that it was unusual given the tradition and the history of U.S. Attorneys within the Department of Justice. It was not my understanding—I understand legally that we do serve at the pleasure of the President, and I have no problem with that.

I think traditionally U.S. Attorneys have held a unique position as Presidential appointees, confirmed by the Senate, in their districts, so I think this was unusual. I am troubled by it because of the potential chilling effect it has on U.S. Attorneys.

Senator SPECTER. Well, you know your situation better than anybody. I phrased the question very carefully to get your judgment as to whether you think you were improperly removed. You haven't quite answered it, by saying that it was "unusual". I think the Committee would be interested to know your judgment if you think it was improper.

Ms. LAM. Again, because I don't know the exact reason and I have not been told that by the Department—in fact, when I did inquire what the reason was I was told essentially that they didn't see why that information would be helpful to me.

Given that, it's a little hard for me to judge what would be proper or improper, and that's why I'm hesitating, Senator. I don't feel that I did anything in my role as U.S. Attorney to either embarrass the administration or the President or warrant removal, but that is all I can say.

Senator SPECTER. All right. I will accept your answer. But we haven't had your judgment, but I will respect that.

Ms. Lam, there were intimations that you were replaced because you were successful in the prosecution against former Congressman Cunningham and that you might have been hot on the trail of others involved. Is there any basis for that suggestion or inference?

Ms. LAM. Well, of course I've seen those suggestions or statements. Again, I have no further information than I've already said. I was given no reason, and I did not receive any communication directly from the Department about it being related to the investigation.

Senator SPECTER. Well, that's not quite responsive again.

Ms. LAM. I apologize.

Senator SPECTER. There's been a suggestion that you will not—or you made a comment that you wouldn't say anything about pending investigations. You're nodding in the affirmative.

I think the circumstances of this matter warrant the Committee making that inquiry, but we can do it in a closed session so that you don't have to talk about it publicly. Do you care to say anything on that subject publicly?

Ms. LAM. No, I don't care to talk about any potential ongoing investigations, Senator, publicly. All I meant to say was that I did not receive any pressure from the Department of Justice or any intimation that I was being removed because of the Cunningham investigation.

Senator SPECTER. Well, still not responsive. Were there continuing investigations arising from the Cunningham conviction?

Ms. LAM. Yes. And I think that is part of the public record. I believe we said that at the time we announced the Fogo and Wilkes indictment.

Senator SPECTER. OK. Well, we'll pursue that further, but in a closed session.

Mr. Iglesias, statements have been made by both Senator Domenici and Congresswoman Wilson about your conversations. I would ask unanimous consent that their full statements be made a part of the record, because I will only quote from a part of them.

Senator SCHUMER. Without objection.

Senator SPECTER. But this is what Senator Domenici said with respect to the conversations: "I asked Mr. Iglesias if he could tell me what was going on in that investigation and give me an idea of what timeframe we were looking at.

"It was a very brief conversation which concluded when I was told that the courthouse investigation would be continuing for a lengthy period." And then Senator Domenici goes on, "At no time in that conversation or any other conversation with Mr. Iglesias did I ever tell him what course of action I thought he should take on any legal matter. I have never pressured him nor threatened him in any way."

Is Senator Domenici wrong in what he said there?

Mr. IGLESIAS. Sir, it's true that he did not direct any specific action. But the fact that he would call and ask about an investigation, I felt, was a threatening telephone call.

Senator SPECTER. Well, Senator Domenici says that "I have never pressured him nor threatened him in any way." What was there that led you to disagree with that and feel pressure or a threat?

Mr. IGLESIAS. Due to the timing of the call. It was late October. I was aware that public corruption was a huge battle being waged by Patricia Madrid and Heather Wilson. I assiduously tried to stay out of that fight. I felt that him asking me about corruption matters, that anything I would say publicly would be used in attack ads. I wanted to stay out of politics.

I wanted to stay out of the campaign, because my job was law enforcement, not playing politics. So the fact that he would even ask about pending corruption matters, I felt, was inappropriate and I did feel pressure to take action.

Senator SPECTER. And so you thought whatever you said might be used in television commercials or attack ads?

Mr. IGLESIAS. In public. Yes, sir, that's correct.

Senator SPECTER. Well, what was the basis for your thinking that?

Mr. IGLESIAS. Because the ads focused on the—my office's prosecution of the State treasurer case. These were unprecedented cases in which my office was able to convict two elected officials in the State of New Mexico, back-to-back State treasurers. We got convictions.

The fact that the State Attorney General had not taken any action and had, in fact, indicted our Federal cooperating witnesses, became a huge point of contention between Congressman Heather

Wilson and her challenger, Patricia Madrid. I wanted to stay out of that.

Senator SPECTER. Well, Mr. Iglesias, aside from your conclusions and feeling pressured, did Senator Domenici say anything more than he has put in his statement where he said, "I asked Mr. Iglesias if he could tell me what was going on"?

Mr. IGLESIAS. The fact that the line went dead after him saying he was very sorry to hear that I would not be taking any action before November. I felt pressure to move the case forward.

Senator SPECTER. Well, you've told me you felt pressure and the line went dead, and he said to you that he was sorry nothing would be happening before November. That's about the total substance of what Senator Domenici said?

Mr. IGLESIAS. That's correct, sir. It was a very brief conversation.

Senator SPECTER. I now turn to the statement which was released by Congresswoman Heather Wilson. "In the fall of last year, I was told by a constituent," reading in part, "with knowledge of ongoing investigations that U.S. Attorney David Iglesias was intentionally delaying corruption prosecutions....

"I called Mr. Iglesias and told him the allegation, though not the source. Mr. Iglesias denied delaying prosecutions. He said that he had very few people to handle corruption cases. I told him that I would take him at his word, and I did.... I did not ask him about the timing of any indictments and I did not tell Mr. Iglesias what course of action I thought he should take or pressure him in any way."

Now, my question to you. Did Congresswoman Wilson say anything beyond, "I told him about the allegation[s]. I told him that I would take him at his word, and I did." Did she say anything more to you than what she has recounted in this statement?

Mr. IGLESIAS. Yes, Senator. She—we didn't talk about resources. She didn't say that anybody was alleging that I was intentionally withholding the indictments or investigation. She wanted to talk about the so-called sealed indictments, something that I could not discuss with her.

Senator SPECTER. She wanted to talk about what?

Mr. IGLESIAS. Sealed indictments.

Senator SPECTER. Sealed indictments?

Mr. IGLESIAS. That's correct, sir.

Senator SPECTER. Did she say anything beyond what she said she said, and the inquiry about sealed indictments?

Mr. IGLESIAS. I don't believe so, sir. It was a very brief conversation. Since, obviously, I could not talk about sealed indictments, I was non-responsive to her inquiries.

Senator SPECTER. And you thought that the conversation by Senator Domenici and Congresswoman Wilson, those calls were inappropriate?

Mr. IGLESIAS. Yes, sir, I do.

Senator SPECTER. Did you report those calls to the Department of Justice?

Mr. IGLESIAS. I did not.

Senator SPECTER. Why not?

Mr. IGLESIAS. I felt terribly conflicted because Senator Domenici had been a mentor to me. He'd assisted me early in my career. And

Heather Wilson was a friend, an ally. We campaigned together back in 1998. I saw her go from being a very—what's the polite way of putting this? Unaccomplished public speaker to being a very accomplished public speaker. And I felt a conflict between my loyalty to them as friends and allies and my duty to report under DOJ guidelines.

Senator SPECTER. Well, Mr. Iglesias, as an experienced prosecutor, you know about the importance of a prompt complaint to establish credibility?

Mr. IGLESIAS. Yes, sir, I do.

Senator SPECTER. Well, I think it's very useful that you have come forward and testified and I commend you for doing that. What the Committee is trying to do, is find out exactly what was said and whether your reaction to it was caused by others or whether what they did was inappropriate.

But that leads me to the next question. It is, what made you change your mind as to what you have just said about your feeling toward Senator Domenici as a mentor, and what you said about Congresswoman Wilson, about your regard for her and how she had helped you, what led you to change the view of not making a prompt report to your superiors at the Department of Justice, and coming forward at a later date with what you have just told us?

Mr. IGLESIAS. Yes, sir. I've always been trained that loyalty is a two-way street. I believe that they were behind me being asked to resign. I began thinking during the month of December that I knew performance was not the issue. I have data to support that. My office is performing superbly. I'm proud of my office, especially my Los Cruces office.

I started thinking, why I am protecting people that not only did me wrong, but did the system of having independent U.S. Attorneys wrong? So upon further reflection, I thought the right thing to do was to go public with the fact that I had been contacted inappropriately by two Members of Congress.

Senator SPECTER. Well, in light of the stands taken by the Department of Justice in terminating so many U.S. Attorneys—and I don't condone it, we haven't seen any reason for it with the kind of performance that the U.S. Attorneys have undertaken—but did the thought cross your mind that they might have terminated you for the same reason they terminated others without having Senator Domenici or Congresswoman Wilson cause your termination?

Mr. IGLESIAS. At the time, early December, in the days after getting my phone call on Pearl Harbor Day, I wasn't thinking about my colleagues. I didn't know what had gone on in the other districts until a few weeks later. But during the month of December I hadn't really connected the dots. I didn't know why I had been asked to resign.

In fact, when I asked Mike Battle, "Mike, why did they ask to terminate me," he said, "I don't know, Dave. I don't want to know." And I don't think—"I don't want to know." All I know is, this came from "on high". That was a quote, "on high". So his response didn't help me understand why I was being asked to resign when, by demonstrable DOJ internal data, my office was performing well.

Senator SPECTER. When did that conversation with Mr. Battle occur?

Mr. IGLESIAS. On December 7th, 2006.

Senator SPECTER. When you were terminated.

Mr. IGLESIAS. Well, when I was asked to resign, effective the end of January. Yes, sir.

Senator SPECTER. Well, when did you first conclude that Senator Domenici and Congresswoman Wilson were instrumental in your termination or your being asked to resign?

Mr. IGLESIAS. Probably sometime during the month of January. I was ruminating as to why. I knew that misconduct was not a basis. That's never been alleged as to any of us. I knew that performance was not the real basis. The only third possibility would be politics.

I started thinking, well, why would I be a political liability hen, a few years ago, I was a political asset? And then I thought about the two phone calls and I knew that the race in New Mexico was very close. I suspect they believe that I was not a help to them during the campaign. And I just started to kind of put the dots together.

Senator SPECTER. And how long after you concluded in your own mind that Senator Domenici and Congresswoman Wilson were responsible for your being asked to resign did you make a complaint about that?

Mr. IGLESIAS. I believe I made public with a general allegation that two Members of Congress had contacted me in late February of this year.

Senator SPECTER. So how long would that have been after you came to the conclusion in your own mind that they were responsible for your being asked to resign?

Mr. IGLESIAS. Approximately a month later.

Senator SPECTER. Thank you, Mr. Chairman.

Senator SCHUMER. Thank you. You have only gone 12 seconds longer than I went, so we're pretty even here.

Senator Feingold?

Senator SPECTER. I was watching the clock closely.

STATEMENT OF HON. RUSSELL D. FEINGOLD, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator FEINGOLD. Thank you, Mr. Chairman, for holding this second hearing and for continuing this important investigation into the unprecedented dismissal of eight U.S. Attorneys in the past few months.

Obviously it is absolutely vital that our citizens be able to rely on the integrity of the justice system. It is equally important that they have confidence that individuals who represent the Federal Government in the justice system are above reproach and are acting in the interest of justice, and not politics, at all times.

Indeed, Attorney General Gonzales testified in January that he would "never, ever make a change in the U.S. Attorney position for political reasons." Yet, there is increasingly disturbing evidence that political motivations played a significant role in what happened and that the Department of Justice did its best to obscure that fact.

Initially, the Department of Justice told this Committee that the dismissals were all performance-related. Then Deputy Attorney

General McNulty conceded at our last hearing that Bud Cummins in Arkansas was not dismissed due to his performance.

Then we learned that most of the ousted U.S. Attorneys had received stellar performance reviews right up until their dismissals. Former Deputy Attorney General James B. Comey even declared that Mr. Iglesias, who is with us today, was "one of our finest".

It seems to me that an already troubling situation has been further complicated by this Committee receiving conflicting and inaccurate information about the reasons why these attorneys were asked to resign, and this hearing is finally shedding some real light onto what happened.

Finally, I was deeply concerned to learn that Members of Congress may have tried to influence an ongoing Federal investigation that Mr. Iglesias was conducting. I am told that Mr. Iglesias's testimony this morning was chilling in that regard.

Intrusion of partisan politics into the prosecutorial discretion of our U.S. Attorneys and the way they conduct their investigations and pursue their indictments is absolutely unacceptable. The Ethics Committee should take these allegations very seriously and should fully explore what investigation and action is warranted.

Even an appearance of impropriety can harm our judicial system. Whatever role political motivations played in the dismissals of these U.S. Attorneys, I think it's clear that the administration has not acted in a manner that upholds the best interests of law enforcement and the reputation of our criminal justice system. Fortunately, Mr. Chairman, you are giving us the ongoing opportunity to explore this problem and I really appreciate that.

I'll ask a couple of questions. First, I want to thank all the witnesses for their dedication to public service, and especially for agreeing to testify before us today.

Let me ask a question to all of you about priority setting. The administration initially talked about performance issues being the reason for the dismissals, and, when we pressed on that, it clarified that it was unhappy with the way in which some of you had set prosecutorial priorities for your offices.

I understand that Mr. McNulty, the Deputy Attorney General, has said that for some offices there were insufficient resources being dedicated to certain kinds of immigration cases. For others, it might have been drug cases, child pornography cases, or some other issue.

In your testimony to us you state that you each felt an obligation to set the priorities for your offices in a manner that reflected the needs of your individual districts, and that obviously seems reasonable to me.

It also seems to me that this justification for your dismissal is awfully convenient. With the limited resources currently available to law enforcement in our criminal justice system, I wonder whether anyone could meet all the priorities that the administration has set out.

I guess I'd like each of you to talk a little bit about to what degree do you believe that a critique of the way that priorities have been set could be leveled at any of the 93 U.S. Attorneys serving at any given time; and if every U.S. Attorney has some shortcomings in the way he or she sets priorities in the office from the

point of view of the Department of Justice, at what point does that become a legitimate reason for dismissal?

Ms. Lam, do you want to start off?

Ms. LAM. Thank you, Senator Feingold. I think it is, as you point out, a difficult job for every U.S. Attorney. Since we entered, four or 5 years ago, depending on the case, we have heard—we have been asked to pursue priorities in virtually every area, ranging from corporate fraud to cyber crimes, child pornography, firearms, drug cases, fraud cases, and identity theft. The list goes on and on. Those priorities never really are ever retracted, they're just added to.

And I think that it is an important and vital part of the U.S. Attorney's responsibilities to evaluate the crime problem in his or her district and their interaction with local law enforcement to see who can carry which area of crime so that there's the best coverage, if you will.

Terrorism, of course, is the primary goal for U.S. Attorney's Offices after 9/11, so that used an enormous number of resources as well. So it is a balancing act that all U.S. Attorneys engage in, as members of this panel know.

And it does concern me that lack of pursuit of one of 20 or 30 priorities would be used as a reason to remove a U.S. Attorney, particularly where the dialog had not risen to that pitch, in other words, there had been no confrontation or ultimatum and, in fact, quite the opposite, that there was reasoned discussion and seeming acceptance and understanding by the Department as to the balancing of priorities in the district.

Senator FEINGOLD. So you were never informed by any DOJ people, top people, White House people that they were unhappy with this aspect of your performance: the priority setting. Is that right?

Ms. LAM. Certainly not—not to this level. There were some—there were sometimes inquiries made. I, many times, engaged in discussion and always felt that the Department understood, accepted, and supported my approach to various priorities.

Senator FEINGOLD. So the comments could not be characterized as signifying that they were unhappy with your choice of priorities.

Ms. LAM. No, sir.

Senator FEINGOLD. Mr. Iglesias?

Mr. IGLESIAS. I'd like to just read a sentence from Mike Battle dated January 24, 2006, to me: "I want to commend you for your exemplary leadership in the Department's priority programs, including anti-terrorism, weed and seed, and the Law Enforcement Coordinating Committee." At no time did I receive any communication from main Justice that I was not following the priorities of the Department of Justice.

Senator FEINGOLD. Thank you.

Mr. McKay?

Mr. MCKAY. Senator, I was never advised by the Department of Justice that I was failing to follow its priorities or that my office was ineffective in any way, shape or form. In fact, I think I had the most current evaluation by the Department of Justice, which was finalized in September, September 22nd of 2006. I know that my leadership was cited.

More important to me, the work of Assistant U.S. Attorneys and the staff people in my office was cited, I think, in very outstanding terms. And so I think it's fair to say, and I know that you've had witnesses here who have downplayed the importance of these evaluations, and I can assure you, having gone through two of them, having 27 people from the Department of Justice interviewing 170 people in my district and on my staff for over 2 weeks, is not an insignificant evaluation.

So, the written report from my office—and I have a letter just like the one my good friend David Iglesias just read, commencing me for the outstanding work of my office, and the fact that I met the priorities of the Department of Justice.

So I don't know what they're talking about when they talk about policy. And none—no deviation was ever cited to me for the Western District of Washington.

Senator FEINGOLD. Thank you very much.

Mr. Cummins?

Mr. CUMMINS. The only thing I would add to my colleagues, of course, it hasn't been alleged against me that my district failed to meet the priorities, so I'm separated out. But I would want to say that every administration is entitled to set their own priorities. I think if your party took the White House, that that administration would be entitled to reorganize the priorities of the Department of Justice just like every other department.

In fact, I think that's one of the strongest arguments for the political appointment of U.S. Attorneys, because the administration is entitled to have a leader in each district that can put the limited resources that we have available to us behind the items that are identified as priorities. In our case, Carol referenced 20 or 30, and it depends on how you count them.

In my mind, we have about seven top priorities. And what that means to me is, no matter what else is going on, if we have a case that comes up on terrorism, or violent crime, or civil rights, or corporate fraud, or child exploitation, we're going to find the resources, even if we have to rob them from somewhere else. We are going to respond to those cases.

And that—I think it's useful for us to know what those priorities are, and it's important that administrations resist the temptation to add to that list indefinitely at the point where—because if you have too many priorities, there are no priorities.

But that being said, I think it's very important and a huge part of our jobs as Presidentially appointed and confirmed U.S. Attorneys to recognize the priorities of the administration and make sure that those are reflected in our district. Every district is different.

Senator FEINGOLD. Let me just ask one more question, Mr. Iglesias.

Mr. IGLESIAS. Yes, sir.

Senator FEINGOLD. You said that when you received the call from Mr. Battle on December 7th and he told you the decision came from "on high", what did you think he meant by that?

Mr. IGLESIAS. Two possible sources: White House counsel or the fifth floor, which is where the AG and Deputy work.

Senator FEINGOLD. Thank you, Mr. Chairman.

Senator SCHUMER. Thank you, Senator Feingold.

Senator Cardin?

Senator CARDIN. Thank you, Mr. Chairman. I very much appreciate these hearings. I want to thank all of our witnesses for their service to our country, and to your districts. Your work is well known, not only as U.S. Attorneys, but in other areas that you've helped in our legal community.

I just really want to underscore the point that Senators Schumer and Specter stated, and that is, no one challenges the administration's right to name the U.S. Attorney or to ask for the resignation of the U.S. Attorney. That's an absolute right of the administration.

But as Senator Specter said, that cannot be used to impede an investigation or to intimidate the work of the U.S. Attorney's Office. There's just too many examples here that require us to move forward. We cannot stop. We have to find out what has happened in this regard.

As Senator Schumer pointed out, in my district in Maryland there is now a report that our former U.S. Attorney was threatened because of a political investigation that he was doing by a member of the Governor's staff. I don't know the circumstances in that case, and certainly we need to find out the facts, because it's certainly a very serious allegation.

I guess my question to you is, do you have any information about what impact this is having on the morale of U.S. Attorney's Offices in your districts, how people feel about the way that power may have been used and what this could mean as far as retention and attracting the best people to go into the U.S. Attorney's Office, as we have in the past?

I would be just curious as to whether you see a concern that we should have, that this could have an impact on our U.S. Attorney's Offices.

Ms. LAM. Well, Senator Cardin, I think that any time a U.S. Attorney departs, there is some disruption to the office in a sense, particularly if it's an unknown who is going to take over afterwards. That's even aside from the circumstances which occurred here.

Certainly when this occurred, and my office, I think, found out in a very difficult manner when there was a leak to the newspaper in mid-January, I think that subsequently when the press began reporting that the reasons that I was leaving was because the administration was unhappy with lack of, or perceived lack of, prosecutions in immigration, I think that that was very difficult for my office because, as noted earlier, approximately half of our resources go to enforcing border crimes, reactive border crimes.

The office works extremely hard, carries a voluminous case load that I think is unique to the Southwest border, and the Southwest border districts. Nobody sits on their hands in our office. Everyone worked very hard to cover both reactive crimes and proactive investigations. I am here as much to clarify things that the Committee wants to know as to defend my office's record and the very good people who work very hard in that office.

Senator CARDIN. I'd be curious. If anyone else wants to respond, fine. But U.S. Attorneys generally have had the reputation of being above the political fray. People really wanted to work in the U.S.

Attorney's Office because they know they will have the freedom to do what's right without being intimidated. It would just seem to me that what has happened here will have an impact on recruitment.

Mr. CUMMINS. Senator, what I would say about that is, I've been real concerned about the impact on my office, not because the office can't carry on their good work without me or any other U.S. Attorney.

The fact is, the backbone of these offices are the career people who tend to be nonpartisans, and stay there, in some cases, quite a long time. And they're going to get the work done with my leadership or somebody else's leadership.

So, it's not that I'm irreplaceable, but I was concerned about the manner that these decisions—not only the decisions themselves are probably of most interest to you, but from my perspective they were just handled so poorly.

And I really felt like that that demonstrated an insensitivity to the effect on my office and other offices because it really created some awkward situations and put me in a position where I valiantly attempted for 6 months, and failed, to kind of conceal the facts of how things were going because I just couldn't see, if I told my office exactly what—how the decision had been implemented, that that wouldn't somehow inhibit my successor's ability to be successful in the office. And the office was important to me, and so—and the people there are important to me.

So I just—I'm concerned about that. In retrospect, I wish—I was able to—actually and gratuitously to stay quite a while after I got the call in June. I didn't really have any immediate plans and I was kind of dragging my feet deciding what I wanted to do next. As things worked out I was able to stay.

In retrospect, in spite of the, you know, fact I wouldn't have gotten a check every week, I wish I'd have left pretty quickly after I had gotten the call, because what—I was very proud of my leadership and the time of working with my office up to the time of the call.

After that, it just got kind of weird and I just feel like it was a bad work atmosphere. And I feel like I could have cured that by just going ahead and getting out the door.

So, I think it's a good question because I think people should be focused on the effect on the career people that are actually doing the work out there. They're not particularly partisan and they kind of tolerate the politics of the necessary changes in the leadership, but I don't think they probably would appreciate it if they perceived that some kind of extra political activity was going on that was directly impacting their offices like that.

Senator CARDIN. I would just hope that one of the messages from this hearing, Mr. Chairman, is that we're doing these hearings for several reasons, one of which is to make it clear that we want the U.S. Attorney's Office to maintain its high standard of independence and we applaud those who have made a career in the U.S. Attorney's Office, as well as those who have come to the U.S. Attorney's Office with extraordinary talent in order to serve their country and community, and that this Committee is committed to making sure that tradition is maintained and continued. If there was

a problem, we want to make sure that never happens again. Thank you very much, Mr. Chairman.

Senator SCHUMER. Thank you, Senator Cardin.

Senator Whitehouse?

Senator WHITEHOUSE. Thank you, Mr. Chairman.

Thank you all for your presence here today. I know it's not an easy day for you. Welcome to the National Association of Former U.S. Attorneys, the consolation prize.

Mr. Cummins, let me ask you, first, I'd like to ask you to put your U.S. Attorney hat back on. You're still in office. Think of a significant grand jury investigation that you led as a U.S. Attorney in your district.

Consider that a significant witness in that grand jury investigation has just come into your office to relate to you that, prior to his grand jury testimony, he was approached about his testimony in exactly, or essentially exactly, the words that Mr. Elston approached you. What would your next step be as a U.S. Attorney?

Mr. CUMMINS. Well, I think I know where you're driving with that question. And I'll answer it, but I'd like to also maybe qualify it. We take intimidation of witnesses very seriously in the Department of Justice and in the U.S. Attorney's Offices, so we would be very proactive in that situation.

I would qualify that by saying that at the time this discussion was had, we weren't under subpoena. The idea of testifying was just kind of a theoretical idea out there. I would say, to the best of my ability to characterize the conversation I described, to the extent we talk about testimony at all, it was the idea that running out and volunteering to be part of this would not be viewed charitably by the people that it would affect.

Senator WHITEHOUSE. But if that sort of approach had been made to a witness in an active proceeding that you were leading and you were extremely proactive about it, that would lead you where?

Mr. CUMMINS. Well, we would certainly investigate it and see if a crime had occurred.

Senator WHITEHOUSE. And the crime would be?

Mr. CUMMINS. Obstruction of justice. I think there's several statutes that might be implicated, but obstruction of justice.

Senator WHITEHOUSE. Mr. McKay, the same question to you. You're in your U.S. Attorney's chair. The conversation that Mr. Cummins related to you in this e-mail is related to you about a witness in a pending grand jury matter. What would the next step be that you would take as a U.S. Attorney?

Mr. MCKAY. I would be discussing it with the assigned prosector and Federal agents.

Senator WHITEHOUSE. With regard to?

Mr. MCKAY. With regard to possible obstruction of justice.

Senator WHITEHOUSE. Mr. Iglesias, I don't know that I need to repeat the question at this point. I assume you—

Mr. IGLESIAS. I was listening.

Senator WHITEHOUSE. Yes.

Mr. IGLESIAS. Same answer, sir.

Senator WHITEHOUSE. Nothing gets by you, it doesn't seem.

Mr. IGLESIAS. Same answer, sir. I would contact the career AUSA and probably the FBI and talk about, what's—what's the evidence we have to maybe move forward on an obstruction investigation.

Senator WHITEHOUSE. Ms. Lam?

Ms. LAM. Fundamentally the same answer. Witness intimidation.

Senator WHITEHOUSE. It also strikes me that in our complex system of checks and balances in this country, one of the helpful checks and balances is what I consider to be a healthy tension that exists between main Justice, which has its priorities and its initiatives, and the U.S. Attorneys in the field who know their judges, who know their locations, who know their agencies, and who, as you said, Ms. Lam, have an understanding of where within the mosaic of enforcement they can best deploy their resources compared to State and county municipal resources.

And it strikes me, as somebody who has lived in that environment for a while, that this purge, if you will, one could consider a fairly disproportionate response. And I'm wondering if you would comment on what effect you think this will have on your colleagues with respect to that healthy balance and the extent to which pushback against the Department is used, a positive thing in certain situations, again, in our system of checks and balances.

Specifically, Ms. Lam, in your case, the extent to which your role as really, in many respects, our forefront U.S. Attorney on national public corruption cases, what chilling effect—the fact that this was applied to you—might have on your colleagues.

Ms. LAM. Well, Senator Whitehouse, I think the difficulty here, as I think I've tried to indicate earlier, was sort of the mystery that surrounded the calls we received on December 7th.

Generally, I think if there were events that were going to lead up to a request for resignation there would be some sort of ramp-up, some sort of transparency to what the issue was at least between the U.S. Attorney and the Department of Justice.

I think the fact that the recipients of the call were all shocked and trying to inquire what the reason was, I think is what, for me, causes the greatest problem for the remaining U.S. Attorneys, that there's no notice or awareness, and therefore it becomes a guessing game as to how it is that the Department is displeased.

And, of course, now we've heard some of the after-the-fact explanations and nobody really knows what emphasis to put on them, or whether they actually played a part in the initial decision.

So, again, without tying it particularly to my situation and the particular investigation, I think that is the concern, is that there's mystery and, therefore, one then says, well, could it be because of this, or could it have been because of that, and that's the chilling effect: perhaps I should just play it safe and try not to displease anybody. I don't think it's in the best interests of the country to have U.S. Attorneys who just want to play it safe.

Senator WHITEHOUSE. Mr. Iglesias?

Mr. IGLESIAS. I'm not sure I can add a whole lot more to what Ms. Lam mentioned. But I think what this entire controversy about is separation of powers and the independence of the U.S. Attorney, which historically has been true regardless of the administration in power.

What happened to me, I believe, is a violation of the separation of powers and also calls into question if political pressure does result in less independence. U.S. Attorneys have to be independent. Politics cannot play a part.

I hope the long-term effect of these hearings is that any future interactions between the branches relative to investigations is done correctly, because in my case it was not done correctly.

Senator WHITEHOUSE. Thank you.

Mr. McKay?

Mr. MCKAY. Senator Whitehouse, I want to say that I have—I continue to have the greatest respect for my currently serving colleagues around the country as U.S. Attorneys, and I do believe that, notwithstanding the speculation and the upset that's occurred over the forced resignations of myself and my colleagues, that they will continue to pursue the qualities that we hope we demonstrated in ourselves, which are prosecutorial independence, integrity, fairness, and a rejection of the idea that partisan politics or political favors in any way enter into our work. I know they did not enter into mine.

So whether others acted on those things, I—I hope that's not true. And I do have confidence in the able men and women in my office in Seattle, in Tacoma, and I do also in the currently serving U.S. Attorneys, and I think they will stand up to this, and I know they will.

Senator WHITEHOUSE. It does make it a tougher environment for policy disagreement with main Justice though, doesn't it?

Mr. MCKAY. I would say that they will be as careful as always.

Senator WHITEHOUSE. Well said.

Finally, Mr. Cummins?

Mr. CUMMINS. The one thing about—as I was explaining to Jody, what a U.S. Attorney was when I got to be one, I told her, with some excitement, that it was a really neat job and that you might have to go out and make really tough decisions and prosecute powerful people, including political people in your own party, and at the end of the time I was U.S. Attorney we might not have a friend in town if I did the job right.

And she kind of looked at me funny like, why do we want this job? But I remember thinking along those terms that if you did your job right as a U.S. Attorney, you don't know where you're going, where it will lead you, and you might have to make some really tough decisions. And as David said, you might have to not give information to people that you've been close friends with, and things like that.

But it never occurred to me in that dialog with my wife or in that thinking—thought process, that the Department wouldn't insulate me, even if became unpopular with my friends at home, that as long as they were convinced that I was following the book and I was doing my duty, that they would insulate me from that criticism even if we didn't get in the country club.

And it doesn't really relate to my case, but I've got to be honest with you, I was very concerned to see some unnamed sources at the Department suggest that in the case of some of my colleagues, that part of the reasoning for their dismissals might have had something to do with Congressional disapproval in their home districts.

That, without some kind of internal investigation to see if it was merited or not—I don't like to use the word "chilling" very much, but that is a little bit chilling, because if you have to keep everybody happy, you can't really do this job right because sometimes you have to make some really tough decisions. So, I do think that that's an important point.

Senator WHITEHOUSE. Mr. Chairman, thank you. I just want to say how impressive I feel these witnesses have been in their demeanor and in their candor with all of us, and I, for one, am proud that they served us as U.S. Attorneys.

Senator SCHUMER. Well, thank you, Senator Whitehouse. I couldn't agree more. They make their own case extremely well about why they deserve to stay on.

We have a vote that began about 7 minutes ago. I think what we'll do is break briefly and resume at 12:15. Senator Sessions has his first round, and some of us have our second round. So we will have a brief recess for 10 minutes.

[Whereupon, at 12:05 p.m. the hearing was recessed.]

Senator SCHUMER. The hearing will come to order once again.

I do not see Senator Sessions here, so I am going to take my second round. Then we will go to Senator Sessions, then one on our side, one of their side, second round.

I know that all of you have another appointment at 2 p.m., so we're going to try to wrap up here by 1 p.m. at the latest. OK.

I'm interested in the conversations you each had with Mike Battle when he called you. I know Mr. Iglesias mentioned something of it.

Can you each tell us about that? I'm interested to just hear what he said. Did he give you any reason, did he express any regret, did he thank you for your service? I know Mike Battle. He served in the Western District of New York. In fact, I fully supported his nomination. I think he's a good man. And as I mentioned in my statement, I have questions as to why he has stepped down.

But let me ask each of you. Why don't we start with you, Mr. Cummins?

Mr. CUMMINS. Of course it's been some time, but the best I remember, Mike was obviously—

Senator SCHUMER. Did he call you as well? Because you were not one on the December 6th.

Mr. CUMMINS. Yes, sir. Mike Battle called me in June of last year. I don't have the exact date. He—he and I are very friendly and, you know, he's a good man and I've enjoyed being his colleague as a U.S. Attorney. I thought he's done a great job as the executive director of EOUSA.

He called and said, "This is a really tough call to make, so I'm going to just get right to the point." I don't remember who he—somebody wants your resignation. I don't know how he phrased it, but he said—

Senator SCHUMER. Did he name a person?

Mr. CUMMINS. No. No individuals were identified in the call of who made the decision, or why, or anything like that. He said—well, they did say—he did eventually say why. He said—he may have said the White House, he may have said the administration

would like your resignation and would like you to be ready to resign as soon as your replacement could be ready.

And of course I was—well, to be honest with you, I had never heard of anybody, absent malfeasance, being asked to step down so I thought maybe he had McKay and Iglesias on a conference call about something completely different and this was a joke, so I kind of waited for the laughter and it didn't come.

And so then I realized he was serious and said, "Mike, have I done something wrong?" And he said, "No, no, no. It's absolutely to the contrary. You've done a great job. This is entirely about the administration's desire to give somebody else the opportunity to serve."

Senator SCHUMER. Did he mention Griffin's name?

Mr. CUMMINS. No, sir.

Senator SCHUMER. He did not?

Mr. CUMMINS. No.

Senator SCHUMER. So you found out about that shortly after that?

Mr. CUMMINS. Eventually it became apparent that Mr. Griffin was the person that was coming in.

Senator SCHUMER. Mr. McKay, your call occurred on December 7th.

Mr. MCKAY. Yes, it did, Senator. I received a phone call from Mike Battle in the morning of December 7th in Seattle. He advised me that the Department—that the "administration", was the word he used, sought to make—"sought to go in a different direction" and that I would be asked to tender my resignation effective no later than the end of January.

I think after a fairly stunned pause I asked him, because I did then, and still do, consider him a friend, "Mike, what is this about?" He said, "John, I can't give you any additional information than that." I waited a second and I said, "I can't be the only one getting this call. Are others being called?" And he said, "John, I don't have any information I can give you on that question.

And I said, "Is there anything that you've been authorized to tell me?" And he said, "No." I said, "OK." And he said, "One last thing, which is, you know, sometimes it's reasonable for someone getting a call like this to conclude that you've done something wrong." He said, "That's not always the case."

I didn't really know what he meant then and I didn't ask him further. It was clear that he was delivering a message he didn't want to deliver to a friend, and I respected him for it and ended the call.

Senator SCHUMER. When he said "the administration", did you assume that was from outside Justice, outside the Justice Department?

Mr. MCKAY. I didn't know what to think, Senator, because we were all aware that only the President can ask us to resign. And, of course, I'm a lawyer. I was waiting to hear the words "the White House" or "the President". I did not hear them. I think that the use of the word "administration" was carefully chosen to leave it vague.

Senator SCHUMER. Mr. Iglesias, you mentioned that they said "on high". Did you make any assumptions as to where that would be? I think you mentioned that to one of my colleagues here. You

thought it would be the Deputy Attorney General or the White House counsel?

Mr. IGLESIAS. My assumption, Senator, was the White House counsel, the AG's office, or the Deputy's office.

Senator SCHUMER. And how about you, Ms. Lam?

Ms. LAM. I'll start by saying I also consider Mike Battle to be a friend and a very good man. He did call me on December 7th. He indicated that the Department of Justice wanted to thank me for my years of service and that they wanted to take my office in a different direction.

He asked for—and that they would like my resignation, effective January 31st. I think I responded something like, "Wow." And then, "May I ask why?" And he said that he did not know. I asked him whether this was normal in some way, and he said that—something to the effect that although he had heard of things like this happening in the past if something bad had happened, this was certainly the fire time in his tenure. I did not have any indication that there were others involved at that point.

Senator SCHUMER. Right. But none of you assumed that it was Battle's decision. I think it's fair to say that every one of you thought that Mike Battle was not making this decision himself, but rather was passing a message. Is that correct?

Ms. LAM. That's right.

Senator SCHUMER. Let the record show all four witnesses nod their head in the affirmative.

Mr. Iglesias, I have a couple of questions for you, because one of the reasons that the Justice Department said you had a performance problem was that you were an absentee landlord.

Just to get the record clear here, isn't it true you served in the Navy Reserve, which required you to serve your country for approximately 40 days a year?

Mr. IGLESIAS. That's correct, sir. In fact, I took my call from Mike Battle, ironically, on Pearl Harbor Day as I was coming back from Navy duty in Newport, Rhode Island. And I'm required to serve at least 36 days of duty per year. Sometimes I add a little extra duty, so it probably averages out to 40, maybe 45 days of duty per year.

Senator SCHUMER. Didn't the Department know you were a Navy Reservist when it recommended you for the U.S. Attorney position in the first place?

Mr. IGLESIAS. I'm very proud of my Navy service and it was on my resume, featured very prominently.

Senator SCHUMER. How did you feel when they accused you of absenteeism, and you knew that the primary reason you were out of your office was to be in the Reserve?

Mr. IGLESIAS. Well, it's very ironic, since the Department of Justice enforces USERRA, the Uniform Services Employment Rights and Reemployment Act, that ensures that Guard members and Reserve members have full employment rights and are not discriminated against on the basis of their military affiliation.

Senator SCHUMER. Right. And were you ever told before that that you were in danger of being fired or that your absences were hurting the U.S. Attorney's Office in New Mexico, or anything to that effect?

Mr. IGLESIAS. Never, sir.

Senator SCHUMER. No.

And I take it none of you were given any inkling of any performance problems that Justice had with you. Is that correct, Mr. Cummins?

Mr. CUMMINS. No, Senator.

Senator SCHUMER. Mr. McKay?

Mr. MCKAY. There had been some discussion by individuals in the Deputy Attorney General's office about a law enforcement information sharing system that I was heading, unrelated to individual prosecutions. But other than that, no, Senator.

Senator SCHUMER. Right. And that law enforcement system, known as LINKS, which Jim Comey, somebody I am very fond of and think did a wonderful job, he hailed it as "visionary". Isn't that correct?

Mr. MCKAY. That's correct, Senator.

Senator SCHUMER. It would make no sense for them to fire you because you thought you were arguing that LINKS would be a good system for you or others to use.

Mr. MCKAY. Well, and I think the system is seen as a national model. And I don't take credit for that for myself, Senator, but it is seen as a model. I had the full support of Deputy Attorney General Comey, as well as chairing a 15-member Committee of U.S. Attorneys.

Senator SCHUMER. Right.

And one more for Ms. Lam. When we met with Deputy Attorney General McNulty, he said one of the reasons they were concerned with you was that you didn't have enough reentry prosecutions. OK. He then said that they had let you know that they thought you should up your reentry prosecutions.

I then asked him, "Did she? Did she meet your expectations?" And he said, "I don't know", which sort of rung a little hollow. If this was one of the reasons to dismiss you, you would think that they would at least inquire whether you had met their needs of reentry prosecutions.

Can you comment on that? Is anything I've just mentioned wrong?

Ms. LAM. No, Senator. I can't think of any specific time when—when I was told to up my reentry prosecutions. In fact, as I indicated, my interactions with the Department following letters received from Congressman Isa and some of his colleagues were positive. I subsequently met with Congressmen Isa and Sensenbrenner.

I related the contents of that. With the Department's approval I related the contents of that conversation to the Department and how—I explained how our efforts were directed toward the worst of the worst, and we were getting lengthier sentences on them.

The response from the Office of Legislative Affairs, I believe, was something along the lines of, good, it sounds like it went well, and perhaps they learned something from your meeting.

Senator SCHUMER. Right. OK. Now that we're at the conclusion of this hearing I just want to get this on the record again.

To each of you, based on everything you know sitting here today, do you believe that you were fired for any failure of performance, as alleged by the Justice Department? Again, if you'd answer it "yes" or "no", that would be helpful.

Mr. Cummins?

Mr. CUMMINS. No. Senator Schumer. Mr. McKay?

Mr. MCKAY. No, Senator.

Senator SCHUMER. Mr. Iglesias?

Mr. IGLESIAS. No, sir.

Senator SCHUMER. Ms. Lam?

Ms. LAM. No, sir.

Senator SCHUMER. Thank you.

I'm now going to turn the questions over to Senator Sessions. I see we have Senator Graham here. So if each of you takes the allotted 10 minutes, then we'll wrap up our witnesses, who have another appointment at 2 and will be able to have a little time to get over there, maybe have a little lunch, et cetera.

Senator Sessions?

Senator SESSIONS. Thank you, Mr. Chairman.

I have great respect for the U.S. Attorneys. It was a delight beyond measure to be selected. I had been an Assistant U.S. Attorney. I loved the work. Had been out in private practice for 4 years. When President Reagan gave me the opportunity to serve again, it was a tremendous thrill.

I think being U.S. Attorney is better than being an Assistant U.S. Attorney, but not much. Got a little more headaches, as you can tell, all of you. You certainly don't have any guaranteed tenure. You serve at the pleasure of the President.

You are required, every day, to try to do the right thing. I did my best to do that. I do think that you have to be strong in that position and do the right thing. You've just got to do what you believe is right.

However, a U.S. Attorney is a part of the Department of Justice. It serves at the pleasure of the President. There are certain priorities and so forth that any administration has a legitimate right to pursue and to expect its prosecutors to pursue.

There are certain cases, if not brought by the U.S. Attorney, no one else can bring them and so they're just never prosecuted. So a U.S. Attorney who flatly refuses to significantly prosecute certain types of crimes, to me, I always thought were placing themselves above the Congress who made it a crime to begin with. Policies are pretty important.

But I just am looking. Ms. Lam, I always thought that gun prosecution was a fabulous part of what the Department of Justice should do, and looked at the numbers that you brought.

It was a priority of the Department of Justice and President Bush, is that not correct? Like, in 2002, you prosecuted 24 cases, 2003, 17. This is under 922 and 924. 922 is Possession After Conviction of a Felony, and 924 is Carrying A Firearm During the Commission of a Crime. Is that correct?

Ms. LAM. [Nods in the affirmative]

Senator SESSIONS. Those, to me, are the bread-and-butter charges. That's what you bring much of: 2004, 18; 2005, 12; 2006, 17.

For the same period, the Southern District of Texas prosecuted 946. The Western District of Texas, 894. The District of Arizona, 897. The district where I prosecuted, the Southern District of Alabama, with one-fifth of your resources, 439.

So wouldn't you agree that the President or the Attorney General should be somewhat concerned that you are not in synch with the policies of the Department of Justice with regard to prosecuting gun cases, that you had a policy that was different from the policy of the President?

Ms. LAM. Well, Senator Sessions, what I would say is that the Project Safe Neighborhoods, which was the firearms initiative, was actually a joint Federal and State initiative in the sense that it was looking at the community as a whole.

When Deputy Attorney General Jim Comey came to my district, I believe in 2003, we sat down and talked about firearms prosecutions in our district. And what I explained to him is that San Diego, the Southern District, is sort of a unique situation because we have only two counties in our district, and 95 percent of the population resides in one county, as opposed to some of my colleagues, most of whom have many, many counties which lie within their districts and, therefore, many, many District Attorneys, some of whom believe more than others in enforcing the gun laws.

California also has very strong State gun laws and enhancements penalties for firearms use. I canvassed the local law enforcement community and what they told me was that they were very satisfied with the gun prosecutions, the firearms cases, the problems they had because it was very well handled by the District Attorney in San Diego County.

I talked to the Deputy Attorney General about the situation that we had, 179,000 people arrested along the Southwest border with Mexico in California alone, which was my district, and that half of my resources were already devoted to taking the worst criminals off the street under 1326 Alien Reentry Program, the criminal reentry program.

Senator SESSIONS. Well, you know, I know you have a lot of challenges, and I'll get to that in a moment, on the immigration area. But it doesn't take that many resources to prosecute a 922 case. I mean, you bring the charge, most of them plead guilty, and you go on to the next case.

Ms. LAM. We do those—

Senator SESSIONS. I picked up a file from my assistants and gone down and tried the case because they had a conflict, with a few hours' notice.

Ms. LAM. Senator Sessions, it's a zero sum game in our district. With thousands of alien cases to do, we could do hundreds of gun cases, but then nobody would do the criminal alien cases. The District Attorney can't handle those.

Senator SESSIONS. Well, let's talk about the general alien cases. I don't want to go into a whole lot of detail. But, I mean, you all have made these complaint. According to the Sentencing Commission, you prosecuted in 2006, after being discussed with this, 1,411 illegal alien prosecutions, whereas the Southern District of Texas did 4,132, the Western District of Texas, 2,699, and the District of Arizona, 2,193.

Ms. LAM. Well, as I—I'm sorry.

Senator SESSIONS. So I think there was some concern there. Several of your policies, which I understand that you have a right to

have policies and should set some policies, they felt your policies were too restrictive in the kinds of cases that you would prosecute.

There may be a good-faith policy, but let me just ask you first on this, and then I'll let you respond. With regard to the policy, you do not contend, do you, that a U.S. Attorney is free to have a policy that is unreviewable as to what kind of cases they would prosecute?

Ms. LAM. A policy? I would expect that if the Department had any concerns, they would feel free to discuss that with the U.S. Attorney.

Senator SESSIONS. And if the appointing authority had a different policy and wanted you to carry out a different policy, and you in good faith said I think my immigration policy is good, then it's you or the Attorney General who wins under that circumstance.

I mean, doesn't the Attorney General and the President get to have someone as U.S. Attorney who executes their policies?

Ms. LAM. There was never a disagreement. What I was told, was I get—specifically, I was told, you're starting from a different baseline. There was never any disagreement.

Senator SESSIONS. So you never received any counsel about concerns from Washington that your policies might not—and your prosecution numbers weren't in harmony with what they thought they should be?

Ms. LAM. There was discussion several years ago. There were questions asked about the numbers of prosecutions. I explained the situation in my district. I was led to believe that they understood and I informed them several times that we were fully supportive of the initiative, and we were working to find cases where the District Attorney's office was getting substantially less time than we could get federally.

I would note that in the first 2 months of 2007, we brought more firearms charges than in the entire year in 2006. So, many of our investigations were long-term undercover investigations that yielded much larger targets than perhaps we would have had we just been doing many of the cases that you were describing, Senator.

Senator SESSIONS. Well, I know a lot of the U.S. Attorneys, I used to think they wouldn't prosecute a bank fraud case unless it was $200,000. They thought that was something to be proud of. We have these high standards of prosecution.

As a result, they prosecuted very few cases because they thought other cases were beneath their prosecution. But I would just say, it's not the—ultimately the U.S. Attorney is amenable and, I think, subject to the policies of the President who appoints them.

Let me just mention, I believe strongly that a U.S. Attorney should not be interfered with in prosecution matters. I don't really think that's something that should occur. I have never called a U.S. Attorney, since I have been in the Senate, to ask them to do or not do something on a case or a prosecution. I think that would be wrong. But I'm not sure non-lawyers fully understand all that and have thought that through. I'm aware of the Department of Justice manual and what it says; others may not have been aware of that.

Senator SCHUMER. We are trying to keep this to 10 minutes because of their time constraints, so if you could just wrap up, Senator Sessions.

Senator SESSIONS. OK. I saw the green light.

But the U.S. Attorney manual, Mr. Iglesias, would say that if you received a contact from a Member of Congress that would impact your prosecution, you should report that to the Attorney General. Isn't that correct?

Mr. IGLESIAS. Yes, sir.

Senator SESSIONS. And I would just say, the policy of the Department of Justice is absolutely rigorous in defending, in my experience, a U.S. Attorney who is doing the right thing and handling those cases.

If you had done so, if you'd felt in any way that you had a problem, I think if you'd call that to the attention of the Department of Justice, I believe you would have been affirmed in your best judgment about how to handle a case.

Senator SCHUMER. OK. Let me call on Senator Graham. I'm sorry, Senator Sessions. Just, we have a time limitation here.

Senator GRAHAM. Thank you.

To each of you, I'm trying to understand a little bit. How long have each of you been a U.S. Attorney, starting with you, ma'am?

Ms. LAM. I've been U.S. Attorney since September 4th of 2002.

Senator GRAHAM. OK.

Who was the U.S. Attorney before you?

Ms. LAM. There had not been a confirmed U.S. Attorney since 1998. Patrick O'Toole was the interim U.S. Attorney before I came in.

Senator GRAHAM. OK.

Mr. IGLESIAS. I started my duties on 16 October 2001 through 28 February 2007.

Senator GRAHAM. OK.

Mr. MCKAY. October, 2001 to January 26, 2007.

Mr. CUMMINS. December 21, 2001 to December 20, 2006.

Senator GRAHAM. Those are long stints, aren't they, as U.S. Attorney? In my State, I'm trying to get as many people through that job as I possibly can, particularly young lawyers who I see to have great potential serving down the road on the bench. I just—I understand. Do you all agree that this an employment-at-will job?

Mr. CUMMINS. I think I can speak for all of us, Senator, that we serve at the pleasure of the President.

Senator GRAHAM. Yes. And I think President Clinton, when he got into office, he asked everybody to submit their resignations so he could get some people in. That's OK with you all, right? If you got a call from the Attorney General tomorrow saying, we appreciate what you've done, we want to get somebody new, nobody objects to that process?

Mr. CUMMINS. I had personal feelings when they called me about it, but those were really irrelevant. The truth is, they can make a decision for any reason or no reason. I would suggest to you, Senator, that in some of these cases the problem is, we didn't—none of us has certainly publicly protested these decisions.

We were all going to accept the fact that we served at the pleasure of the President. It was only when Congress took the administration to task and the Department endeavored to try and explain these decisions to some of our detriment that any of us spoke up at all.

Senator GRAHAM. Yes. And let me just say this about each one of you. I think you understand the nature of the job, that it's a political appointment but it's also a public responsibility. Once you get there it's not your job to play politics, it's your job to enforce the law.

These are long stints. I mean, in South Carolina, I don't know what the longest-serving U.S. Attorney is in an 8-year period, but I consciously try to cycle people through just because it's a wonderful experience to have. I mean, it's not a lifetime job. It's going to end 1 day. The more experience you can have, the more people who can have that experience, the better.

Your problem is, you're caught in this political contest and you feel like your reputations have been unfairly besmirched. And let me tell you, I sympathize with that, I really do. I don't want anyone to leave this job and having their reputations or performance questioned.

I do stand by the idea that everybody in your job could be asked to leave tomorrow and really the Congress has no business saying that's good or bad, to be honest with you, as long as it's done for the right reasons. And the question is, the right reason, to me, is I want some other people to have that experience. And I don't think anybody really disagrees with that.

Now, to you, Mr. Iglesias, when you got the contact from Senator Domenici, did you report it to anybody up the chain of command?

Mr. IGLESIAS. I did not. No, sir.

Senator GRAHAM. OK. And I know you've got a personal relationship with Senator Domenici. I guess what I'm trying to figure out is, in my business we get complaints all the time about what you all do or don't do. You try to weed through this the best you can. And especially the more profile the case, the more contacts you get.

So have all of you been called by a politician at one time or another to be asked about a case?

Mr. CUMMINS. I never have. I've talked to politicians, but never about cases.

Senator GRAHAM. OK.

Mr. MCKAY. I have previously testified here, Senator, before you were here about a phone call that I received on a pending preliminary inquiry.

Senator GRAHAM. Yes.

Ms. LAM. Never about a specific case.

Senator GRAHAM. OK. All right. Well, we're just going to have to work through this. From what I can tell, maybe your case loads are out of line with Department of Justice, but you've been there 6 years, so obviously whatever performance problems people allege you had, they sure ignored it for a long time.

So my point is, there's a lot of politics going on here and I don't want you all to get caught up in it.

So, Mr. Chairman, as we work through this, let's don't change the rules in the middle of the game and let's don't make up reasons why we replace people, and let's make sure that what is an inquiry about a case is properly explained on both sides.

I look forward to getting this matter behind us, and Congress needs to do a better job. Obviously the administration needs to do

a better job, and maybe we'll learn something from all this. Thank you very much.

Senator SCHUMER. I thank my colleague. I'd just make one point. If the policy was, after 4 years or 6 years, people should retire, they ought to state it publicly. They ought to apply it across the board. No one has.

We're going to adjourn the hearing. Senator Specter seemed to want a second round, but I don't see him coming in here. All right. Then I am going to make just one final statement. We're trying to get you out of here as quickly as possible.

[Pause]

Senator SCHUMER. Senator Specter?

Senator SPECTER. When we are called back for votes and returned, I know we've kept you waiting. It's somewhat disjointed, but there are interruptions we just can't avoid.

Mr. McKay, you commented about a call you got from Ed Cassidy, who is the Chief of Staff to whom?

Mr. MCKAY. Representative Doc Hastings, of Richland, Washington, Senator.

Senator SPECTER. And he was making an inquiry which you thought improper, but he didn't go too far once you pulled back. Is that the sum and substance of what happened?

Mr. MCKAY. Senator, I would rather, I guess, characterize it myself, which is, I received a phone call. I, like my colleague, Mr. Iglesias, was immediately concerned to be taking a phone call from a Chief of Staff in the midst of the election brouhaha, and carefully listened to what he said and what he asked. He asked about the status of the case, which I gave him, publicly known information.

Senator SPECTER. What was the status of the case?

Mr. MCKAY. Well, there was no case, Senator. We had both the Seattle FBI and my office, the U.S. Attorney's Office in Seattle, had publicly indicated that we would receive any complaints from any source regarding potential criminal conduct, whether it be election fraud, whether it be felon voters, whatever it would be, because this was, as you can understand, on the front page of every newspaper. So, that was publicly known.

But, of course, had we been investigating the case we would not have discussed it any further than that. So I laid that out for him and then he proceeded to push the conversation beyond my statement of what the status was.

Senator SPECTER. And what did he say specifically to push the conversation?

Mr. MCKAY. I don't—I would be surprised if he got an entire sentence out, Senator, because I knew I had just communicated to him all that I could communicate. I can't tell you what his partial sentence was because I interrupted him.

Senator SPECTER. You stopped him.

Mr. MCKAY. I did, Senator.

Senator SPECTER. OK.

Mr. MCKAY. And that is exactly what I did. I stopped him and I told him, I'm sure you're not about to ask me anything about an investigation that isn't public or to try to lobby me about that. And he agreed that that was not why he was calling.

Senator SPECTER. You asked him that leading question.

Mr. MCKAY. I did ask him a leading question.

Senator SPECTER. OK. And you got the expected answer?

Mr. MCKAY. I did get the expected answer.

Senator SPECTER. So that pretty much ended it.

Mr. MCKAY. It did end the conversation. And again, I felt that it was sensitive. I wanted to relate it immediately, and I called in the Criminal Chief and the first assistant to relate the entire conversation the moment it ended, and to ask if they concurred with me that I had stopped the call before it crossed the line, and they—

Senator SPECTER. And you did that because you wanted some corroboration of your concern with some other officials who were in a position to either agree or disagree with you.

Mr. MCKAY. Yes. I mean, it was—I think it was prudent for me to call them in and ask if they concurred the decision would be mine, but I wanted to see if they had the same impression that I did or if I had missed anything.

Senator SPECTER. Uh-huh.

Well, that sounds to me as if, as we lawyers would say, you were protecting the record. You wanted to be on record as having called this to someone's attention.

Mr. MCKAY. No, Senator. That would be much—I don't even recall having that thought. I felt the call was significant, I was troubled by the call, and I wanted to consult with my two most senior advisors on the impact of that call, and so I—

Senator SPECTER. And you—

Mr. MCKAY. I assiduously wanted their input.

Senator SPECTER. OK.

If the conversation had gone further, if you thought that the call had been improper, that it contained questions which were improper, would you have reported it to the Department of Justice?

Mr. MCKAY. Yes. Under those circumstances, I would. Again, that was—

Senator SPECTER. And why would you have done that?

Mr. MCKAY. Because I was aware of the Department policy to report such contacts and, in fact, is why I called in my senior people, to ask if they concurred that I had not allowed this individual to cross the line by interrupting him, and they—they did agree with me. And we decided at that point it was appropriate for me to take no further action.

So, Senator, I was not really interested in—if I was interested in documenting that call I probably would have created a memorandum of it, which I did not. But I am quite certain that my first assistant and Criminal Chief recall that conversation vividly.

Senator SPECTER. If there had been—this is a little repetitious, but I want to be sure I understand you. If you had thought that what the caller had done was improper, had gone that far, you would have reported it to the Department of Justice?

Mr. MCKAY. I'm just having trouble with the wording. I think so. I think if I felt that it was clearly improper, I would have reported that.

Senator SPECTER. Do you think Mr. Iglesias should have reported to the Department of Justice the calls he got from Senator Domenici and Congresswoman Wilson?

Mr. MCKAY. Well, Mr. Iglesias is here and can say what he thinks. I believe Mr. Iglesias wishes he had done that.

Senator SPECTER. Excuse me?

Mr. MCKAY. I said, I believe Mr. Iglesias has already testified that he wishes he had done that.

Senator SPECTER. Mr. Cummins, I've gone over your e-mail and I'm searching for the specifics as to what Mr. Elston said to you. There aren't specifics in the e-mail, as I read it.

Could you, referring to the e-mail, show where what you said here reflected what Mr. Elston said to you?

Mr. CUMMINS. Senator, I really had forgotten there was an e-mail until I saw that—since I wrote it, I saw it for the first time last night.

Senator SPECTER. How long after your conversation with Mr. Elston did you send this e-mail?

Mr. CUMMINS. I would say within an hour.

Senator SPECTER. Uh-huh.

Mr. CUMMINS. And I can remember thinking, it might not be very smart to put that into an e-mail, but that I was very busy and that I really didn't have time to make five phone calls, and I wanted five people to be aware that that conversation had taken place. So I sent the e-mail.

Senator SPECTER. What I'm getting at, Mr. Cummins, is you have given your reactions and your impressions as to what Mr. Elston was trying to do. But I'd like to get as precise as we can on exactly what he said.

Mr. CUMMINS. Senator, I'm afraid I'm not going to be able to help you with exact quotes, but I can tell you that it was—he made an observation or a comment. As I said before, I would not be a very good witness in a criminal prosecution because I would tell the jury I don't know what it was. You can characterize it however you want. I don't think, given the timing and everything, that he intended to obstruct justice. I think he intended to observe—

Senator SPECTER. That was my next question.

Mr. CUMMINS. Well, it was a different time, you know. That was way back on February 20th.

Senator SPECTER. What he said to you did not constitute obstruction of justice?

Mr. CUMMINS. I think it was a lot—no, sir. I don't think it—I wouldn't have construed it to be—to him trying to commit a crime. I thought it was a lot more about the publicity than it was potential testimony.

The testimony part of our discussion, as I recall, kind of came in at the end when I was trying to assure him that the people here, and others, were not trying to stir up a controversy, we were trying to remain loyal to the administration that made us U.S. Attorneys, and that we didn't want to be here, and we resented the fact that this situation had been created to put us here, that potentially put us here. And I was trying to explain—you know, and as one example, I told him that we had turned down opportunities to testify, and he did react to that.

But most of our conversation was just that obviously they had read an article in the Washington Post that had given one or more people in the Department some chagrin, and I think the message

was, you know, we really don't want to keep reading articles like this if you all expect us to stay however restrained they felt like they were being at the time.

Senator SPECTER. OK. You don't think it constituted obstruction of justice. And both you and I know what obstruction of justice is. Right?

Mr. CUMMINS. Yes, Senator.

Senator SPECTER. OK.

Mr. CUMMINS. I think that would be a tough conviction.

Senator SPECTER. OK.

The next question is, do you think that he was trying to stop you from testifying?

Mr. CUMMINS. No. I think the call was a lot more directed, at the time, of just publicity, that one or more of us had responded to inquiries from the media and, in my case, had been quoted.

I think that they were feeling like we were trying to stir a controversy, and if you took him at his word that they were feeling like they were being more restrained than they could be, and they were doing it on our behalf to protect us, so if we wanted them to continue to maintain that posture, that we needed to understand that we shouldn't be stirring the pot.

Senator SPECTER. OK. It wasn't obstruction of justice. They weren't trying to stop you from testifying. Did you sense that he was trying to stop you from talking further to the newspapers?

Mr. CUMMINS. I think that it was fair to say that he was suggesting—I don't think he was telling me to do anything. I think he was suggesting that it was an "if, then." If people keep talking to the newspapers, then it is likely that more information will need to be made public to defend the Department's action.

Senator SPECTER. OK. So that's in the context of him, in effect, saying to you, if there's more information coming from the U.S. Attorneys who were asked to resign, then the Department of Justice will have to respond to whatever is said and to say why they were asked to resign. Is that the sum and substance of it?

Mr. CUMMINS. I think that's a fair—fair summary, Senator. And like I said, some people—I know some people would want to interpret that as a threat, but it could also be, hey, here's some friendly advice. You know, I've seen these things before, and if you all keep pushing this, it's likely that somebody's going to feel like they have to step up the defense and it may come back to hurt you.

Senator SPECTER. OK. If it's friendly advice, then you wanted to pass it on to other people who would have the benefit of your sense that if there was more talk to the newspapers there'd be more responses from the Department of Justice, and the essence, as you put it, "friendly advice" would be that if people stopped talking, there won't be any responses to the talk.

Mr. CUMMINS. I'm not sure. I don't want to ask you to repeat that, but can I try and—

Senator SPECTER. I'd be glad to.

Mr. CUMMINS. Can I take a crack at it? I think that my—you know, I had some trepidation about sharing the conversation and all because I felt like it was a personal conversation between Mike Elston said and myself.

But I can remember sitting at my desk thinking, if I were John McKay, David Iglesias, or Carol Lam and tomorrow the Washington Post or the Wall Street Journal or the New York Times called me, I would want to know that somebody in the Department had opined that things might get more embarrassing for me if I continued to talking to the press.

Senator SPECTER. OK. Senator Schumer wants to conclude this, so I'm going to let it go at friendly advice and move on to another very brief subject matter.

Mr. CUMMINS. "Friendly advice" would very likely be one fair characterization. I've attempted to not characterize the call. I just tried to pass the substance on to my colleagues.

Senator SPECTER. Well, if you characterize it as friendly advice, I'm going to drop this particular questioning.

Mr. CUMMINS. I will concede that that's one very possible characterization of the call.

Senator SPECTER. When I was chairman, Senator Schumer once went on for 30 minutes in a 5-minute round.

Senator SCHUMER. I would just say that the witnesses, then, did not have to be somewhere else at 2. That's all.

Senator SPECTER. OK.

Senator SCHUMER. That's the only reason. I'm happy to keep going, it's just, they have to be at the House at 2 under subpoena.

Senator SPECTER. I'll let you go shortly.

Senator SCHUMER. OK.

Senator SPECTER. On the Washington Post story dated February 4th, there is a reference here to Presidential advisor Karl Rove, whose former aide was the person to replace you. And the speculation was—I'm going to lead you a little here to make it shorter.

Mr. CUMMINS. I appreciate that, Senator.

Senator SPECTER. But you don't have to agree with anything that's leading. To have his former aide become the U.S. Attorney to groom him for possible political office. Is that the long and short of it?

Mr. CUMMINS. I don't remember the article and I have no idea what the plan was for my successor. I'm not privy to that.

Senator SPECTER. Were you aware of any speculation that Karl Rove's former aide was replacing you to groom him for public office?

Mr. CUMMINS. Senator, I would have no way of knowing why those decisions were made.

Senator SPECTER. Do you think it was inappropriate for Karl Rove's former associate to replace you as U.S. Attorney?

Mr. CUMMINS. No. 1, I don't know that my opinion on that is really relevant. I served at the pleasure of the President. Who they wanted to replace me with was entirely within their—their discretion. But I don't know of any reason, objectively, that Tim Griffin isn't qualified to be U.S. Attorney.

Senator SPECTER. OK. His qualifications have to be determined by somebody else, but the final statement here, "Cummins said, 'The political aspect of it shouldn't really be a shock to anybody.'" What did you mean by "the political aspect"?

Mr. CUMMINS. Well, I'm afraid I don't remember that article. There's been a lot of them. But I think that I was probably refer-

ring to the fact that—the fact that Tim Griffin has a political background should not just be an earth-shattering news flash.

I had a very political background. I'd run for Congress. I'd been involved in a lot of political—I think David and John had, and any number of our colleagues in the U.S. Attorney community.

The only important thing in this business is, you know even though you get the job politically, you must leave politics at the door while you do the job. If you don't know that, you are not going to be successful.

But the fact that somebody has some politics in their background, to me, shouldn't disqualify them to be a U.S. Attorney, because that would disqualify a whole lot of us.

Senator SPECTER. OK. This is the final question. "Cummins said, 'The political aspect of it shouldn't really be a shock to anybody,' noting his own status as an active Republican lawyer who served as one of Arkansas's electors committed to Bush in 2000. He said, 'Every U.S. Attorney knows they serve at the pleasure of the President.'" Does that sum it up pretty well?

Mr. CUMMINS. Whoever said that was very, very insightful.

[Laughter.]

Senator SPECTER. Excuse me? I didn't hear you.

Mr. CUMMINS. Yes, sir. I agree with that statement.

Senator SPECTER. It pretty well sums it up. You agree with it, because it's your statement.

Mr. CUMMINS. Yes. I agree with it because I believe it to be true. Every one of us serves at the pleasure of the President.

Senator SPECTER. Mr. Cummins, I thank you. And I thank you, Mr. McKay, Mr. Iglesias, and Ms. Lam. This is not an easy thing for you to do, to come forward as you have and testify. The three of us are lawyers here, a couple of former prosecutors and we understand the situation. We thank you for your contribution today.

Senator SCHUMER. Well, thank you. And thank you, Senator Specter.

I'm just going to make three quick points, because he is, as you can see, a very good prosecutor.

Senator SPECTER. Not much of a Senator.

Senator SCHUMER. Well, you're good at that, too.

No. 1, I just want the record to note or just underscore Mr. Cummins said friendly conversation was one interpretation of the memo.

Second, both Mr. McKay and Mr. Iglesias, who are sort of the targets of the memo, have different interpretations of that memo.

Three, the memo speaks for itself. The word "threat" is used several times in it. We're not going to draw any legal conclusions here today, that's not our purpose, but there are some issues here. I just, in conclusion, want to thank all the witnesses. I think you've proven the case about what fine prosecutors you are and what fine Americans you are, and we thank you for your service.

The administration, in response to your comments, used the word "grandstanding", which frankly I resent. I'm sure you do, too, but you don't have to state so. You were coming to this hearing. You avoided coming, as Mr. Cummins talked about.

You're coming to this hearing because, A) you've been subpoenaed and the House side, and you would have been subpoenaed

and had to come back on the Senate side, and just agreed, for the convenience of doing it all together, to be here. But the subpoenas are on the document. And the word "grandstanding" is entirely inappropriate.

I would say this. I would just say to the administration that this is not going to go away by intimidating or name-calling. There are a lot of serious allegations here. Senator Specter and Senator Whitehouse talked about obstruction, and there's different views of that, both on this Committee and on the panel.

But the one thing I can assure the public is we're going to get to the bottom of this, because the integrity of the U.S. Attorney's Office is so important to you, to us, and to the country.

The hearing is concluded.

[Whereupon, at 1:13 p.m. the hearing was adjourned.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

March 4, 2007

Senator Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510-6275

Dear Mr. Chairman,

I am in receipt of your letter dated March 2, 2007, requesting my attendance and testimony before the Senate Judiciary Committee Hearing on pending legislation, the Preserving United States Attorney Independence Act of 2007 (S. 214), to be held on March 6, 2007, at 10:00 a.m. in room 226 of the Dirksen Senate Office Building. I have been honored and greatly appreciative of the opportunity I have had to serve for 5 ½ years as one of the 93 United States Attorneys in the Department of Justice. Prior to becoming United States Attorney, I spent 11 years serving the District of Nevada as an Assistant United States Attorney prosecuting cases on behalf of the United States Department of Justice. Throughout my military and government service, I have always considered myself to be a career prosecutor. The United States Attorney's Office is an office vested with important duties and obligations and your Committee's interest in our United States Attorney's Offices is appropriate and greatly appreciated.

It is my understanding that I am under no legal obligation to testify at this time. If that understanding is incorrect, please bring that fact to my attention immediately and please advise me of my specific obligations. If at any point my attendance becomes compulsory, I assure you that I intend to fully cooperate with your Committee. However, if I am still permitted to make an election, I respectfully decline the invitation to attend and participate in the above referenced Senate Judiciary Committee hearing.

Sincerely,

Daniel G. Bogden

DANIEL G. BOGDEN

From: H.E. Cummins [redacted]
Sent: Tue 2/20/2007 5:06 PM
To: Dan Bogden; Paul K. Charlton; David Iglesias; Carol Lam; McKay, John (Law Adjunct)
Subject: on another note

Mike Elston from the DAG's office called me today. The call was amiable enough, but clearly spurred by the Sunday Post article. The essence of his message was that they feel like they are taking unnecessary flak to avoid trashing each of us specifically or further, but if they feel like any of us intend to continue to offer quotes to the press, or organize behind the scenes congressional pressure, then they would feel forced to somehow pull their gloves off and offer public criticisms to defend their actions more fully. I can't offer any specific quotes, but that was clearly the message. I was tempted to challenge him and say something movie-like such as "are you threatening ME???", but instead I kind of shrugged it off and said I didn't sense that anyone was intending to perpetuate this. He mentioned my quote on Sunday and I didn't apologize for it, told him it was true and that everyone involved should agree with the truth of my statement, and pointed out to him that I stopped short of calling them liars and merely said that IF they were doing as alleged they should retract. I also made it a point to tell him that all of us have turned down multiple invitations to testify. He reacted quite a bit to the idea of anyone voluntarily testifying and it seemed clear that they would see that as a major escalation of the conflict meriting some kind of unspecified form of retaliation.

I don't personally see this as any big deal and it sounded like the threat of retaliation amounts to a threat that they would make their recent behind doors senate presentation public. I didn't tell him that I had heard about the details in that presentation and found it to be a pretty weak threat since everyone that heard it apparently thought it was weak.

I don't want to stir you up conflict or overstate the threatening undercurrent in the call, but the message was clearly there and you should be aware before you speak to the press again if you choose to do that. I don't feel like I am betraying him by reporting this to you because I think that is probably what he wanted me to do. Of course, I would appreciate maximum opsec regarding this email and ask that you not forward it or let others read it.

Bud

35800.002

PETE V. DOMENICI
NEW MEXICO

United States Senate
WASHINGTON, DC 20510-3101

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

March 3, 2007

U.S. SEN. PETE V. DOMENICI (R-New Mexico)
Statement

I take this opportunity to comment directly on media statements by former U.S. Attorney for the District of New Mexico, David Iglesias.

Since my knowledge of his remarks stems only from a variety of media accounts, I have hesitated to respond. Nevertheless, in light of substantial public interest, I have decided to comment.

I called Mr. Iglesias late last year. My call had been preceded by months of extensive media reports about acknowledged investigations into courthouse construction, including public comments from the FBI that it had completed its work months earlier, and a growing number of inquiries from constituents. I asked Mr. Iglesias if he could tell me what was going on in that investigation and give me an idea of what timeframe we were looking at. It was a very brief conversation, which concluded when I was told that the courthouse investigation would be continuing for a lengthy period.

In retrospect, I regret making that call and I apologize. However, at no time in that conversation or any other conversation with Mr. Iglesias did I ever tell him what course of action I thought he should take on any legal matter. I have never pressured him nor threatened him in any way.

I was pleased to recommend to the President of the United States in early 2001 that he nominate Mr. Iglesias as U.S. Attorney for New Mexico. I knew from many discussions with federal law enforcement and judicial officials that the caseload had become extremely heavy within our state.

During the course of the last six years, that already heavy caseload in our state has been swamped by unresolved new federal cases, especially in the areas of immigration and illegal drugs. I have asked, and my staff has asked, on many occasions whether the federal prosecutors and federal judiciary within our state had enough resources. I have been repeatedly told that we needed more resources. As a result I have introduced a variety of legislative measures, including new courthouse construction monies, to help alleviate the situation.

-More-

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My conversations with Mr. Iglesias over the years have been almost exclusively about this resource problem and complaints by constituents. He consistently told me that he needed more help, as have many other New Mexicans within the legal community.

My frustration with the U.S. Attorney's office mounted as we tried to get more resources for it, but public accounts indicated an inability within the office to move more quickly on cases. Indeed, in 2004 and 2005 my staff and I expressed my frustration with the U.S. Attorney's office to the Justice Department and asked the Department to see if the New Mexico U.S. Attorney's office needed more help, including perhaps an infusion of professionals from other districts.

This ongoing dialogue and experience led me, several months before my call with Mr. Iglesias, to conclude and recommend to the Department of Justice that New Mexico needed a new United States Attorney.

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Statement of Senator Kennedy
Judiciary Committee Hearing
Preserving Prosecutorial Independence: Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys?—Part II
3/6/07

I thank the Chairman for holding this very important hearing and I thank our witnesses for testifying today. I know that it cannot be easy to come before this Committee under these circumstances.

United States attorneys have an indispensable role in the enforcement of federal law. They protect us from violent crime, terrorism, organized crime, public corruption, and violations of basic civil rights. Traditionally, they have practiced law in the district in which they serve. Most often, they are leading members of the local bar who have distinguished themselves in public service or private practice. They bring to their positions an understanding of their local legal system that is indispensable to their effectiveness.

United States Attorneys must be above partisan or ethical reproach. Many bring to the office some background in political activity, but it is essential for the public to have full confidence in their experience in the law and their ability and commitment to enforce the law effectively. Above all, it's the responsibility of a United States Attorney to see that justice is done and to preserve the confidence of the American people in our system of justice.

Recently, the Bush Administration fired eight U.S. Attorneys, seven on the same day. In the weeks that followed, the Administration has offered a series of shifting explanations for the dismissals. First, the Attorney General denied before the Judiciary Committee that he would ever fire a U.S. Attorney for political reasons or to curtail an investigation. Soon after that, Deputy Attorney General Paul McNulty testified before the Committee that all but one of the prosecutors were dismissed based on inadequacies in their performance. He acknowledged that Bud Cummins had been dismissed in Arkansas solely so that Karl Rove's deputy, who previously served as the director of opposition research for the Republican National Committee, could have the job. Whether this replacement was simply an unseemly effort to give a young GOP operative a credential or whether there was something more at play we do not yet know.

We subsequently learned that nearly all of the dismissed U.S. Attorneys had received glowing evaluations in the regular performance evaluation process of the Department of Justice. The Department acknowledged that the fired prosecutors had positive performance assessments, but contended that most had failed in some way to carry out Department of Justice priorities. We have now begun to hear – and I expect we will hear a lot more today – from the dismissed U.S. Attorneys that they did not receive any indication from the Department that their performances were inadequate.

35800.005

From the start, there has been considerable concern that several of the dismissed U.S. Attorneys were involved in significant public corruption investigations. Carol Lam in San Diego had prosecuted Randy Duke Cunningham, and was close to indicting others at the time she was told of her dismissal. It has been reported that two Republican members of the New Mexico congressional delegation called U.S. Attorney Iglesias to ask about the progress of public corruption indictments in October, shortly before the election. He has suggested that his rejection of those overtures may have led to his firing.

The succession of shifting explanations offered by the Department only deepens concern that we do not yet know the true reason for some of these dismissals. It may be that the real reasons lie in performance deficiencies, failure to meet Department priorities, failure to pursue corruption or other investigations aggressively enough, or the desire to open positions for others. Unfortunately, because these explanations have been offered one after another, they have generated deep suspicion that there is more to this story and that we do not know the whole truth.

These dismissals are deeply disturbing in and of themselves, but they are even more troubling because of the pattern of partisan and ideological hiring that has been the hallmark of the Department of Justice in this Administration. Attorney General Ashcroft abolished the honors hiring procedure for attorneys instituted by the Eisenhower Administration half a century ago to guarantee merit hiring and prevent partisanship and cronyism.

Since then, an alarming pattern of partisan and ideological hiring in the Civil Rights Division, for example, has allowed partisanship to influence enforcement of the Voting Rights Act. We can't afford to let the same corrupt practices undermine confidence in the fair enforcement of the federal criminal and civil laws by our U.S. Attorneys.

We cannot allow the Administration to play politics with the administration of justice or to use the Department of Justice as an employment bureau that can be exploited for political gain. We can not allow the Administration to sacrifice the fair, impartial and effective enforcement of our laws so that young political operatives can gain a credential.

We still have much to learn about these dismissals. I am confident that today's hearing will be an important step in uncovering the truth.

35800.006

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

AUG 1 0 2006

Homeland Security

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

Dear Senator Feinstein:

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

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

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

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

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

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

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

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

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

35800.008

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

Sincerely,

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

35800.009

Joint Statement of Former United States Attorneys Before Senate Committee on the Judiciary

March 6, 2007

Good morning Chairman Leahy, and members of the Committee. My name is Carol Lam. Until recently, I was the United States Attorney for the Southern District of California. In the interest of conserving time, I will be making introductory remarks on behalf of all the former United States Attorneys before you on the panel today, with whom I had the great privilege of serving as a colleague, from the following districts: Bud Cummins, Eastern District of Arkansas; David Iglesias, District of New Mexico; and John McKay, Western District of Washington. Each of us was subpoenaed to testify this afternoon on the same subject matter before a subcommittee of the House Committee on the Judiciary, and we were informed that in short order we would be receiving subpoenas to testify before this Committee, and so we are making our appearances before both Committees today. We respect the oversight responsibilities of the Senate Committee on the Judiciary over the Department of Justice, as well as the important role this Committee plays in the confirmation process of United States Attorneys.

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

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

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

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

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

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

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

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

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

Bud Cummins, *Little Rock, Arkansas*

David Iglesias, *Albuquerque, New Mexico*

Carol Lam, *San Diego, California*

John McKay, *Seattle, Washington*

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Statement of Senator Patrick Leahy
Chairman, Senate Judiciary Committee
Hearing Before the Senate Judiciary Committee
"Part II - Preserving Prosecutorial Independence: Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys?"
March 6, 2007

We have learned over the last few months of actions by this Administration that threaten to undermine the effectiveness and professionalism of U.S. Attorneys offices around the country. Not since the Saturday Night Massacre, when President Nixon forced the firing of the Watergate prosecutor Archibald Cox, have we witnessed anything of this magnitude. The calls to a number of U.S. Attorneys across the country last December, by which they were forced to resign, were extraordinary. What is more disconcerting is that, unlike during Watergate, there was no Elliot Richardson or William Ruckelshaus seeking to defend the independence of federal prosecutors. Instead, the Attorney General, the Deputy Attorney General, the Executive Office of U.S. Attorneys and the White House all collaborated in these actions.

United States Attorneys around the country are the chief federal law enforcement officers in their States. They are the face of federal law enforcement and have enormous responsibility for implementing anti-terrorism efforts, bringing important and often difficult cases, and taking the lead to fight public corruption. It is vital that those holding these critical positions be free from any inappropriate influence. Their importance is reflected in the fact that these appointments have traditionally, and are currently, subject to Senate confirmation.

Sadly, what we have heard from the Administration has been a series of shifting explanations and excuses. This lack of accountability or acknowledgement of the seriousness of this matter makes it all the more troubling.

The Attorney General's initial response at our January 18th hearing when we asked about these matters was to brush aside any suggestion that politics and interference with ongoing corruption investigations were factors in the mass firings. Now we know that these factors did play a role in these matters.

The question now arises, where is the accountability? For six years accountability has been lacking in this Administration. Loyalty to the President is rewarded over all else. That lack of accountability, and lack of the checks and balances that foster it, must end. We do not need another commendation for the "heckuva job" done by those who have failed in their essential duties to the American people.

Defense Secretary Gates finally pointed the way last week. Those in charge of the scandalous conditions at Walter Reed Medical Center are gone, as is the Secretary of the Army in charge. Where is the accountability for the scandalous actions by the Justice Department? That is the question this Committee is ultimately asking and to which the

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American people are entitled to an answer. The women and men replaced and whose reputations were stained by those seeking to justify these firings as "performance related" were appointees of President Bush. Several had significant achievements in office and glowing performance reviews. While effective prosecutors, were they simply too independent for this Administration? What were the real motivations for their firings? Who within the Administration were the moving forces and who were involved?

This Administration has been creating these vacancies by removing U.S. Attorneys as it chooses on a timeline it dictates. It cannot now claim that there simply was not the time to work with home state Senators to identify replacement. Why were home state Senators not consulted in advance? I would note that every one of the U.S. Attorneys who was asked to resign was someone chosen by this Administration, nominated by this President, approved by the home state Senators and confirmed by the Senate. This is thus entirely a problem of the Administration's imagination and choosing.

We can fix the statutory excess that opened the door to these untoward actions. During the Patriot Act Reauthorization last year, appropriate curbs on the authority of the Attorney General to appoint interim United States Attorneys to fill a vacancy temporarily were removed. The change to the law removed the 120-day limit for such appointments and removed the district court's role in making any subsequent interim appoints. This change in law, accomplished over my objection, allowed the Attorney General for the first time to make so-called interim appointments that could last indefinitely.

This Committee has reported a bill to the Senate to reverse that mistake. Senator Feinstein, Senator Specter, Senator Schumer and I have all cosponsored the bill to restore the statutory checks. Regrettably, Republican objections have prevented Senate consideration of S.214 and prevented its consideration as an amendment to S.4. I urge all Senators to join with us to correct the statutory authority. Yet fixing the law will not undo the damage done to the American people's confidence in federal law enforcement.

I thank Senator Schumer for chairing this hearing, the second one this Committee has had on this matter in the past month. I thank the witnesses for their willingness to come here today and help us get to the truth.

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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 23, 2006

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

Dear Senator Feinstein:

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

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

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

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

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

The Honorable Dianne Feinstein
Page Two

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

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

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

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

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

Sincerely,

William E. Moschella

William E. Moschella
Assistant Attorney General

Attachment

35800.016

United States Attorneys – Criminal Caseload Statistics[1]
Southern District of California
Standard Sentencing Counts
Immigration

Sentencing

Fiscal Year[2]	Defendants in Cases Filed	Defendants in Cases Terminated	Total Defendants Guilty	Number of Guilty Defendants Not Sentenced To Prison	Percent Change	Number of Guilty Defendants Sentenced To Prison	Percent Change	Percent of Guilty Defendants Sentenced To Prison
93	357	340	324	18		306		94.4%
94	290	378	357	22	22.2%	335	9.5%	93.8%
95	894	850	841	50	127.3%	791	136.1%	94.1%
96	1,425	1,341	1,318	190	280.0%	1,128	42.6%	85.6%
97	1,949	1,892	1,852	302	58.9%	1,550	37.4%	83.7%
98	2,093	1,811	1,741	156	-48.3%	1,585	2.3%	91.0%
99	1,778	1,837	1,737	82	-47.4%	1,655	4.4%	95.3%
00	2,223	2,070	1,942	62	-24.4%	1,880	13.6%	96.8%
01	1,988	2,112	1,977	80	29.0%	1,897	0.9%	96.0%
02	2,059	1,877	1,759	74	-7.5%	1,685	-11.2%	95.8%
03	2,558	2,497	2,395	92	24.3%	2,303	36.7%	96.2%
04	2,632	2,588	2,408	38	-60.9%	2,370	2.9%	98.5%
05	1,514	1,732	1,551	49	38.1%	1,502	-36.6%	96.8%
06	1,580	1,492	1,372	40	-18.4%	1,332	-11.3%	97.1%
Average	1,668	1,630	1,541	90	28.5%	1,451	17.5%	93.9%

Sentencing

Fiscal Year[2]	Number of Guilty Defendants Sentenced To Prison	Defendants Sentenced to Prison 1-12 Months	Percent of Defendants Sentenced to Prison 1-12 Months	Defendants Sentenced to Prison 13-24 Months	Percent of Defendants Sentenced to Prison 13-24 Months	Defendants Sentenced to Prison 25-36 Months	Percent of Defendants Sentenced to Prison 25-36 Months	Defendants Sentenced to Prison 37-60 Months	Percent of Defendants Sentenced to Prison 37-60 Months	Defendants Sentenced to Prison 61+ Months	Percent of Defendants Sentenced to Prison 61+ Months	Defendants Sentenced to Life in Prison	Percent of Defendants Sentenced to Life in Prison	Defendants Sentenced to Death	Percent of Defendants Sentenced to Death
93	306	63	20.6%	223	72.9%	10	3.3%	5	1.6%	5	1.6%	0	0.0%	0	0.0%
94	335	41	12.2%	281	83.9%	4	1.2%	4	1.2%	5	1.5%	0	0.0%	0	0.0%
95	791	54	6.8%	704	89.0%	6	0.8%	16	2.0%	11	1.4%	0	0.0%	0	0.0%
96	1,128	146	12.9%	904	80.1%	16	1.4%	45	4.0%	17	1.5%	0	0.0%	0	0.0%
97	1,550	457	29.5%	994	64.1%	28	1.8%	32	2.1%	39	2.5%	0	0.0%	0	0.0%
98	1,585	404	25.5%	718	45.3%	340	21.5%	67	4.2%	56	3.5%	0	0.0%	0	0.0%
99	1,655	374	22.6%	474	28.6%	629	38.0%	100	6.0%	78	4.7%	0	0.0%	0	0.0%
00	1,880	755	40.2%	573	30.5%	498	26.4%	42	2.2%	14	0.7%	0	0.0%	0	0.0%
01	1,897	931	49.1%	580	30.6%	323	17.0%	50	2.6%	13	0.7%	0	0.0%	0	0.0%
02	1,685	747	44.3%	561	33.3%	326	19.3%	38	2.3%	13	0.8%	0	0.0%	0	0.0%
03	2,303	1,035	44.9%	785	34.1%	418	18.2%	52	2.3%	13	0.6%	0	0.0%	0	0.0%
04	2,370	896	37.8%	745	31.4%	592	25.0%	116	4.9%	21	0.9%	0	0.0%	0	0.0%
05	1,502	338	22.5%	512	34.1%	329	21.9%	246	16.4%	77	5.1%	0	0.0%	0	0.0%
06	1,332	384	28.8%	444	33.3%	186	14.0%	276	20.7%	42	3.2%	0	0.0%	0	0.0%
Average	1,451	473	32.6%	607	41.8%	265	18.2%	78	5.4%	29	2.0%	0	0.0%	0	0.0%

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

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

Cases & Defendants – Filed, Pending, & Terminated

Fiscal Year[2]	Cases Filed	Percent Change	Defendants Filed	Percent Change	Average # of Defendants Per Case Filed	Cases Pending	Percent Change	Defendants Pending	Percent Change	Average # of Defendants Per Case Pending	Cases Terminated	Percent Change	Defendants Terminated	Percent Change	Average # of Defendants Per Case Terminated
93	330		357		1.08	217		284		1.31	308		340		1.10
94	272	-17.6%	290	-18.8%	1.07	137	-36.9%	191	-32.7%	1.39	345	12.0%	376	10.6%	1.09
95	851	212.9%	884	204.8%	1.04	155	13.1%	221	15.7%	1.43	829	140.3%	850	126.1%	1.03
96	1,367	60.6%	1,425	61.2%	1.04	227	46.5%	300	35.7%	1.32	1,291	55.7%	1,341	57.8%	1.04
97	1,653	35.6%	1,949	36.8%	1.05	259	14.1%	352	17.3%	1.36	1,818	40.9%	1,892	41.1%	1.04
98	1,918	3.5%	2,093	7.4%	1.09	479	84.9%	626	77.8%	1.31	1,695	-6.8%	1,811	-4.3%	1.07
99	1,664	-13.2%	1,778	-15.1%	1.07	448	-6.5%	566	-9.6%	1.26	1,687	-0.5%	1,837	1.4%	1.09
00	2,116	27.2%	2,223	25.0%	1.05	601	34.2%	710	25.4%	1.18	1,961	16.2%	2,070	12.7%	1.06
01	1,907	-9.9%	1,988	-10.6%	1.04	496	-17.5%	580	-18.3%	1.17	2,006	2.3%	2,112	2.0%	1.05
02	1,921	0.7%	2,059	3.6%	1.07	634	27.8%	761	31.2%	1.20	1,782	-11.2%	1,877	-11.1%	1.05
03	2,463	28.2%	2,558	24.2%	1.04	739	16.6%	818	7.5%	1.11	2,359	32.4%	2,497	33.0%	1.06
04	2,527	2.6%	2,632	2.9%	1.04	816	10.4%	918	12.2%	1.13	2,506	6.2%	2,588	3.6%	1.03
05	1,441	-43.0%	1,514	-42.5%	1.05	645	-21.0%	714	-22.2%	1.11	1,626	-35.1%	1,732	-33.1%	1.07
06	1,432	-0.6%	1,580	4.4%	1.10	672	4.2%	776	8.7%	1.15	1,412	-13.2%	1,492	-13.9%	1.06
Average	1,578	22.1%	1,666	21.6%	1.06	466	13.1%	558	11.4%	1.20	1,545	18.4%	1,630	17.4%	1.05

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

EOUSA/DATA ANALYSIS STAFF/CRIMINAL/FORM A 14-Jul-06 CAS

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

Cases & Defendants Tried

Fiscal Year[2]	Cases Terminated	Defendants Terminated	Cases Disposed of by Trial	Percent Change	Cases Tried as Percent of Those Terminated	Defendants Disposed of by Trial	Percent Change	Defendants Tried as Percent of Those Terminated	Average Number of Defendants Per Case Tried
93	308	340	5		1.6%	6		1.6%	1.20
94	345	376	7	40.0%	2.0%	7	16.7%	1.9%	1.00
95	629	650	7	0.0%	0.8%	7	0.0%	0.8%	1.00
96	1,291	1,341	13	85.7%	1.0%	13	85.7%	1.0%	1.00
97	1,819	1,892	7	-46.2%	0.4%	9	-30.8%	0.5%	1.29
98	1,695	1,811	39	457.1%	2.3%	42	366.7%	2.3%	1.08
99	1,687	1,837	52	33.3%	3.1%	54	28.6%	2.9%	1.04
00	1,961	2,070	17	-67.3%	0.9%	20	-63.0%	1.0%	1.18
01	2,006	2,112	42	147.1%	2.1%	47	135.0%	2.2%	1.12
02	1,782	1,877	33	-21.4%	1.9%	35	-25.5%	1.9%	1.06
03	2,359	2,497	29	-12.1%	1.2%	30	-14.3%	1.2%	1.03
04	2,506	2,588	42	44.8%	1.7%	42	40.0%	1.6%	1.00
05	1,626	1,732	89	111.9%	5.5%	91	116.7%	5.3%	1.02
06	1,412	1,492	50	-43.8%	3.5%	50	-45.1%	3.4%	1.00
Average	1,545	1,630	31	56.1%	2.0%	32	47.0%	2.0%	1.05

Defendants - Guilty, Acquitted, Dismissed, Other Terminations

Fiscal Year[2]	Total Defendants Terminated	Total Defendants Guilty	Percent Change	Defendants Found Guilty	Defendants Found Guilty as Percent of Total Guilty	Defendants Who Pled Guilty	Defendants Who Pled Guilty as Percent of Total Guilty	Conviction Rate	Defendants Acquitted	Percent Change	Defendants Dismissed	Percent Change	Other Terminated Defendants	Percent Change
93	340	324		6	1.9%	318	98.1%	95.3%	0		16		0	
94	376	357	10.2%	7	2.0%	350	98.0%	94.9%	0		19	18.8%	0	
95	650	641	135.8%	7	0.8%	634	99.2%	98.9%	0		9	-52.6%	0	
96	1,341	1,318	56.7%	12	0.9%	1,306	99.1%	98.3%	1		22	144.4%	0	
97	1,892	1,852	40.5%	7	0.4%	1,845	99.6%	97.9%	3	200.0%	35	59.1%	2	
98	1,811	1,741	-6.0%	40	2.3%	1,701	97.7%	96.1%	2	-33.3%	68	94.3%	0	
99	1,837	1,737	-0.2%	49	2.8%	1,688	97.2%	94.5%	5	150.0%	95	39.7%	0	
00	2,070	1,942	11.8%	19	1.0%	1,923	99.0%	93.8%	2	-60.0%	126	32.8%	0	
01	2,112	1,977	1.8%	45	2.3%	1,932	97.7%	93.6%	2	0.0%	132	4.8%	1	
02	1,877	1,759	-11.0%	34	1.9%	1,725	98.1%	93.7%	1	-50.0%	116	-12.1%	1	0.0%
03	2,497	2,395	36.2%	28	1.2%	2,367	98.8%	95.9%	2	100.0%	100	-13.8%	0	
04	2,588	2,406	0.5%	37	1.5%	2,369	98.5%	93.0%	5	150.0%	170	70.0%	7	
05	1,732	1,551	-35.5%	86	5.5%	1,465	94.5%	89.5%	5	0.0%	174	2.4%	2	-71.4%
06	1,492	1,372	-11.5%	50	3.6%	1,322	96.4%	92.0%	0		116	-33.3%	4	100.0%
Average	1,630	1,541	17.6%	31	2.0%	1,510	98.0%	94.6%	2	50.7%	86	27.2%	1	9.5%

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

[2] FY 2005 numbers are straight-line projections based on actual data through the end of March 2006.

EOUSA/DATA ANALYSIS STAFF/CRIMINAL/FORM A 14-Jul-06 CAS

3/6/2007
FOR IMMEDIATE RELEASE

Statement from Congresswoman Heather Wilson

"I want to comment directly on media reports over the last week concerning the dismissal of U.S. Attorney David Iglesias.

"Throughout last year, there was extensive reporting and widespread public discussion about corruption in New Mexico. There was a lot of frustration expressed to me by many New Mexicans about the slow pace of federal prosecutions in response to these problems.

"In the fall of last year, I was told by a constituent with knowledge of ongoing investigations that U.S. Attorney David Iglesias was intentionally delaying corruption prosecutions. This allegation was deeply troubling to me. While I shared public frustration with the pace of prosecutions, I have always thought Mr. Iglesias to be an honorable man who would not do something like that.

"I called Mr. Iglesias and told him the allegation, though not the source.

"Mr. Iglesias denied delaying prosecutions. He said he had very few people to handle corruption cases.

"I told him that I would take him at his word, and I did.

"My call was not about any particular case or person, nor was it motivated by politics or partisanship. I did not ask about the timing of any indictments and I did not tell Mr. Iglesias what course of action I thought he should take or pressure him in any way. The conversation was brief and professional.

"If the purpose of my call has somehow been misperceived, I am sorry for any confusion. I thought it was important for Mr. Iglesias to receive this information and, if necessary, have the opportunity to clear his name.

"I never discussed this matter or anything related to Mr. Iglesias' performance as U.S. Attorney with the Justice Department at any time. The Administration's decision to dismiss David Iglesias was made without input from me and no one in the Administration asked for my input.

"The Department of Justice will have to explain why they let Mr. Iglesias go and why they have made public comments about his performance."

— End —

PRESERVING PROSECUTORIAL INDEPENDENCE: IS THE DEPARTMENT OF JUSTICE POLITICIZING THE HIRING AND FIRING OF U.S. ATTORNEYS?—PART III

THURSDAY, MARCH 29, 2007

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, Pursuant to notice, at 10:07 a.m., in room SH–216, Hart Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Kennedy, Kohl, Feinstein, Feingold, Schumer, Durbin, Cardin, Whitehouse, Specter, Hatch, Grassley, Kyl, Sessions, Graham, and Cornyn.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Good morning. I would note we are starting just a couple moments late here. There is a series of roll call votes on the floor, and what I am going to do is try to start as quickly as possible with statements by myself and the Ranking Member.

If we have further votes this morning, I am going to try to do it in a way that we go back and forth on the votes and keep the hearing going. This is too important a hearing. I know Senators have a number of other things they are doing, but we will go forward.

Today the Committee proceeds with another hearing into the mass replacement of U.S. Attorneys, and this morning we will hear testimony from D. Kyle Sampson, the former Chief of Staff to Attorney General Gonzales. He is represented by another attorney who served in the White House Counsel's Office for the White House, Bradford Berenson. Mr. Sampson could have been subpoenaed, but we thank him for appearing voluntarily and testifying.

I hope this hearing will provide us with an opportunity to learn additional facts and help us get beyond the shifting stories to the truth. Our goal is to get to the bottom of what happened, but also why it happened, and who was involved in devising and implementing this plan to replace so many United States Attorneys around the country.

At his press conference 2 weeks ago, and actually again this week in an interview, Attorney General Gonzales seemed to heap much of the responsibility for this matter on Mr. Sampson. The Attorney General admits that mistakes were made, but he seems, ac-

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cording to him, to say, however, those mistakes were mostly by Mr. Sampson.

He was one of the people in charge of assembling the list of U.S. Attorneys to be fired. The Attorney General indicated he was also one of the people who concealed information from others at the Department of Justice so that there was, in the words of the Attorney General, "consequently, information shared with the Congress that was incomplete."

This hearing gives Mr. Sampson a chance to answer these charges by the Attorney General and also to present the facts as he knows them. We are going to ask only that Mr. Sampson share with us the truth and the whole truth with regard to these matters.

I want the American people to have a Justice Department and United States Attorneys' Offices that enforce the law without regard to political influence and partisanship.

I want that today, but I want to set the standard so that whoever is President 2 years from now, whether it is a Democratic or Republican administration, we have an independent prosecutor system that will prosecute without fear or favor.

We also know that one of the most important things a prosecutor can do is to decide not only when to bring a charge, but when not to bring a change. And if the people feel that there is somehow political influence on those decisions, then we all suffer.

I want the American people to have confidence in Federal law enforcement. I want Federal law enforcement officers to have the independence they need to be effective and to consistently merit the trust of the American people. And, regrettably, what we have heard from the administration has been a series of shifting explanations and excuses and lack of accountability or even acknowledgment of the seriousness of this matter.

This investigation stems from this Committee's responsibilities to the American people. The Judiciary Committee has the authority to conduct oversight and investigations related to the Department of Justice and the U.S. Attorneys' Offices.

We have the authority to examine whether inaccurate or incomplete testimony was provided to this Committee, to consider legislation within our jurisdiction, and to protect our role in evaluating nominations pursuant to the Senate's constitutional responsibility to provide advice and consent.

And as one who has been in the Senate for 32 years, I take the right and the duty of advice and consent very, very seriously. And I must admit that when anybody tries a back-door way to get around the Senate's constitutional duty and obligation of advice and consent, it does not sit well.

Indeed, it was in light of this jurisdiction—the confirmation power vested in the Senate, and the jurisdiction of this Committee over the review of U.S. Attorney nominations—that our Ranking Member observed early on that we have primary responsibility to investigate this matter.

The answers to our questions at the January 18th hearing with the Attorney General and the February 6th hearing with the Deputy Attorney General, as well as a series of statements by White House spokespeople and other Justice Department officials in pri-

vate briefings, have been contradicted by the sworn testimony of the former United States Attorneys.

They have also been contradicted by the limited e-mails and other documents we have obtained from the Department of Justice. Let me emphasize it has been limited. A lot of them had been erased. The material in them had been removed. And despite the initial denials of White House involvement, it is now apparent that White House officials were involved in the planning of the replacement of U.S. Attorneys and the subsequent misleading explanations from Justice Department officials.

U.S. Attorneys serve at the pleasure of this President, but justice does not serve at the pleasure of the President or any President.

Our law enforcement and justice system is the envy of the world. It is one of our country's greatest strengths. It is built on a foundation of checks and balances and the people's faith in the rule of law without fear or favor. That foundation can be easily eroded. We need to be vigilant in protecting it.

The dismissed U.S. attorneys have testified under oath and said in public that they believe political influence was applied. Incidentally, these U.S. Attorneys were all appointed in a Republican administration, and they have given chapter and verse and specific examples.

If they are right—and that is why we are having these hearings, to determine if they are right, that mixing of partisan political goals into Federal law enforcement, is highly improper because it corrodes the public's trust in our system of justice, it is wrong, and that is what we are seeking to determine through our investigation of the facts. We need a thorough and fair investigation of what happened and why and who was involved.

Normally I would go to the Ranking Member at this point. I think he is probably still held up on the floor. Because of the importance of this, we wanted to start, and I will yield to the Chairman of the appropriate Subcommittee. I will then yield to Senator Specter. Should Senator Hatch wish to say anything, we will yield to him.

Senator Schumer?

STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Well, thank you, Mr. Chairman. I want to thank you for the opportunity to speak and, more importantly, for your vital leadership on this critically important issue.

I also want to thank Senators Feinstein, Pryor, and Lincoln, who raised the alarm about what went on in their States. And I want to thank Mr. Sampson for coming here today voluntarily to shed some light on these events.

I just want to take a couple of minutes to note, first, what we have uncovered so far in this investigation; second, what we can expect to accomplish today; and, third, where we expect to go from here.

First, let me comment on where we have been and how far we have come. It was only 7 weeks ago that I chaired the first hearing on this issue. Just 7 weeks ago, the Department of Justice and most of my friends across the aisle were insisting we needed to

keep a secretly passed provision in the PATRIOT Act that threatened to take the Senate out of the confirmation process for U.S. Attorneys.

Since then, the Senate has voted 94–2 to return a vital check and balance to the U.S. Attorney appointment process, and this week the House voted overwhelmingly to do the same.

Just 7 weeks ago, the Department of Justice was insisting we were making a big deal out of nothing. Since then, the Attorney General's Chief of Staff has resigned; the official who made the fateful calls on December 7th has resigned; and the Justice Department's liaison to the White House has taken an indefinite leave of absence and asserted her Fifth Amendment right against self-incrimination.

In the last 7 weeks, we have learned that Attorney General Gonzales was personally involved in the firing plan after being told that he was not. We have learned that the White House was involved after being told that it was not. We have learned that Karl Rove was involved after being told that he was not. And we have learned that political considerations were very important after being told that they were not.

The list of contradictions, contortions, and retractions grows longer every day. Maybe no one has anything to hide and everyone acted honorably, but it is sure hard to come to that conclusion based on the events of the past 7 weeks. I dare say that given the unbroken stream of mishaps, missteps, and misstatements, the burden has shifted. It is now, arguably, up to the Department of Justice to show that it behaved well, not for us to show that it behaved badly.

All of these developments raise serious and troubling questions, which brings me to my second point: What can we expect today?

Many people in the Justice Department are pointing the finger at Kyle Sampson, but today we hear Mr. Sampson's side of the story. For that reason, this is a very important hearing. I hope and trust we will learn more of the facts that have so far eluded us. Kyle Sampson was at the epicenter of all of this and should know those facts better than anyone else.

It is the logical next step in our investigation to have him here today. It is not the beginning, and it is certainly not the end. It is a very important step, but we may not even realize the importance of it until we hear from other witnesses and other facts come out.

I appreciate, again, Mr. Sampson's willingness to stay here for as long as we have questions, and I intend to take him up on that offer and pursue some lengthy factual questioning when I have the opportunity to do so. So the hearing may last a while.

The purpose of today's hearing is not to find a smoking gun. The purpose is to build a factual base and to continue to figure out what went on. The purpose is not "gotcha." The purpose is, as they said in "Dragnet," "Just the facts, ma'am."

I hope we learn more about the involvement of the Attorney General in all this. Based on the facts we already know, his situation is grave. Whether he was intimately involved in this debacle or just presided over a Department that allowed it to happen and did not know a thing, that is a pretty severe indictment.

Finally, whatever happens at this hearing and, for that matter, whatever happens to Attorney General Gonzales, we have a duty to continue to ask questions and investigate until we are satisfied that all of the facts have been found. If we do anything less, we are abdicating our responsibility to the citizens who elected us and who wanted to trust once again that the Department of Justice enforces the law equally and without fear or favor.

[Pause.]

Senator SCHUMER. Ladies and gentlemen, we are waiting for other Senators to return. There is one final vote, and then we will not be interrupted the rest of the day, thanks to Senator Reid and the way he scheduled this. So we are going to take a brief recess.

[Recess 10:22 a.m. to 10:34 a.m.]

Chairman LEAHY. Only because I would like to see the witness—I am happy to cooperate with the photographers, but I kind of like to see who I am talking with.

I am not sure what is happening on the floor. We are having a lot of votes that we were not supposed to have. I would hope that that is simply because people are exercising their constitutional rights and not because they are all coming from the other side, whether these votes are from those who wish we were not going to have a hearing.

What I am going to do is I am going to swear in Mr. Sampson, and we can begin with his statement. When Senator Specter gets here, of course, he will have a chance to give his statement. He will take priority over everybody else.

Mr. Sampson, please stand and raise your right hand. Do you solemnly swear that the testimony you are about to give in this matter shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SAMPSON. I do.

Chairman LEAHY. Thank you.

As I said earlier, Mr. Sampson, I appreciate you and your attorney cooperating to have you here, and I would note again you appeared without us having to issue the subpoena, which I had signed.

Please go ahead.

STATEMENT OF D. KYLE SAMPSON, FORMER CHIEF OF STAFF TO THE ATTORNEY GENERAL OF THE UNITED STATES, WASHINGTON, D.C.

Mr. SAMPSON. Thank you, Mr. Chairman.

As you know, I have come here voluntarily to answer your questions. I have been a public servant for the past 8 years. During the past several years, I have served Attorney General Gonzales in a staff position, culminating in my service to him as his Chief of Staff.

In that role, I was responsible for organizing and managing the process by which certain U.S. Attorneys were asked to resign. From that vantage point, I believe I was well positioned to observe and understand what happened in this matter.

I can't pretend to know or remember every fact that may be of relevance, but I am pleased to share with the Committee today those that I do know and those that I do remember.

After the 2004 election, the White House inquired about the prospect of replacing all 93 U.S. Attorneys with new appointees. I believed, as did others, that less sweeping changes were more appropriate. The Department of Justice then began to look at replacing a limited number of U.S. Attorneys in districts where, for a variety of reasons, the Department thought change would be beneficial.

Reasonable and honest people can differ—and, in fact, did at various stages of the process—on whether particular individuals should be asked to resign. But the decision to ask them to do so was the result of an internal process that aggregated the considered, collective judgment of a number of senior Justice Department officials.

I would be the first to concede that this process was not scientific, nor was it extensively documented. That is the nature of Presidential personnel decisions. But neither was the process random or arbitrary. Instead, it was a consensus-based process based on input from Justice Department officials who were in the best position to develop informed opinions about U.S. Attorney performance.

When I speak about U.S. Attorney performance, it is critical to understand that performance for a Senate-confirmed Presidential appointee is a very different thing than performance for a civil servant or a private sector employee.

Presidential appointees are judged not only on their professional skills, but also their management abilities, their relationships with law enforcement and other governmental leaders, and their support for the priorities of the President and the Attorney General.

A United States Attorney may be a highly skilled lawyer and a wonderful person, as I believe all of the individuals who were asked to resign are. But if he or she is judged to be lacking in any of these respects, then he or she may be considered for replacement.

The distinction between "political" and "performance-related" reasons for removing a U.S. Attorney is, in my view, largely artificial. A U.S. Attorney who is unsuccessful from a political perspective, either because he or she has alienated the leadership of the Department in Washington or cannot work constructively with law enforcement or other governmental constituencies in the district, is unsuccessful.

With these standards for evaluating U.S. Attorneys in mind, I coordinated the process of identifying U.S. attorneys that might be considered for replacement. I received input from a number of officials at the Department of Justice who were in a position to form considered judgments about the U.S. Attorneys, and these included not only senior political appointees, such as the Deputy Attorney General, but also senior career lawyers such as David Margolis, a man who has served Justice for more than 40 years under Presidents of both parties and who probably knows more about United States Attorneys than any person alive.

I developed and maintained a list that reflected the aggregation of views of these Department officials over a period of almost 2 years. I provided that information to the White House when requested and reviewed it with and circulated it to others at the De-

partment of Justice for comment. By and large, the process operated by consensus. When any official I consulted felt that an individual name should be removed from the list, it generally was.

Although consideration of possible changes had begun in early 2005, the process of actually finalizing a list of U.S. Attorneys who might be asked to resign and acting on that list did not begin until last fall. In the end, eight total U.S. Attorneys were selected for replacement: Bud Cummins in mid-2006 and the other seven in a group in early December of 2006.

With the exception of Bud Cummins, none of the U.S. Attorneys was asked to resign in favor of a particular individual who had already been identified to take the vacant spot. Nor, to my knowledge, was any U.S. Attorney asked to resign for an improper reason.

U.S. Attorneys serve at the pleasure of the President and may be asked to resign for almost any reason, with no public or private explanation. The limited category of improper reasons includes an effort to interfere with or influence the investigation or prosecution of a particular case for political or partisan advantage.

To my knowledge, nothing of the sort occurred here. Instead, based on everything I have seen and heard, I believe that each replaced U.S. Attorney was selected for legitimate reasons, falling well within the President's broad discretion and relating to his or her performance in office, at least as performance is properly understood in the context of Senate-confirmed political appointees.

Nonetheless, when Members of Congress began to raise questions about these removals, I believe the Department's response was badly mishandled. It was mishandled through an unfortunate combination of poor judgments, poor word choices, and poor communication in preparation for the Department's testimony before Congress.

For my part in allowing this to happen, I want to apologize to my former DOJ colleagues, especially the U.S. Attorneys who were asked to resign. What started as a good-faith attempt to carry out the Department's management responsibilities and exercise the President's appointment authority has unfortunately resulted in confusion, misunderstanding, and embarrassment.

This should not have happened. The U.S. Attorneys who were replaced are good people. Each served our country honorably, and I was privileged to serve at the Justice Department with them.

As the Attorney General's Chief of Staff, I could have and should have helped to prevent this. In failing to do so, I let the Attorney General and the Department down. For that reason, I offered the Attorney General my resignation. I was not asked to resign. I simply felt honor bound to accept my share of blame for this problem and to hold myself accountable.

Contrary to some suggestions I have seen in the press, I was not motivated to resign by any belief on my part that I withheld information from Department witnesses or intentionally misled either those witnesses or the Congress.

The mistakes I made here were made honestly and in good faith. I failed to organize a more effective response to questions about the replacement process, but I never sought to conceal or withhold any material facts about this matter from anyone.

I always carried out my responsibilities in an open and collaborative manner. Others in the Department knew what I knew about the origins and timing of this enterprise.

None of us spoke up on those subjects during the process of preparing Mr. McNulty and Mr. Moschella to testify—not because there was some effort to hide this history, but because the focus of our preparation sessions was on other subjects—principally why each of the U.S. Attorneys had been replaced, whether there had been improper case-related motivations for those replacements, and whether the administration planned to use the Attorney General's interim appointment authority to evade the Senate confirmation process.

As I see it, the truth of this affair is this: The decisions to seek the resignations of a handful of U.S. attorneys were properly made but poorly explained. This is a benign rather than sinister story, and I know that some may be disposed not to accept it. But it is the truth as I observed it and experienced it.

And, Mr. Chairman, if I may just add, 8 years ago I moved my wife and children here to Washington because I was interested in public service, and I came to work here for this Committee first, for then-Chairman Hatch, and it was an honor for me to do that. And really through serendipity, I have had opportunities for other public service in the Government. And I believe in public service, and in all of my work in public service, I have made every effort to operate openly and forthrightly and with integrity.

Chairman LEAHY. Mr. Sampson, I do not mean to cut you off, and we have given you extra time, as you know. We have now what I believe is a final vote. I am going to turn the gavel over to Senator Kohl while I go and vote. I will come back. If you wish to add the part that was cutoff, certainly I will give you the time.

Thank you.

Mr. SAMPSON. Thank you, Mr. Chairman.

Chairman LEAHY. Mr. Sampson, finish your statement.

Mr. SAMPSON. Thank you, Mr. Chairman. All I had to say, all I wanted to conclude in saying is that I have come up here to testify voluntarily today because I believe in public service and because I believe in the goodness of our political process.

I appreciated Senator Schumer saying this was not a game of "gotcha," and I came here today because this episode has been personally devastating to me and my family. And it is my hope that I can come up here today, share with you the information that this Committee and that the Congress wants and, frankly, put this behind me and my family.

And with that, I am happy to answer any questions any Senators may have.

Senator KOHL. [Presiding.] We will withhold further proceedings until the Chairman returns.

Mr. SAMPSON. Thank you.

[Recess 10:45 a.m. to 10:57 a.m.]

Chairman LEAHY. I should let everybody know what we are going to do. Mr. Sampson is on his way back in, and I really apologize for the way this is going. Unfortunately, you never know what the Senate schedule is going to be.

I want people watching us to understand that we have had a series of roll call votes, and a decision was made by anybody who might have been holding up the Senate that they will not. We have had the final vote, and now Senators can stay here.

As I was saying as I was leaving, Mr. Sampson was making a personal comment, which we made sure got on the record, and I am sorry I had to cut out for that. I made that vote by about 30 seconds.

I am going to yield first to Senator Specter for his opening statement. We have already had the opening statement from Mr. Sampson. I am going to yield for the opening statement to Senator Specter. I will ask questions, and then Senator Specter will ask questions.

Senator SPECTER. Thank you, Mr. Chairman. I—

Senator SESSIONS. Mr. Chairman, are you forgetting me?

Chairman LEAHY. Also, I had told Senator Sessions yesterday, since he is the Ranking of the appropriate Subcommittee, that following Senator Specter's statement—he was not here when we made the opening statements earlier—I will yield to Senator Sessions.

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. I am sorry to have missed your opening statement, Mr. Chairman, and the opening statement by Mr. Sampson. But as has already been said, we have been in the midst of roll call votes with the final passage vote in process now on providing the $100 billion plus for the troops in Iraq, and I was on the floor and was deliberating as to how to vote. So as soon as I could make up my mind, I came over for this subject.

It is my hope that this hearing today will provide some coherence, accuracy, and veracity as to what has gone on here. We have very important questions that we have to find the answers to. We have to make a determination as to why these U.S. Attorneys were asked to resign.

It is admitted that the President has the authority to replace U.S. Attorneys for no reason, but I think there is a consensus that the President does not have the right to ask for resignations for a bad reason, that is, whether U.S. Attorney Carol Lam in San Diego was asked to resign because she was hot on the trail of confederates of Duke Cunningham. We do not know whether she was or not. These hearings are designed to find that out.

We do not know whether or not the U.S. Attorney in New Mexico Iglesias was asked to resign because he refused to bring a fraud prosecution where there was no basis for it.

We have to make that determination. We have to find out whether there was a calculated effort by the Department of Justice to use this provision in the PATRIOT Act to avoid Senate confirmation and Senate scrutiny on who the United States Attorneys were.

So there are some really important questions to be determined, and right now it is generally acknowledged that the Department of Justice is in a state of disrepair, perhaps it's even dysfunctional, because of what has happened, with morale low, with U.S. Attorneys across the country who do not know when another shoe may

drop, whether they may be asked to resign for a bad reason if they are not exercising their discretion. And it is vital that U.S. Attorneys be able to exercise their discretion in good faith and make prosecutions, something I have had some experience with myself.

And then we need to know what was the role of the Attorney General. He has said that he was not involved in discussions, and that statement is apparently contradicted by e-mails. But I am not prepared to make a judgment on whether the Attorney General should stay or go based upon what I read in the newspapers.

I want to see him eyeball-to-eyeball at that witness stand and have a chance to ask him questions. And there are serious questions beyond this U.S. Attorneys issue. The National Security Letters, which this Committee took up earlier this week, have really great importance on tools for law enforcement. We should know whether they are being exercised properly with regard for civil liberties. And I think the Attorney General has serious questions to answer on that.

And then there is the role that Mr. Rove played, and I think we ought to hear from him—candidly, sooner rather than later. I think we ought to try to get to the bottom of all these factual situations so that we can make a determination as to who ought to stay, who ought to go, and how the Department of Justice ought to perform on its very vital role in the national interest.

I have discussed the issue of the participation by Mr. Karl Rove, Ms. Harriet Miers, Mr. Bill Kelley, and others in the White House. I have discussed that with Mr. Fielding, and I have agreed with some of the President's conditions and disagreed with others. I think that the President is wrong in insisting that there not be a transcript. I do not see how we can function without a transcript. If we do, we have a hearing, and Senators walk out and in perfectly good faith give different versions. So it has to be written down. That is the essence of our judicial system.

I am prepared to agree with the President that these White House officials ought not to appear before both bodies with so many members present. We can have a joint proceeding with a limited number of members. At least we can in my opinion.

And while the oath is always salutary, I do not think it is indispensable because the penalty for a false official statement is 5 years, the same as for perjury. And I would like to see the hearings in public, I think the public has a right to know, but I think that is negotiable as well.

But we ought not to be at polar opposites and at swords' points between the White House and the Congress. We have to respect the Executive privilege. The President is right when he says he needs to have unfettered information and his deputies telling him what their advice is without the fear of being hauled before a Committee.

But we can balance that out, and there are some 73 appearances by similar executive officials since 1944. And Condoleezza Rice as National Security Counselor appeared under oath before the 9/11 Commission.

So let's work it out. Let's try to come to terms here to get the information this Committee needs so we can make a judgment.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.
Senator Sessions?

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you, Mr. Chairman. I spent 15 years in the Department of Justice, 12 as United States Attorney, and those were great, great years, and there is nothing I enjoyed more or was more proud of than serving as United States Attorney. The Department of Justice is one of the great Departments in Washington.

I think sometimes Presidents have not understood just how difficult the job of Attorney General is. If you just look back at the history of the people that have served there, many were quite capable but had great difficulties because they had, I think, in some ways less experience in that job than they needed to take it over.

Let me just say this, Mr. Sampson: I think from reading some of the e-mails—and I certainly have not read them all—you understood, I think pretty well, the difficulties of removing United States Attorneys. They are removable. They do serve at the pleasure of the President. Everyone knows that.

In fact, in 1926, the Supreme Court found unconstitutional a postmaster statute that the Congress had passed to declare that Congress not only would advise and consent in the appointment of postmasters, but would advise and consent in their termination. And they said that denied the President the power to run the executive branch and declared that part of it unconstitutional.

So that we know is a legitimate thing, that the President should supervise the United States Attorneys. They are paid by the taxpayers. If they do not prosecute immigration cases in a certain district, who else will there be to prosecute those cases?

No one but that United States Attorney has the venue or the jurisdiction to prosecute the cases. So the President must have the ability to control that and make sure that the laws are faithfully executed in our country.

I noticed that in one of your e-mails you talk about you oppose the wholesale removal of all of the U.S. Attorneys, correctly noting it would cause significant disruption in the Department of Justice. You noted that a suitable replacement must be found in consultation with the home-State Senators and that the Senate must confirm them. Later on you talk about the appointment under the PATRIOT Act that might have obviated that confirmation requirement.

You noted that if a decision is made to remove and replace a limited number of United States Attorneys, then the following might be considered for removal and replacement, and you name four.

Later you suggested perhaps three and said that if you would like to see more change in effect, let me know. So I think you were sensitive to those problems that have occurred, and perhaps had you been listened to more carefully, we would not be in this fix.

You noted that you are concerned—and I am quoting your e-mail. "I am concerned that to execute this plan properly we must all be on the same page, be steeled to withstand any political upheaval that might result. If we start caving to complaining United States

Attorneys or Senators, we shouldn't do it. It'll not be worth the trouble."

I think that might have been good advice for some people to listen to.

There are some inconsistencies in comments that have been made, Mr. Sampson. I think you are in the middle of a lot of that, and maybe you can shed some light on it. I am inclined to believe that I have never met finer people than those who serve in the Department of Justice, but the demands are great. The demand for integrity is important.

So we will give you a fair shake. I think the Attorney General deserves a fair shake. But there will be hearings, and we will get facts, and in the end I think the truth will come out.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much, Senator Sessions.

Mr. Sampson, let me just get a couple preliminary things out of the way. Did you bring any documents with you?

Mr. SAMPSON. I didn't.

Chairman LEAHY. Do you have any documents related to this investigation under your control or custody?

Mr. SAMPSON. I reviewed the documents that the Department of Justice made available to the Committee, and perhaps the folks who are here with me today have copies.

Chairman LEAHY. No, but do you have anything in your possession, control, or custody that has not been turned over to us?

Mr. SAMPSON. No, sir.

Chairman LEAHY. Now, since the 2004 election, did you speak with the President about replacing U.S. attorneys?

Mr. SAMPSON. I don't ever remember speaking to the President after the 2004 election.

Chairman LEAHY. So your answer would be no.

Mr. SAMPSON. No. I haven't spoken with the President since I worked in the White House.

Chairman LEAHY. Did you attend any meeting with the President since the 2004 election where the replacement of U.S. Attorneys was discussed?

Mr. SAMPSON. I did not.

Chairman LEAHY. Are you aware of any Presidential decision documents since the 2004 election in which President Bush decided to go ahead with the replacement plans for the U.S. Attorneys?

Mr. SAMPSON. I'm not aware of any.

Chairman LEAHY. Now, I am going to give you a copy a document, and I am going to actually go through a number of documents, and they are all labeled OAG and then a whole series of zeroes and then a number.

Just to make it easier, I will just refer to them as OAG and the final number. This is OAG–45. It is a copy of a December 4, 2006, e-mail exchange between you and Deputy White House Counsel William Kelley, copied to White House Counsel Harriet Miers. Is that correct?

Mr. SAMPSON. Yes, sir.

Chairman LEAHY. Now, in Mr. Kelley's e-mail, he states, "We're a go for the U.S. Attorney plan. White House Leg, Political, and

Communications signed off. They acknowledged we have to be committed to follow through once the pressure comes." Is that correct?

Mr. SAMPSON. Yes.

Chairman LEAHY. Who headed the White House political operation at the time?

Mr. SAMPSON. Sarah Taylor was the Director of the Office of Political Affairs.

Chairman LEAHY. And was Ms. Taylor the overall head of the political operation?

Mr. SAMPSON. I understood that Ms. Taylor was the Director of the Office of Political Affairs and she—that office reported to Karl Rove who ultimately reported to the President.

Chairman LEAHY. And who headed the White House communications operation at the time?

Mr. SAMPSON. I don't remember. I'm not sure if it was Dana Perino or—I don't know, Senator.

Chairman LEAHY. Who headed the White House legal operation at the time?

Mr. SAMPSON. I think that the e-mail refers to White House Leg., which is short for Legislative Affairs, and that was Candi Wolff, I believe.

Chairman LEAHY. Now, let me give you a copy of the documents numbered OAG–40–43. You will notice the first page is a copy of a November 15, 2006, e-mail you sent to White House Counsel Harriet Miers; her Deputy, William Kelley; and it is copied to Deputy Attorney General Paul McNulty. Is that what you were just handed?

Mr. SAMPSON. Yes.

Chairman LEAHY. The subject of the e-mail is "USA Replacement Plan." The "USA" would refer to U.S. Attorneys. Is that right?

Mr. SAMPSON. Yes.

Chairman LEAHY. "Attached is a plan for the removal of a set of U.S. Attorneys, including Paul Charlton, Carol Lam, Margaret Chiara, Dan Bogden, John McKay, and David Iglesias." Is that correct?

Mr. SAMPSON. Yes.

Chairman LEAHY. Now, in this e-mail dated November 15, 2006, shortly after last fall's elections, you told Ms. Miers and Mr. Kelley that you had not informed anyone in Karl's shop, which you considered a "pre-execution necessity." By "Karl", are you referring to Karl Rove?

Mr. SAMPSON. Yes.

Chairman LEAHY. Now, in the e-mail you ask Ms. Miers and Mr. Kelley to circulate the plan to Karl's shop. Is that right? Is that what you asked?

Mr. SAMPSON. Yes.

Chairman LEAHY. Do you know whether that was done?

Mr. SAMPSON. I believe that the previous e-mail that you provided me a copy of, OAG–45, indicates from Mr. Kelley that White House Leg., Political, and Communications have signed off, and the reference in the e-mail I drafted that is OAG–40 to "Karl's shop" was to the Office of Political Affairs at the White House.

Chairman LEAHY. But do you know whether then it was circulated to Karl's shop? I mean, your answer is it was. Is that correct?

Mr. SAMPSON. I believe it was.

Chairman LEAHY. OK. And in the e-mail you write, "Will stand by for a green light from you." Is that correct?

Mr. SAMPSON. Yes, sir.

Chairman LEAHY. Now, you state in your e-mail that you "have consulted with the DAG," D–A–G. That is the Deputy Attorney General, Mr. McNulty, correct?

Mr. SAMPSON. Yes.

Chairman LEAHY. Had you by the time of your November 15 e-mail discussed a replacement plan with the Attorney General?

Mr. SAMPSON. I believe so.

Chairman LEAHY. You believe you had?

Mr. SAMPSON. Yes.

Chairman LEAHY. Let me give you a copy of a document numbered OAG–14. Now, this document contains Ms. Miers's response on November 15th to your e-mail that day and your reply to her. You ask, "Who will determine whether this requires the President's attention?" Is that correct?

Mr. SAMPSON. Yes.

Chairman LEAHY. Did you get an answer to that question?

Mr. SAMPSON. No, I do not believe so.

Chairman LEAHY. Who decided?

Mr. SAMPSON. I don't know.

Chairman LEAHY. Did the President review this plan for the removal and replacement of U.S. Attorneys?

Mr. SAMPSON. I personally don't know.

Chairman LEAHY. So you don't know either way?

Mr. SAMPSON. I don't—

Chairman LEAHY. You never heard either way?

Mr. SAMPSON. That's correct. Not that I recall.

Chairman LEAHY. And do you know today either way?

Mr. SAMPSON. I don't know.

Chairman LEAHY. Between this November 15 e-mail exchange and the December 4 e-mail from Mr. Kelley, which informed you that White House Leg. and Political and Communications had signed off on the plan, did you have further communications with the White House regarding the plan to remove and replace several U.S. Attorneys?

Mr. SAMPSON. I don't remember specifically. There was a Thanksgiving holiday in between there, and I just don't remember.

Chairman LEAHY. So you don't know whether you did or not?

Mr. SAMPSON. I don't remember if I did or not.

Chairman LEAHY. Let me give you a copy of a document numbered OAG–231. That is a December 7, 2006, e-mail exchange between you and Mr. Kelley of the White House Counsel's Office, copying Scott Jennings, Special Assistant to the President, Deputy Director of Political Affairs. Is that correct?

Mr. SAMPSON. I am sorry, Senator. I was looking at the document.

Chairman LEAHY. Is this a copy of a December 7, 2006, e-mail exchange between you and Mr. Kelley of the White House Coun-

sel's Office, copying Scott Jennings, Special Assistant to the President, Deputy Director of Political Affairs?

Mr. SAMPSON. Yes.

Chairman LEAHY. You received this e-mail from Mr. Kelley on the day seven of the U.S. Attorneys were told to resign asking you to talk to Scott Jennings about the particulars of Kevin Ryan's situation. He was one of the U.S. Attorneys told that day to resign. Did Mr. Kelley write, "Karl would like to know some particulars as he fields these calls"?

Mr. SAMPSON. Senator, I didn't remember this until looking at this document right now, but what I remember is that after Mr. Ryan was called and asked to resign, the White House Office of Political Affairs had received some calls, that Mr. Ryan had called in some political chits, as it says there.

Chairman LEAHY. My question was: Does it say, "Karl would like to know some particulars as he fields these calls"? Is that in the e-mail?

Mr. SAMPSON. It is.

Chairman LEAHY. And that is Karl Rove?

Mr. SAMPSON. I assume so.

Chairman LEAHY. Did they have many other Karls spelled with a K?

Mr. SAMPSON. I'm sorry, Mr. Chairman. I think it must have been.

Chairman LEAHY. OK. And you responded by copying Mr. Jennings, asking him to call you, and then sent another e-mail to Kelley yourself, asking Kelley to forward something to Mr. Jennings. What were you asking Mr. Kelley to forward to Mr. Rove's Deputy?

Mr. SAMPSON. I don't remember, Mr. Chairman. It looks like I replied to both Mr. Kelley and to Mr. Jennings, and then again forwarded it to Mr. Kelley and asked him to forward it to Mr. Jennings. I don't remember why.

Chairman LEAHY. Well, I wish you did remember. It would be awfully helpful. My time is up. We are going to come back to this, and I would hope that you would search your memory as we go along.

Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Sampson, first of all, thank you for coming in. It is not easy to be in your position and to appear voluntarily. It is commendable, so thank you for doing that.

In the time I have on the first round, I want to take up two questions with you. One is: Was any United States Attorney asked to resign because either that United States Attorney was pursuing hot leads on corruption which somebody wanted stopped or whether any U.S. Attorney was asked to resign because the U.S. Attorney refused to prosecute cases which should not have been prosecuted? And then I want to get to the question as to whether Attorney General Gonzales has been candid in his responses.

Starting off with U.S. Attorney Carol Lam, it has been reported that on the day that Ms. Lam was the subject of an e-mail from you raising an issue about asking her to resign, that she broadened the investigation to include the Chairman of the House Appropria-

tions Committee and that the day before, she had initiated search and seizure warrants.

Now, my question is: Was there any connection between those two events—the issuance of the search and seizure warrants, the broadening of the investigation to include a Member of the House, Chairman of the Appropriations Committee—and the e-mail which you sent saying we ought to be looking to replace Ms. Lam?

Mr. SAMPSON. There was never any connection in my mind between asking Carol Lam to resign and the public corruption case that her office was working on. I don't remember—

Senator SPECTER. Is it just a coincidence that you sent that e-mail saying, "The real problem we have right now with Carol Lam that leads me to conclude that we should have someone ready to be nominated on 11/18, the day her 4-year term expires"? Now, admittedly, that is sometime in the future. But if neither of those incidents was connected, what was the problem with Ms. Lam to ask her to resign?

Mr. SAMPSON. The real problem at that time was her office's prosecution of immigration cases. In the month—

Senator SPECTER. And that is the sole reason she was asked to resign?

Mr. SAMPSON. No, sir. But at that time of that e-mail, that's what was in my mind when I said the real problem with Carol Lam that leads me to believe that she should be asked to resign when her 4-year term expires, in my mind—

Senator SPECTER. Let me move on—

Mr. SAMPSON.—that was immigration enforcement.

Senator SPECTER. Let me move on then to the situation with the U.S. Attorney in New Mexico. Your e-mails show that the name of David Iglesias was not added until November 7, 2006, which he had not been on a list of anyone to be asked to resign, but it was added on that day, which was the day of the election and after the calls had been placed to Mr. Iglesias.

Was there any consideration at all of asking Mr. Iglesias to resign because he refused to carry out a prosecution which you thought should have been carried out?

Mr. SAMPSON. Not to my knowledge. In mid-October, as this process was being finalized, I went back and looked at the list of U.S. Attorneys whose 4-year terms had expired to see if anyone else should be added to the list, and I did that in consultation with others at the Department of Justice, including Mike Elston—who was the Deputy Attorney General's Chief of Staff—the Deputy Attorney General, and others.

And there were four U.S. Attorneys who were added to the list sometime there in mid-October and appeared on the list on November 7th or during that period of time. And they were close cases. They were U.S. Attorneys who for a variety of reasons—

Senator SPECTER. Mr. Sampson, I have your answer, and I need to move on because of limitation of time. Then are you prepared to swear under oath that no U.S. Attorney was asked to resign because the U.S. Attorney was pursuing an investigation which you thought was too hot or was failing to undertake a prosecution which you thought should have been made?

Mr. SAMPSON. To my knowledge, that was the case.

Senator SPECTER. OK. Well, let me turn to the issue as to the candor or truthfulness of the Attorney General. In his press conference on March the 13th, Attorney General Gonzales said that he was not involved in any discussions relating to the issue.

But the e-mails show that on November 27th there was a meeting which Attorney General Gonzales attended which took up the issues and apparently discussions occurred on the U.S. Attorney appointments.

Was your e-mail correct that Attorney General Gonzales was present at a meeting on November 27th at which there were discussions about U.S. Attorneys?

Mr. SAMPSON. I don't think the Attorney General's statement that he was not involved in any discussions about U.S. Attorney removals is accurate, and—

Senator SPECTER. Is what? Is accurate?

Mr. SAMPSON. I don't think it's accurate. I think he's recently clarified it. But I remember discussing with him asking certain U.S. Attorneys to resign, and I believe that he was present at the meeting on November 27th.

Senator SPECTER. So he was involved in discussions, contrary to the statement he made at his news conference on March 13th?

Mr. SAMPSON. I believe so—yes, sir.

Senator SPECTER. In the limited time I have remaining, I want to come to one final issue on this round, and that is the question of whether there was a calculation by the Department of Justice to use this new provision in the PATRIOT Act to avoid Senate confirmation or Senate scrutiny on replacement U.S. Attorneys.

Without going into it now, because I have no time left, and I want to finish the question, isn't it true, as these e-mails suggest, that there is a calculation on your part and the part of others in the Department of Justice to utilize this new provision to avoid confirmation by the Senate and to avoid scrutiny by the Senate and to avoid having Senators participate in the selection of replacement U.S. Attorneys?

Mr. SAMPSON. Senator, that was a bad idea by staff that was not adopted by the principals. I did advocate that at different times, but it was never adopted by Judge Gonzales or by Ms. Miers or any—

Senator SPECTER. But it was adopted—

Mr. SAMPSON.—of the decisionmakers.

Senator SPECTER. It was your idea, at least your idea, according to the e-mails.

Mr. SAMPSON. I recommended that at one point.

Senator SPECTER. But you are saying others did not adopt it?

Mr. SAMPSON. I was the Chief of Staff, and I had made recommendations of different options that the decisionmakers might pursue, and I did recommend that at one point. But it was never adopted by the Attorney General.

Senator SPECTER. Was it ever rejected by the Attorney General or Ms. Miers?

Mr. SAMPSON. It was rejected by the Attorney General. He thought it was a bad idea, and he was right.

Senator SPECTER. Do you have an e-mail or any confirmation of that rejection?

Mr. SAMPSON. I didn't communicate with the Attorney General by e-mail, so I don't.

Senator SPECTER. Well, I will pick this up in the next round. I think there is a lot more to it from the e-mails which I will get into in detail.

Chairman LEAHY. Thank you, Senator Specter. I am somewhat boggled because that is exactly the provision of the PATRIOT Act that has now been repealed by the Congress that was used. If it is an idea never adopted by anybody, somehow miraculously it was used at least for eight of these U.S. Attorneys.

Senator Schumer?

Senator SCHUMER. Thank you, Mr. Chairman.

Again, Mr. Sampson, let me thank you for coming here voluntarily. I think that is most appreciated.

I want to followup on Senator Specter's discussion about the Attorney General and his involvement in the dismissal of these eight U.S. Attorneys and his statements about it. First, let's go over some of the Attorney General's statements.

As you know, at a press conference on March 13th, the Attorney General discussed this process of dismissing the U.S. Attorneys, and he said, "I never saw documents. We never had a discussion about where things stood."

Was that statement accurate?

Mr. SAMPSON. I don't think it is entirely accurate, what he said. I don't remember if the Attorney General ever saw documents. I didn't prepare memos for him on this issue. But we did discuss it as early as before he became the Attorney General, when he was the Attorney General Designate, in January of 2005, I think; and then from time to time as the process was sort of in a thinking phase through 2005 and 2006; and then I remember discussing it with him as the process sort of came to a conclusion in the fall of 2006.

Senator SCHUMER. So there were repeated discussions?

Mr. SAMPSON. Yes, and I think the Attorney General clarified that a couple of days ago.

Senator SCHUMER. I just want to get it clear. So were there at least five?

Mr. SAMPSON. I don't remember specifically, but it would—I spoke with him every day, so I think at least five.

Senator SCHUMER. OK. And you asked about the documents—I asked you about the documents. You said you are not sure he read a document. He received documents that mentioned this.

Mr. SAMPSON. I don't know that he did. I don't think the Attorney General saw every iteration of the list—

Senator SCHUMER. Let me ask—

Mr. SAMPSON.—and I'm not sure that he saw the replacement plan that I drafted. I don't remember if he did or not.

Senator SCHUMER. The November 27th meeting that Senator Specter alluded to, he was there, right?

Mr. SAMPSON. Yes, I think so.

Senator SCHUMER. OK. And the purpose of that, according to the e-mails, was to discuss U.S. Attorneys with you and other senior Justice officials, right?

Mr. SAMPSON. Yes.

Senator SCHUMER. Was a document handed out at that meeting? Was there any paper?

Mr. SAMPSON. I don't think so. I had circulated the replacement plan to the Deputy Attorney General and others who were discussing this matter, and we may have had it at that meeting, but I don't remember.

Senator SCHUMER. Was there a discussion at the meeting?

Mr. SAMPSON. Yes.

Senator SCHUMER. Did the Attorney General participate in the discussion?

Mr. SAMPSON. I think so. I don't remember the meeting clearly, Senator.

Senator SCHUMER. But your recollection is he did speak at the meeting.

Mr. SAMPSON. Yes.

Senator SCHUMER. OK. Now, that in itself says a whole lot.

At the same press conference, the Attorney General also said, "The charge for the Chief of Staff here was to drive this process, and the mistake that occurred here was that information that he had was not shared with individuals within the Department who were then going to be providing testimony and information to Congress."

The Attorney General was referring to you as his Chief of Staff, correct?

Mr. SAMPSON. Yes.

Senator SCHUMER. Was that an accurate statement that he made?

Mr. SAMPSON. Senator, I believe that at no time did I ever intend to mislead the Congress or mislead witnesses that were coming before the Congress. I think we mishandled the preparation for Mr. McNulty's testimony—

Senator SCHUMER. Sir, I am sorry to interrupt you. I just am trying to get yes or no questions. He said—OK?—that the mistake that occurred here was that information you had, Kyle Sampson had, was not shared with individuals within the Department. Is that true or false?

Mr. SAMPSON. Senator, I shared—I shared information with anyone who wanted it. I was very open and collaborative in the process. In the preparation for Mr. McNulty and Mr. Moschella's testimony, I—

Senator SCHUMER. That is what I want to ask. Did you share information with Mr. McNulty and Mr. Moschella?

Mr. SAMPSON. I did.

Senator SCHUMER. So the Attorney General's statement is wrong. It is false. How can it not be? If you shared information with Mr. McNulty and Mr. Moschella, and the Attorney General is saying it was not shared with individuals in the Department who were providing testimony—to wit, Moschella and McNulty—his statement is false, correct?

Mr. SAMPSON. Senator, as I look back on that process, the problem was that we were focused on other questions, and I think any information—

Senator SCHUMER. I understand, but it is just—

Mr. SAMPSON.—that I didn't provide was—

Senator SCHUMER. Time is limited.

Mr. SAMPSON. I'm sorry.

Senator SCHUMER. The statement is false, correct? The statement is false. There is no way to believe it is not.

Mr. SAMPSON. I don't think it is accurate if the statement implies—

Senator SCHUMER. OK. We will leave it at that.

Mr. SAMPSON.—that I intentionally mislead—

Senator SCHUMER. It is not accurate. I am not asking intent. I am just asking whether it was false, and you said it was inaccurate.

Senator CORNYN. Mr. Chairman? Mr. Chairman, I think it is not fair to the witness to not allow him to answer the questions and to continually interrupt and to ask whether something is true or false—

Senator SCHUMER. OK. Mr. Chairman—

Chairman LEAHY. Gentlemen, gentlemen, the Senator from Texas is going to have a chance to followup if he wants. If he feels they are not answered, he can follow up.

Senator CORNYN. Mr. Chairman, it is not fair to—

Chairman LEAHY. They are not—

Senator CORNYN. This witness is testifying under oath, and if the penalties of perjury—

Chairman LEAHY. And this witness—

Senator CORNYN.—attach to his testimony—

Chairman LEAHY. And this witness has said—

Senator CORNYN.—he ought to be able to answer the questions fully—

Chairman LEAHY. And this witness has said a couple dozen times—

Senator CORNYN.—and not be interrupted.

Chairman LEAHY.—that he doesn't remember on things, and we are trying to find what in heaven's name he does remember. I will let the Senator from New York continue.

Senator SCHUMER. Thank you, and I think the questions are clear-cut, factual, and demand some factual answers, and I will continue.

Senator CORNYN. And the witness ought to be—

Senator SCHUMER. Similarly—

Senator CORNYN.—allowed to answer the question fully.

Senator SCHUMER. Similarly, DOJ spokesman on March 24th, Ms. Scolinos, said the Attorney General did not participate in the selection of U.S. Attorneys to be fired. Was that an accurate statement?

Mr. SAMPSON. I don't think that's an accurate statement.

Senator SCHUMER. Ms. Scolinos did say on that occasion that the Attorney General did sign off on the final list. Was that an accurate statement?

Mr. SAMPSON. Yes, that's an accurate statement.

Senator SCHUMER. OK. And when did he sign off on the final list?

Mr. SAMPSON. I don't remember specifically. It was during this period in time when we had an ongoing discussion. I remember that he asked me to make sure that I was consulting with the Dep-

uty Attorney General and that he agreed with the list of U.S. Attorneys who should—who we might consider asking to resign. And he also asked that I be sure to coordinate with the White House.

Senator SCHUMER. All right. Did the Attorney General add or remove any names from the list at any time?

Mr. SAMPSON. I don't remember him ever doing that.

Senator SCHUMER. OK. Did you discuss with the Attorney General the reasons or method for selecting individuals to put on that list?

Mr. SAMPSON. I don't remember specifically doing that. You know, we had talked over the course of a couple of years about the strengths and weaknesses of U.S. Attorneys, and he was more interested in making sure that senior Department leaders agreed that that was the right list.

Senator SCHUMER. But at some point in time, you mentioned the names to him, right?

Mr. SAMPSON. Yes, I think do.

Senator SCHUMER. OK. So how could Ms. Scolinos say he didn't participate at all in the—to quote her words, "did not participate in the selection of the U.S. Attorneys to be fired"?

Mr. SAMPSON. I can't really speak to what she said.

Senator SCHUMER. OK. Thank you.

I have many more questions in this regard, Mr. Chairman, but I am at a synapse here, so I yield.

Chairman LEAHY. Senator Cornyn, I will recognize you next.

Senator CORNYN. Thank you, Mr. Chairman.

Mr. Sampson, in your written statement you say, "I believe the Department's response was badly mishandled. It was mishandled through an unfortunate combination of poor judgments, poor word choices, and poor communication in preparation for the Department's testimony before Congress."

Is that your testimony today?

Mr. SAMPSON. Yes.

Senator CORNYN. Mr. Sampson, for me these next two questions are the most important part of this inquiry. I am talking about for me personally. In your prepared statement, you explain that, to your knowledge, no United States Attorney was asked to resign for an improper reason. You say that, "The limited category of improper reasons includes an effort to interfere or with or influence the investigation or prosecution of a particular case for political or partisan advantage."

At any time were you approached by anyone with the administration with a complaint about a U.S. Attorney that you would consider, taken alone, to be an improper reason to remove the individual?

Mr. SAMPSON. No, Senator, I don't remember anything like that.

Senator CORNYN. I believe Director Mueller of the FBI testified a couple of days ago and was asked whether any of these removals, to his knowledge, had provoked a response from an FBI agent to the effect that it had interfered with an ongoing investigation or prosecution. His testimony was consistent with yours.

Am I correct that the Public Integrity Section of the Criminal Division oversees the Department's efforts to combat public corrup-

tion through the prosecution of elected and appointed public officials at all levels of Government?

Mr. SAMPSON. Yes.

Senator CORNYN. At any point during the U.S. Attorney evaluation process did you have any direct contact with attorneys or other employees of the Public Integrity Section or supervisors in the Criminal Division in relation to the work of a particular United States Attorney or a particular district?

Mr. SAMPSON. I don't remember that. I spoke with Alice Fisher from time to time about various issues, but I don't remember speaking with her ever about the idea of identifying a set of United States Attorneys who might be asked to resign. And I certainly didn't speak with her with the idea of identifying U.S. Attorneys who might be asked to resign so as to influence a case for political reasons.

Senator CORNYN. Mr. Sampson, the United States Attorneys, who are appointed by the President and confirmed by the Senate, are those the ones who typically handle the day-to-day investigation and prosecution of public corruption cases or other serious crimes?

Mr. SAMPSON. It is my understanding that those sorts of cases are usually handled by career investigators and prosecutors.

Senator CORNYN. Is there any reason, to your knowledge, to believe that the replacement of a United States Attorney with another individual appointed by the President and confirmed by the U.S. Senate would in and of itself tend to interfere or impede with any investigation into any serious criminal matter that a U.S. Attorney's Office was investigating or prosecuting?

Mr. SAMPSON. Not to my knowledge. My observation was that U.S. Attorneys, as political appointees, came and went. I had participated in the selection of all of the U.S. Attorneys from the beginning of the administration, and about half of them had already left office. There was much turnover in the U.S. Attorney ranks, and it never was my belief that a U.S. Attorney changeover would have much influence at all on a particular case.

Senator CORNYN. Mr. Sampson, why have you chosen to voluntarily appear before the Committee today rather than to invoke your rights under the United States Constitution under the Fifth Amendment?

Mr. SAMPSON. Well, because I wanted to come up to the Senate and explain the facts as I understood them. I considered what the appropriate thing to do was, and for me it was to come and testify here today.

Senator CORNYN. At least one of the other people that worked with you at the Department of Justice has invoked her rights under the Fifth Amendment of the United States Constitution.

Do you have any opinion with regard to why it is that a public servant working at the Department of Justice would find it necessary when a Senate Committee is conducting an investigation to invoke her rights against self-incrimination?

Mr. SAMPSON. Senator, I don't, really. It's no small thing to come up here and meet before this Committee. But I really wouldn't want to venture an opinion.

Senator CORNYN. Well, Mr. Sampson, I appreciate your testimony, and basically from everything that this Committee has heard so far, at least what I have heard, there is no evidence that any of this replacement of U.S. Attorneys was designed to or actually did impede a criminal investigation or prosecution. If there was any evidence, I would be the first one to be jumping down your throat. But I have heard no evidence of that.

If, at the end of this investigation there continues to be no evidence of that, I regret the fact that dedicated public servants get caught up in politically motivated attacks against the administration or other individuals; and find it necessary to have to hire lawyers and invoke their rights under the Constitution not to testify rather than risk perhaps prosecution for perjury or some other related criminal matter. I think it is unfortunate. I really do. And I appreciate your testimony here today.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you. I am not quite sure how to take that last statement. We have investigations all the time. Obviously, if people do not commit perjury, they do not get prosecuted for perjury. Everybody, if they feel they might be the subject of a criminal investigation, they do have a constitutional right to take the Fifth.

Senator CORNYN. Mr. Chairman, my only point was I believe there was some implication that by invoking the Fifth Amendment, inference of guilt could be drawn from that. And I think that is an incorrect statement of law, and I don't think any negative inference can or should be drawn from anyone invoking their constitutional rights.

Chairman LEAHY. My statement is that if somebody does not commit perjury, they do not get charged with perjury.

Senator Kohl?

Senator KOHL. Thank you, Mr. Chairman.

Mr. Sampson, what has always made our country and justice system so special is our confidence in the independence and the integrity of our judicial system, of which the Justice Department, as you know, is an integral part.

Our Justice Department exists to serve the rule of law and justice, not some partisan political agenda. So the firing of these eight U.S. Attorneys has disturbed me and others greatly. I believe it tells us how far from this proud tradition of our democracy the administration has fallen.

The administration has fired nearly a tenth of our Nation's U.S. Attorneys but retained the remaining 85. What separated the 85 who remain from the 8 who were dismissed? Your e-mail, Mr. Sampson, appears to tell us a story. The U.S. Attorneys you chose to retain had proven themselves to be "loyal Bushies" or "exhibited loyalty to the President and the Attorney General."

This process strikes at the core of the integrity of our justice system. When one of the U.S. Attorneys in my State of Wisconsin brings an indictment, I do not want to worry and I do not want our citizens to have to worry that he did so for some crass political motives or to settle scores with some political opponent or to advance the agenda of his political party.

It is a sacred tenet of our democracy that politics must stay out of criminal prosecutions. Merely by pursuing investigations and ob-

taining indictments, U.S. Attorneys have enormous power to blacken reputations and destroy lives.

To retain U.S. Attorneys on the basis of loyalty to a political agenda and fire other well-qualified and regarded U.S. Attorneys whom the political echelons at the Justice Department and the White House suspected were not "loyal Bushies" strikes at the very heart of our system of justice.

So I ask you, Mr. Sampson, what confidence can citizens have in the fairness of our system and the unbiased nature of decisions to prosecute after reviewing what happened with the dismissal of these U.S. Attorneys? Isn't there tremendous damage done to the Justice Department and our entire system of justice when the appearance of partisan politics seems to trump the administration of justice?

Mr. SAMPSON. Senator Kohl, thank you. I understand the concern that animates your question. Let me just say that in my e-mails, by referring to "loyal Bushies" or "loyalty to the President and the Attorney General," what I meant loyalty to their policies and to the priorities that they had laid out for the U.S. Attorneys.

The President, at the beginning of the administration, launched a domestic policy initiative called Project Safe Neighborhoods to increase Federal gun prosecutions. That is an example of what I was referring to.

I agree wholeheartedly that with regard to particular matters and investigating cases that U.S. Attorneys and Federal law enforcement officers have to take the facts as they find them and prosecute cases based on the facts and the law.

I understand that United States Attorneys also have another role which is as political appointees to promote the President's priorities and initiatives in the area of law enforcement.

So I hope that my answer has given you the assurance that I share that view as well.

Senator KOHL. Well, partially. What is the public's perception to be when somebody who is—like Karl Rove, who is the ultimate political operative, the ultimate political insider, whose function is political almost by definition, is so involved in this process? What would you expect average people to think around the country other than the process is highly politicized?

Mr. SAMPSON. Senator, I don't—I wouldn't want to speculate on what the perception of people around the country is. I don't know.

Senator KOHL. Well, can you disagree with people who might have the impression, however inaccurate, that the process is highly politicized when the ultimate political insider is so involved in it?

Mr. SAMPSON. Senator, if that is the impression that people have, then I regret it, because that does—

Senator KOHL. But isn't it—

Mr. SAMPSON.—bring harm—

Senator KOHL. But isn't it the job, one of the jobs of people like yourself to do everything that they can to see that that impression is not given, however accidentally?

Mr. SAMPSON. Senator, the answer is yes, and I failed in that, and that is why I resigned.

Senator KOHL. We have heard the Attorney General compare his management style to that of a CEO. He seems to have said in re-

cent days that he was not involved in determining which U.S. Attorneys would be fired or for what reason, and yet he did acknowledge that he signed off on the final list of terminations that you compiled. In essence, he is saying that he permitted his deputies to fire almost 10 percent of the U.S. Attorneys with almost no input from him at all.

Now, this is hard to believe. Either the Attorney General is simply absent as manager of the Justice Department, or he has not been candid with the American people about his participation in the firings. Which one is it? Or is there some other explanation?

Mr. SAMPSON. Well, as I said in a previous answer, the Attorney General was aware of this process from the beginning in early 2005. He and I had discussions about it during the thinking phase of the process.

Then after the sort of more final phase of the process in the fall of 2006 began, we discussed it. He asked me to make sure that the process was appropriate, that I was consulting with the Deputy Attorney General and others in developing the list, and then ultimately he approved both the list and the notion of going forward and asking for these resignations.

Senator KOHL. Mr. Sampson, the fact that you and your colleagues at the top echelons of Justice decided to fire these eight U.S. Attorneys, individuals that you have referred to in your written statement to the Committee as "good people," who "each served our country honorably," makes us wonder what exactly did the other 85 U.S. Attorneys do to keep their jobs?

Were there any political discussions regarding any U.S. Attorneys who were not fired that led them to pursue cases that they were not otherwise working on or not to pursue cases that they were working on? But, again, you fired these who were otherwise good people, honorable people, doing nice jobs. You didn't fire any of the other 85. What is it about the other 85 that caused them not to be fired?

Mr. SAMPSON. Senator, to my knowledge, there was no U.S. Attorney asked to resign for the purpose of influencing a particular case for a political reason. My view was that these were political appointees, and that under the statute they serve 4-year terms and then can hold over.

And so with regard to all 93 U.S. Attorneys, as far as I can remember we didn't even consider U.S. Attorneys who were in the midst of their 4-year term. So we only considered in a collaborative manner among senior Justice Department officials United States Attorneys who had served more than 4 years, who had completed their term.

And of that group, we identified a group of U.S. Attorneys who it was the considered judgment of folks could be thanked for their service and that it would be beneficial to have a new U.S. Attorney appointed.

Senator KOHL. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Mr. Sampson, I should have noted at the beginning, obviously if you at some point in here need a break or something for a couple minutes, by following the normal tradition of this Committee, and you are aware of that, give us a signal.

Mr. SAMPSON. Thank you, Mr. Chairman.

Chairman LEAHY. We will make it possible for you to go. What I am going to do, in going back and forth, we decided at the last meeting—Senator Cornyn spoke first for the Republicans, but I am going to go by the list that Senator Specter has, and under that list Senator Hatch will go next; following Senator Hatch, Senator Feinstein on our side.

It is also my intention, so people can plan, to go somewhere between 12:30 and quarter of 1 and break so that you and your attorneys can have lunch. It would depend upon just where we are in the sequence of questioning, and we will break for about 1 hour.

Senator Hatch?

Senator HATCH. Well, thank you, Mr. Chairman.

One indication that the process was thorough and deliberative was that in your January 2005 e-mail, "rough guess," you use the language, the rough guess was that you were going to retire about 15 to 20 percent, and in the end less than 10 percent were asked to resign. So this process, as I understand it, took almost 2 years. Is that correct?

Mr. SAMPSON. Senator, the issue was raised, you know, in early 2005 about whether all the United States Attorneys should be removed and replaced.

Senator HATCH. I remember that.

Mr. SAMPSON. It was my view, along with others, that that would not be appropriate and that we might consider as a management effort to identify a smaller subset of folks who might be asked to resign after their 4-year terms had expired. And the process after that took a while.

In January of 2005, none of the first class of Bush-appointed United States Attorneys had served their 4-year term. The first expirations did not begin until the fall of 2005.

Senator HATCH. Right.

Mr. SAMPSON. So during 2005, it was really a thinking phase in the process where we were just identifying U.S. Attorneys where there were issues or concerns with them.

Senator HATCH. I am grateful that you agreed voluntarily to come here today, and I am glad you are here primarily because you were in charge of this process of evaluating U.S. Attorneys and recommending some for replacement.

One thing the administration has consistently said is that seven of the eight U.S. Attorneys were asked to resign for performance-related reasons. Now, the only way properly to evaluate the administration's decisions is on the administration's terms, so it is very important, it seems to me, to understand how the administration defined that key word "performance" in this process.

You were in charge of the evaluation process and in making the recommendations. In that January 9, 2005, e-mail, you spoke of a desire to remove U.S. Attorneys who you described as "underperformers." Now, how did the administration view this category of performance?

Mr. SAMPSON. Senator, as I said in my opening statement, it was not a scientific or quantitative analysis for identifying U.S. Attorneys who might be considered underperforming.

Senator HATCH. But it was more than looking at just statistics, right?

Mr. SAMPSON. Frankly, Senator, it was looking at statistics in a few of the cases, but in other cases it was a process of asking leaders in the Department, folks who would have a reason to have an informed judgment, who were U.S. Attorneys that presented issues and concerns.

Senator HATCH. I want to be crystal clear on this. Our Democratic colleagues here in the Senate and in the House claim that there were no performance problems by using a very narrow definition of that term. They say the only legitimate performance problem is one that shows up on the statistical evaluation conducted every 3 years.

So let me ask you again just to be clear: When you evaluated the performance of U.S. Attorneys, did you look only at statistical categories and written evaluations? Or was your idea of performance much broader than that?

Mr. SAMPSON. To me, and to others in the process, "performance-related" was much broader. It included production in the office, management abilities, extracurricular U.S. Attorney work on the Attorney General's Advisory Committee or other work in developing policies of the administration. It included not engaging in policy conflicts with Main Justice.

It was a general process where I talked to senior leaders in the Department and asked them if we were going to ask a handful of U.S. Attorneys to resign so that others might serve, who would you have on your list? And so "performance-related" is a plastic term that included a lot of things to a lot of people in the process.

Senator HATCH. A lot of additional things than what you have just said here today, right?

Mr. SAMPSON. Yes, sir.

Senator HATCH. Well, based on the broader definition of "performance" you actually used, do you believe that there was or that there were legitimate performance-related bases for asking several of these U.S. Attorneys to resign?

Mr. SAMPSON. Yes, I believe that all eight were asked to resign for reasons related to their performance.

Senator HATCH. You were in charge of this project. It was assigned to you. We have hundreds, even thousands of pages of documents showing that you worked very hard on this project for approximately 2 years. I want to ask you to go on to some of the many claims and charges swirling around, most coming from the other side of the aisle.

One of my Democratic colleagues said that the only U.S. Attorneys the administration fired are those who "are investigating Republicans or not investigating Democrats when somebody wanted them to." Is that untrue?

Mr. SAMPSON. To my knowledge, that was not a consideration in adding a U.S. Attorney to the list.

Senator HATCH. One of my Democratic colleagues said that when you were the Attorney General's Chief of Staff, you actually admitted that U.S. Attorneys were fired for political reasons. Have you ever admitted such a thing? Or were any of them asked to resign

for political reasons? Or should I say "improper political reasons"? Because they serve at the President's pleasure.

Mr. SAMPSON. The U.S. Attorneys are political appointees, and as I said in my opening statement, I think the distinction between "performance-related" and "political" is artificial. I am not aware of any of the United States Attorneys being asked to resign for the improper political purpose of influencing a case for political benefit. But I am aware that some were asked to resign because they were not carrying out the President's and the Attorney General's priorities, and in some sense that may be described as political by some people.

Senator HATCH. But that is also described as a performance situation.

Mr. SAMPSON. That's right.

Senator HATCH. Some of my colleagues focus on one of these U.S. Attorneys more than any other, claiming that Carol Lam was asked to resign as U.S. Attorney for the Southern District of California because she was investigating and prosecuting the corruption case involving former Representative Duke Cunningham. They say it flat out so let me ask you flat out. Did you conclude that Carol Lam should be replaced because she was pursuing the Cunningham case?

Mr. SAMPSON. I did not.

Senator HATCH. Here is one of the things that confuses me about this claim that Carol Lam was removed because of the Cunningham case, or any other case, for that matter. Any other case?

Mr. SAMPSON. Not to my knowledge, sir.

Senator HATCH. As I read the documents provided by the Department of Justice, you listed Carol Lam as a recommended replacement on a chart dated February 24, 2005. Now, that was several months before the Cunningham scandal even broke in the media, which was before Federal investigators and prosecutors, as far as I could see, got involved. And I see correspondence and other evidence that complaints about her performance were coming in even earlier in 2004 from House Members.

And Southern California newspapers reported in 2003 about the frustration of Border Patrol agents that Carol Lam's office was bringing so few prosecutions of smugglers of immigrants. And complaints about her performance in 2003 and 2004 led to a February 2005 recommendation that she be asked to resign for performance-related reasons.

It seems pretty reasonable, if those are true. I guess I am baffled how a case that did not even exist could somehow have been responsible for her removal, and that is the tale being spun by some that I have heard. And I confess I just do not understand it.

In reading the record correctly, when did concerns and complaints about Carol Lam's performance arise and what were they?

Mr. SAMPSON. Carol Lam is a good person and a very skilled lawyer.

Senator HATCH. I agree with that.

Mr. SAMPSON. But she consistently appeared on the list that I aggregated based on input from other senior Department of Justice officials from the beginning of this process. My recollection is that

in the beginning it was due to her office's failure to embrace the President's anti-gun violence initiative, Project Safe Neighborhoods.

The district in San Diego simply did not devote appropriate resources to that initiative, and it was the subject of consternation in former Deputy Attorney General Jim Comey's office and early on through the process.

Later, in 2005 and 2006, the concerns about Carol Lam related to her office's immigration enforcement in the context of the debate that was going on about comprehensive immigration reform.

Senator HATCH. Well, thank you, Mr. Chairman. Sorry I went over a little bit.

Chairman LEAHY. Thank you.

Senator Feinstein?

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

I would like to go back to your answers to Senator Specter's questions when he asked you about the notice you received on the search warrant on May 10, 2006, and he asked you if the real problem aspect was related to this case, and you said no, it was her immigration record.

I am asking my chief counsel to give you a letter and am asking that that letter be also distributed to the Committee as well as to the press.

This is a letter dated February 15th—

Chairman LEAHY. And does the Senator want that in the record also?

Senator FEINSTEIN. I would. Thank you very much.

Chairman LEAHY. Without objection.

Senator FEINSTEIN. February 15, 2007, signed by the Director, Field Operations, of the United States Customs and Border Protection Agency. It is sent to Carol Lam, and it is a letter of commendation, and I will just read a few sections.

"To address the alien enforcement issue, your office supported the implementation of the Alien Smuggling...Fast Track Program and has demonstrated a commitment to aggressively address the alien smuggling recidivism rate."

"In support of [CBP] referrals for prosecution, your office maintains a 100 [percent] acceptance rate of criminal cases, while staunchly refusing to reduce felony charges to misdemeanors and maintaining a minimal dismissal rate, and supporting special prosecution operations."

"In validation of...enforcement initiatives, your staff aggressively prosecuted enrollees in the SENTRI program who engaged in smuggling to support a zero tolerance posture. They have focused on cases of fraud, special interest aliens, the prosecution of criminal aliens, and supported our sustained disrupt operations."

"CBP-Prosecutions Unit presented...416 alien smuggling cases, which represents a 33 [percent] increase 314 cases presented in 2005."

"CBP-Prosecutions Unit identified and pursued the prosecution of several recidivist alien smugglers and presented...30 non-threshold alien smuggling cases for prosecution, resulting in a...100 [percent] conviction rate. This represented a...329 [percent] increase over the seven...non-threshold cases presented in 2005.

Additionally, a cumulation study done by USA Today places Carol Lam as one of the top three attorneys in the United States for the prosecution of these cases. It is a real surprise to me that you would say here that the reason for her dismissal was immigration cases.

Now, if I might go on, who, Mr. Sampson, was Dusty Foggo—or is Dusty Foggo?

Mr. SAMPSON. I understand from news reports, Senator, and from general knowledge that he was an employee at the CIA.

Senator FEINSTEIN. And who is Mr. Wilkes?

Mr. SAMPSON. I don't know. I understand, again, from news reports, that he's affiliated somehow with Mr. Foggo.

Senator FEINSTEIN. And are you aware that on May 10th, Carol Lam sent a notice to the Department of Justice saying she would be seeking a search warrant of the CIA investigation into Dusty Foggo and Brent Wilkes?

Mr. SAMPSON. I don't remember ever seeing such a notice.

Senator FEINSTEIN. But the next day you wrote the e-mail which says, "The real problem we have right now"—right now—"with Carol Lam that leads me to conclude we should have someone ready to be nominated on 11/18, the day after her 4-year term expires," that that relates to her immigration record?

Mr. SAMPSON. The real problem that I was referring to in that e-mail was her office's failure to bring sufficient immigration cases. The Attorney General in the month before had been subject to criticism at a hearing in the House Judiciary Committee, and thereafter, at the Department of Justice in our senior management meeting with the Deputy Attorney General and others, there had been a robust discussion about how to address that issue.

The Department was being criticized for not doing enough to enforce the border, largely by House Republicans, and the Attorney General was concerned about it. And he asked the Deputy Attorney General to take some action to address that issue.

I recall also that the Deputy Attorney General was scheduled to meet with the California House Republicans who were critical of Carol Lam on May 11th.

Senator FEINSTEIN. OK. Let me just move on. On January 13th, Dan Dzwilewski, the head of the FBI office in San Diego, said that he thought Carol Lam's continued employment was crucial to the success of multiple ongoing investigations. Did you call FBI headquarters and complain about those comments?

Mr. SAMPSON. I did. I called Lisa Monaco, who serves as a Special Assistant to the Director of the FBI, and asked her why an FBI employee was commenting on that issue.

Senator FEINSTEIN. And why would you think that the special agent in charge in the area should not comment on whether her termination was going to affect cases?

Mr. SAMPSON. I understood that Carol Lam was a political appointee and that a decision had been made in the executive branch to ask her to resign so that others could serve.

Senator FEINSTEIN. OK. I would like to just go over a series of cases quickly in the time I have remaining. I will finish it on the next round if I do not have a chance.

Were you aware that Bud Cummins was looking at an investigation into Missouri Republican Governor Roy Blunt? I am just asking if you were aware of that.

Mr. SAMPSON. I don't remember being aware of that.

Senator FEINSTEIN. OK. To the best of your knowledge, was the Attorney General?

Mr. SAMPSON. I don't know.

Senator FEINSTEIN. Were there any discussions that you heard that discussed this?

Mr. SAMPSON. No. I don't remember being aware of that, Senator.

Senator FEINSTEIN. OK. Were you aware that Dan Bogden had opened a probe relating to Nevada Republican Governor Jim Gibbons?

Mr. SAMPSON. I don't remember being aware of that.

Senator FEINSTEIN. You were not? Were you aware that John McKay declined to intervene in a contentious Governor's race in Seattle?

Mr. SAMPSON. I remember hearing about that back in 2005, I believe. But I don't really have any specific recollection about that. I may just have heard of that through news accounts.

Senator FEINSTEIN. Were you aware that Paul Charlton had opened preliminary probes into Republican Congressman Jim Kolbe and Rick Renzi before the November election?

Mr. SAMPSON. I think that I was aware of that through news accounts.

Senator FEINSTEIN. And of what were you aware?

Mr. SAMPSON. That he had—that there was some preliminary investigation of those two Congressmen.

Senator FEINSTEIN. OK. And were you aware that David Iglesias had been overseeing an investigation of State Democrats and—let me just put a question mark there.

Mr. SAMPSON. I don't remember being aware of that until, you know, the last month or so.

Senator FEINSTEIN. Were you aware that calls were made to Mr. Iglesias?

Mr. SAMPSON. I don't remember being aware of that.

Senator FEINSTEIN. Were you aware that there were concerns with that case?

Mr. SAMPSON. I was not aware of any concerns with any particular case in New Mexico.

Senator FEINSTEIN. My time is up. Thank you, Mr. Chairman. I will continue in the next round.

Chairman LEAHY. Senator Kyl is not here. I will go to Senator Sessions.

Senator SESSIONS. United States Attorneys have got to be strong people. They are given difficult challenges. They are not shrinking violets. If somebody criticizes them, they are not likely to wither and run and hide. I think that is important to note, and I think every day most of them go forward, almost universally, making tough calls that they believe are just and fair and take the consequences no matter what people say. I just hate anything that suggests here that there is some serious problem with United

States Attorneys not doing what they think is right, because I think daily they do.

This idea to remove a number of United States Attorneys, did the Attorney General himself object? Did he call the White House and say, "This is not a good idea"? You expressed some concern. Your initial numbers were three, maybe four to be terminated. Did he object to removing any United States Attorney to give someone else a chance?

Mr. SAMPSON. No.

Senator SESSIONS. You know, Attorney Generals are lawyers for the President in one sense—not his personal lawyer, but they are the country's lawyer. And I think sometimes they just have to say no, and I think a lot of Attorney Generals have, and maybe we would have been better off if there had been some explanation of the difficulties that you have raised here with this process had been conveyed further up in a firm way.

Why didn't you just say early in 2005, which was the appropriate time to tell people they would be leaving, they had completed nearly 4 years at that time, most had, why didn't you tell them, "By the time your 4 years is up, maybe September or October, later in the year, we want to replace you, and you need to be looking for something else"? Why didn't that happen?

Mr. SAMPSON. Well, Senator, the best of my recollection is that the very first U.S. Attorneys had not completed their 4-year terms until September, and then for the next year, sort of September 2005 to September 2006, is when that first class' 4-year terms expired.

Senator SESSIONS. Well, wouldn't you have told them in January of 2005 that they would be moving on later on in that year when their 4 years were completed?

Mr. SAMPSON. That was never communicated, I think perhaps because—

Senator SESSIONS. That is sort of part of the bungling, it seems to me. That would have been perhaps—you said it should be done quietly, respectfully of the United States Attorneys. But it really did not happen that way, did it?

Mr. SAMPSON. No, sir.

Senator SESSIONS. Now, I think we have got to talk about this November 27th meeting. The Attorney General himself said he was not involved in any discussions about what is going on. We never had a discussion about where things stood.

Now, this was a pretty big meeting. Your e-mails indicate you understood the seriousness, at least politically, if not substantively, of removing a number of United States Attorneys. Memos had been sent out. A lot of people of key importance were at that meeting. Isn't that true?

Mr. SAMPSON. Yes.

Senator SESSIONS. How long did it take?

Mr. SAMPSON. I don't remember the meeting being that long. Maybe 20 minutes.

Senator SESSIONS. And who all was there?

Mr. SAMPSON. I don't remember specifically, and perhaps the documents reflect this. I remember specifically that the Deputy Attorney General was there, and I believe that one or two of his depu-

ties; I believe that Monica Goodling, who was the senior counsel to the Attorney General; and the Attorney General and myself.

Senator SESSIONS. And the Attorney General stayed the whole time?

Mr. SAMPSON. I don't remember specifically. I know that he was there at least for a portion of the meeting. I think he's acknowledged as much in the last couple of days.

I remember in my mind that it was in the Attorney General's conference room and that at the close of the meeting, I went to follow the Attorney General into his office, and the Deputy Attorney General called me back with a question. I have that recollection in my mind.

Senator SESSIONS. Well, I don't think it was a small matter, and I think that the Attorney General—I am disappointed that he did not remember that in his statement.

Now, with regard to Senator Schumer asking you about preparing Mr. McNulty for his testimony, the Deputy Attorney General did not know all the e-mails that have been produced here and did not know all the conversations you had had with people in the White House or other offices about these appointments, did he?

Mr. SAMPSON. He did not, and at the time that we were preparing Mr. McNulty, I didn't remember all of them.

Senator SESSIONS. And so you are not saying that you told him everything, it later turned out, he really needed to know to answer the questions honestly in the Committee, and accurately.

Mr. SAMPSON. In the preparation for Mr. McNulty, we really focused on the issues of the day, the questions that the Congress had. And I remember that Mr. McNulty was focused on trying to provide the Congress the information it wanted, and so we talked about the different performance-related reasons each of the U.S. Attorneys made it onto that list.

We talked about whether the administration had ever made a decision to circumvent the Senate's confirmation process. And we talked about whether to the knowledge of anybody in those preparation sessions, any of these U.S. Attorneys had made it on the list in an effort to influence a case for an improper political reason.

That's what we really focused on at his preparation. We didn't focus on the historical origins of this process, that it initiated at the White House—

Senator SESSIONS. I can understand how that is possible, and—

Chairman LEAHY. Senator Sessions—

Senator SESSIONS. The green light is still one.

Chairman LEAHY. I am sorry. I read it wrong. You are OK. Go ahead, please. I apologize.

Senator SESSIONS. I can see how that is possible, but when he was asked those things and when he responded in some instances incorrectly, do you have any information that at that time he knew something different and was providing information to the Committee that he knew was inaccurate?

Mr. SAMPSON. I don't.

Senator SESSIONS. And so you believe he testified to the best of his knowledge when he testified?

Mr. SAMPSON. I think we collectively failed to prepare appropriately, and I felt some responsibility for that, and that's why I

offered my resignation to the Attorney General. But I didn't intend to mislead Mr. McNulty or Mr. Moschella or the Congress, and I honestly don't think either of them intended to.

Senator SESSIONS. Well, I just think we want to get that straight, if we can, and I appreciate your candor on that subject.

With regard to Carol—I guess my time is up. I would just say this: With regard to the FBI supervisor's comment that her presence as United States Attorney was crucial to the success of corruption cases, he should have probably been disciplined for that because it is not so. I would be amazed if she personally was trying those cases.

United States Attorneys turn over all the time, and I do not believe that that is an accurate statement. If it is, I would like to see him make proof of that. And if it comes up in this Committee that what occurred had some tendency to block a legitimate prosecution, then people are going to be in big trouble with me and I think this Congress. But I assume and hope and pray that that was just an overreaction by him to make a statement that was over the top.

Chairman LEAHY. Thank you, Senator Sessions.

Senator SESSIONS. And I think it was not correct for him to do so.

Chairman LEAHY. Thank you.

Senator Cardin?

Senator CARDIN. Thank you very much, Mr. Chairman.

Mr. Sampson, thank you for being here. In your prepared statement, you indicate that one reason for dismissal would be the loss of trust or confidence of important local constituencies in law enforcement or Government, and I want to ask you whether that played a role in the eight U.S. Attorneys that were dismissed, but I am particularly interested, quite frankly, in New Mexico and California. And I would appreciate it if you could answer that somewhat briefly.

Mr. SAMPSON. Senator, the reason the eight U.S. Attorneys were put on the list was related to their performance, related to—

Senator CARDIN. My question is related to the concerns of the local political establishment.

Mr. SAMPSON. I understand. I understand that the eight were put on the list because of concerns related to their performance. I also understand that—I know that at the time the Department knew that Congressman Issa and others were very critical of Ms. Lam.

I also have been reminded that the Attorney General received three calls from Senator Domenici complaining about Mr. Iglesias, and that the Deputy Attorney General received a call from Senator Domenici complaining about Mr. Iglesias.

I am not sure those things were on my mind when those names were added to the list, but they certainly may have been influential. I know that the Department cares about the views of Congress.

Senator CARDIN. Who would be the principal person that advised you on who should go on the list, who would be responsible for weighing the local political issue?

Mr. SAMPSON. Well, that wasn't—I don't believe that was specifically a consideration. I guess I just wanted to share with you that

looking back on this, as I sit here today, the Department as a whole was aware of those complaints from those Members of Congress. No one in the senior DOJ leadership who I was getting input from would be responsible for assessing the views of Congress specifically.

Senator CARDIN. You mention in your testimony that, "I developed and maintained a list that reflected the aggregation of views of these and other Department officials over a period of almost 2 years." The Chairman asked you in the beginning whether you had additional documents. Is this a document that would be available that reflects these different views as it relates to the U.S. Attorneys?

Mr. SAMPSON. It wasn't one document, and it wasn't a—it was in the context of sort of a Presidential personnel context, where I gathered information from various sources.

Senator CARDIN. Did it include political information, locally?

Mr. SAMPSON. I don't remember. I don't remember specifically looking for that or receiving that.

Senator CARDIN. How did you arrive at eight as the number? It could have been nine, could have been seven, could have been 15? Was there a specific number you were looking for?

Mr. SAMPSON. There really wasn't. In fact, in mid-October, after presenting the list to different DOJ officials, I remember asking, let's go back and look at all of the—the remaining United States Attorneys whose 4-year terms have expired, which was another 30, maybe, and see if there are any folks there that ought to be added to the list.

And I remember that four U.S. Attorneys were added to the list at that time, relatively close cases but ones that we could consider whether it would be beneficial or not to ask them to resign.

Senator CARDIN. You indicated you compiled the list over 2 years, but it is not one document, it is numerous documents. Are those documents available?

Mr. SAMPSON. I don't personally have control of any documents. I don't work at the Justice Department anymore. I don't think they exist. They were lists that I kept and marked up and then threw away, and a new list was created. So I believe that the—

Senator CARDIN. Over 2 years, you—I am a little bit confused. Your testimony says that, "I developed and maintained a list that reflected the aggregation of views of these and other Department officials over a period of almost 2 years." Is that not accurate then?

Mr. SAMPSON. To be clear, it was not one list that was sustained through the 2 years. It was various—

Senator CARDIN. And this list no longer exists?

Mr. SAMPSON. Senator, what it was, the Executive Office of United States Attorneys prepares a running chart of all the United States Attorneys, of when they were appointed, you know, and other U.S. Attorneys who are in the pipeline to be appointed or are there on interim appointments. It is a master chart of the U.S. Attorneys at that specific time. And it is constantly—

Senator CARDIN. But your statement says that it had the aggregation of views related, I assume, to the performance. And my question is whether that exists, and you are indicating it was more

note taking and so you did not maintain one consistent list over the period of 2 years.

Mr. SAMPSON. That's accurate. All I can say, it wasn't scientific and it wasn't well documented.

Senator CARDIN. I want to get to perception here, because I tell you, we all worry about perception. Perception and public confidence go hand in hand. You acknowledge here that an inappropriate way to discharge a U.S. Attorney would be for interference or influence on the investigation or prosecution of a particular case for political or partisan advantages.

You have also acknowledged that you were aware of what was happening in California at the time the decision was made to ask for the resignation of the U.S. Attorney. You also acknowledge you were aware in New Mexico of the contacts that were made in regard to a sensitive decision on whether to prosecute or not.

Do you see a perception problem here?

Mr. SAMPSON. Senator, at the time, in my mind I did not associate at all the idea of asking a U.S. Attorney to resign and the idea that it would be done to improperly influence a case for political—

Senator CARDIN. Do you see a perception problem here of the timing relative to the investigations and the U.S. Attorneys that were selected?

Mr. SAMPSON. Senator, in retrospect, I do. And I believe that it was a failure on my part, and I want to take accountability and responsibility—

Senator CARDIN. But you are saying the failure was the manner in which you handled it, but not the decisions that were made on the dismissal of the U.S. Attorneys?

Mr. SAMPSON. I'm acknowledging, Senator, that it was a failure on my part, and others, but I will hold myself responsible for not—for the lack of foresight that people would perceive it as being done to influence a case for an improper political reason.

Senator CARDIN. And the impact—

Mr. SAMPSON. I didn't associate—

Senator CARDIN.—it is having on U.S. Attorneys' Offices throughout this country.

Mr. SAMPSON. And I regret that.

Senator CARDIN. You regret it. If you could do it over again, would you have a different list? No list? Or what do you—I am not sure I understand what you are acknowledging to this Committee, whether it is just a public relations problem in presenting it or whether it is a real problem in the method that was used to ask for the U.S. Attorneys to resign.

Mr. SAMPSON. I guess I was just trying to answer your question. I was acknowledging that at the time I personally did not take adequate account of the perception problem that would result.

Senator CARDIN. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

What we will do is we will go to Senator Whitehouse at this point, and then we will recess until quarter of 1.

Senator Whitehouse?

Senator CARDIN. Quarter of 1:00? Quarter of 2.

Chairman LEAHY. Quarter of 2. We were using—I guess we were not even using California time.

[Laughter.]

Chairman LEAHY. Quarter of 2.

Senator WHITEHOUSE. Thank you, Mr. Chairman.

Hello, Mr. Sampson.

Mr. SAMPSON. Senator.

Senator WHITEHOUSE. Could you tell me who, other than your family and your lawyers, you have discussed your testimony today with before you came in here?

Mr. SAMPSON. No one.

Senator WHITEHOUSE. Who has it been coordinated with, to your knowledge, other than your own lawyers and your family?

Mr. SAMPSON. No one. I have not spoken with anyone at the Department or anywhere else.

Senator WHITEHOUSE. When you were in charge of this project, did you keep a file on this project?

Mr. SAMPSON. I think it would be too much to say that I kept a file. In my lower right-hand desk drawer, I had the charts that I referred to in answering Senator Cardin's question. It was just sort of a drop file. It was changed in and out.

I think in looking back and reviewing the documents in preparation for this testimony, I see that there were lots of lists at different times, but as I said to Senator Cardin, I didn't keep one list.

Senator WHITEHOUSE. But did you keep one file where you kept information related to this project?

Mr. SAMPSON. Again, just sort of a drop file in my lower right-hand desk drawer.

Senator WHITEHOUSE. Did somebody else keep it for you?

Mr. SAMPSON. No. There really was no file, there really was no documentation of this. It was an aggregation of views and various lists and notes at different points in time. As the process finalized in the fall of 2006, it became a little more formalized, but only in the sense that we were working in the senior leadership of the Department to finalize the list.

Senator WHITEHOUSE. So this was a project you were in charge of. This was a project that lasted for 2 years. This was a project that would end the careers of eight United States Attorneys. And neither you nor anybody reporting to you kept a specific file in your office about it?

Mr. SAMPSON. Senator, I didn't keep a specific file on this issue. I guess I just didn't want to associate myself with the premise in your question that it ended the careers of eight U.S. Attorneys. My view is—

Senator WHITEHOUSE. As U.S. Attorneys, in any event.

Mr. SAMPSON. My view is they are good people and skillful lawyers and served well for 4 or 5 years.

Senator WHITEHOUSE. But not U.S. Attorneys.

Let me ask you a different question. If you know, is it true that a career attorney working for the Department of Justice who refuses to cooperate with an OPR or an OIG investigation and who refuses to testify is terminated as a result of refusing to cooperate?

Mr. SAMPSON. I don't know.

Senator WHITEHOUSE. You don't know?

Mr. SAMPSON. I don't know.

Senator WHITEHOUSE. Do you know if it is the policy of the Department of Justice that an officer of a corporation that is under investigation who refuses to cooperate and testify is required by the Department—the Department requires the corporation to have that officer dismissed?

Mr. SAMPSON. I don't know. I understand that there are—that the Department has a policy with regard to the charging of corporations. But I'm not familiar with it. I'm not well versed enough to answer your question.

Senator WHITEHOUSE. We have a situation right now in which there is an employee of the Department of Justice who has asserted Fifth Amendment rights against self-incrimination with respect to their conduct in office at the Department of Justice. And that person has, as of the last I have here, not been terminated.

In your recollection and to your knowledge, in the entire history of the Department of Justice has there ever been an attorney working for the Department of Justice who asserted Fifth Amendment privileges against self-incrimination regarding their conduct in office who was not terminated and who was kept on as an employee and on the payroll?

Mr. SAMPSON. I've never looked at that question, and I don't know.

Senator WHITEHOUSE. Are you aware that courts and juries are allowed regularly, as a matter of standard practice, to draw an adverse inference, it is called, from the assertion of Fifth Amendment privilege by a witness in a civil case?

Mr. SAMPSON. I have not researched that issue, and I don't know, and I wouldn't want to venture a guess here today.

Senator WHITEHOUSE. All right. In your experience as an attorney, have you ever tried a criminal case?

Mr. SAMPSON. I have.

Senator WHITEHOUSE. Where and when?

Mr. SAMPSON. In the Southern District of Florida in 2004, I was appointed a special attorney and went and tried a case down there.

Senator WHITEHOUSE. That was the one case?

Mr. SAMPSON. Yes.

Senator WHITEHOUSE. OK. Do you remember the nature of the charges?

Mr. SAMPSON. Yes. It was a gun case. It was a felon in possession of a firearm and also a felon in possession of narcotics with the intent to distribute.

Senator WHITEHOUSE. Have you ever tried a civil case?

Mr. SAMPSON. Yes.

Senator WHITEHOUSE. When? Where?

Mr. SAMPSON. I was an associate at a law firm in Salt Lake City for 2 years, and I participated in the trials. I was not lead counsel, but participated—

Senator WHITEHOUSE. Second chair?

Mr. SAMPSON. Yes, in a handful of cases.

Senator WHITEHOUSE. OK. Should we be concerned with the experience level of the people who are making these highly significant decisions for United States Attorneys? And I reference in particular an e-mail between you and Monica Goodling in which she

suggested that the U.S. Attorney for the Western District of North Carolina should not be on the list, and now—what do you know?—that person is not on the list. Do you know whether Monica Goodling has ever tried a case?

Mr. SAMPSON. I don't know. I know that she served as a Special Assistant United States Attorney in the Eastern District of Virginia for a time. I wouldn't want to—let me just leave my answer at that.

Senator WHITEHOUSE. You wouldn't want to what?

Mr. SAMPSON. I am sorry, Senator. I just lost my train of thought.

Senator WHITEHOUSE. OK. Well, the question was: Should we have any concern about the experience level in terms of actual—you know, these are people out there making very hard decisions in the real world, and they are under a lot of pressure, and here their careers as United States Attorneys are brought to an end, and in some cases it appears that the make-or-break decision is being made by somebody who graduated from law school in 1999, who may or may not have ever tried a case. That seems pretty remarkable to me.

Mr. SAMPSON. Senator, the decisionmakers in this case were the Attorney General and the Counsel to the President. I and others made staff recommendations, but they were approved and signed off on by the principals.

Senator WHITEHOUSE. On what basis?

Mr. SAMPSON. They were—

Senator WHITEHOUSE. Because they were your recommendations, or did the principals look through the recommendations and make an independent judgment themselves as to whether the U.S. Attorneys should remain?

Mr. SAMPSON. I think you'd have to ask the principals.

Senator WHITEHOUSE. You don't know?

Mr. SAMPSON. I think you'd have to ask the principals. I made recommendations, and some of them were adopted and some of them weren't.

Senator WHITEHOUSE. I think my time has expired, Mr. Chairman.

Chairman LEAHY. I am not sure you ever got an answer to your last question, but we will let it stand at that, and we will stand in recess until quarter of 2.

Mr. SAMPSON. Thank you, Mr. Chairman.

[Whereupon, at 12:32 p.m., the Committee was recessed, to reconvene at 1:45 p.m., this same day.]

AFTER RECESS [1:48 p.m.]

Chairman LEAHY. Good afternoon. Before we start, I've been advised that Mr. Sampson has a clarification he might—he wants to make about something that came out in the testimony in our morning session. And so before I yield to Senator Kyl, Mr. Sampson, what is—what is the clarification you wish to make?

Mr. SAMPSON. Thank you, Mr. Chairman. I stated this morning that I had not spoken with the President since the time that I'd worked at the White House as Associate Counsel to the President.

Chairman LEAHY. As I recall, that was in answer to a question I asked you.

Mr. SAMPSON. I—yes, sir. I remembered at lunch that I had spoken to the President briefly sometime in 2005 at a meet-and-greet in honor of Chief Justice Roberts's confirmation. I don't think—we didn't speak about anything substantively. I'm not even sure if I said words with the President. But I wanted to be clear that I had been in a room with the President since I worked there at the White House.

Chairman LEAHY. Well, I appreciate that clarification. Had you not, I would have reminded you of it. I was there at that—I was there at that time, just for whatever that's worth.

Mr. SAMPSON. Thank you, Mr. Chairman.

Senator KYL. The world wants to know if you had words with the President.

Chairman LEAHY. I did. And with the Vice President on occasion. [Laughter.]

Go right ahead.

Senator KYL. And we don't need to go into what words, right? Thank you, Mr. Chairman.

Mr. Sampson, I'm going to ask you a few questions, first, about the former U.S. Attorney in Arizona, Paul Charlton. Did you know Paul Charlton?

Mr. SAMPSON. I know Paul Charlton, Senator, and I think him to be a fine man and a very good lawyer.

Senator KYL. That was the other question I was going to ask. He has a reputation of being a top-notch attorney and performed very well as Arizona's U.S. Attorney.

The reason why he was—do you know the reason why—or the primary reason he was asked to resign?

Mr. SAMPSON. I do.

Senator KYL. And did that have to do with policy differences with the Department?

Mr. SAMPSON. It did.

Senator KYL. Primarily, two particular policy matters?

Mr. SAMPSON. Yes. I think, as Mr. Moschella testified in the House a couple of weeks ago, the concerns and issues that were raised with Paul Charlton related to the death penalty, and also—the recording of interrogatories. The Department-wide policy about that.

Senator KYL. Right. In some cases there were differences of opinion about when to seek the death penalty. Is that right?

Mr. SAMPSON. Yes.

Senator KYL. And Paul Charlton had pretty much a running dispute with the Department, wanting to use recorded confessions by the FBI, and the FBI did not want to record confessions in most cases. That policy dispute actually went on for some time and represented several different meetings and communications between Paul Charlton and the Department. Is that right?

Mr. SAMPSON. That's my understanding.

Senator KYL. Right. But, clearly, this is a policy dispute. Let me ask one more question. Did you also believe that the Department of Justice felt that perhaps Mr. Charlton had pursued his point of view after the—after the Attorney General had made his decisions final, that Mr. Charlton continued to press his point of view?

Mr. SAMPSON. Yeah. Yes, sir. That was the substance of the concern, I believe.

Senator KYL. Right. So it was that rather than some kind of under-performance in his duties as U.S. Attorney that occasioned his request for removal. Is that correct?

Mr. SAMPSON. Again, I think the term "under-performance" has—has led to a lot of confusion here, but I think that's a fair characterization.

Senator KYL. Well, it may have led to some confusion, but I think you would also acknowledge that there's a difference between indicating that someone had a policy difference with the administration and, as a result, the administration has the perfect right to ask them to pursue something else.

On the other hand, when you suggest that it is a matter of performance or under-performance, would you not agree it's almost a challenge for any good lawyer to come forward and defend his reputation or her reputation?

Mr. SAMPSON. I would agree with that, Senator. I think that largely was the mishandling and bungling that the Department of Justice did in the wake of this.

Senator KYL. Right. So even though I can appreciate how you could consider that, under the overall general rubric of performance, policy differences would be subsumed in that, in retrospect, would it not have been better to characterize situations like Mr. Charlton's as predominantly depending on policy differences rather than an under-performance of his duties?

Mr. SAMPSON. Yes.

Senator KYL. Thank you.

Did the Department of Justice or the White House, to your knowledge, have a replacement in mind for Mr. Charlton when they asked him to step down in January?

Mr. SAMPSON. To my knowledge there was no replacement ready to replace Mr. Charlton.

Senator KYL. And to your knowledge is there any yet? I mean, Senator McCain and I have recommended someone, and I'm not asking you to prejudge that. But there's nobody by the White—the White House doesn't have its own candidate, to your knowledge?

Mr. SAMPSON. Correct.

Senator KYL. Was there any suggestion that anyone, to your knowledge, ever considered investigations, either in the U.S. Attorney's office in Arizona or the FBI in Arizona—was there any suggestion that Mr. Charlton be removed because of a pending or potential political corruption case?

Mr. SAMPSON. To my knowledge, that was not the case.

Senator KYL. Could you say that—that—that you probably would have had knowledge, given all of the discussions that were occurring back and forth, if anyone sought to remove him because of his involvement in, or lack of involvement in, a political corruption case in which they might have had a different point of view?

Mr. SAMPSON. I believe so. I was the aggregator of input that was coming in from different sources. And based on everything I observed and heard, that was not a factor.

Senator KYL. So you would have probably known, although I know you can't say for sure.

Mr. SAMPSON. I can only—

Senator KYL. But you would have probably known if anybody had ever talked about that.

Mr. SAMPSON. I can only speak for myself, and I—I was not aware of any of that, to the best of my knowledge.

Senator KYL. But you were the aggregator of information, and didn't see anybody else speaking to it either. Is that correct?

Mr. SAMPSON. That's correct.

Senator KYL. Now, in an e-mail on September—or, excuse me, December 7th, 2006, you wrote, "Senator Kyl is fine." That—there's a number 61 by that. I presume that designates the number of the e-mail.

Were you aware that I had asked Paul McNulty to request of the Attorney General to reconsider the decision with respect to Mr. Charlton?

Mr. SAMPSON. I don't believe I was aware of that. My recollection is that the Attorney General—as part of the plan, the Attorney General was going to call you to let you know of the decision to ask Mr. Charlton to resign, but that Mr. McNulty indicated that he would make the call because he had a relationship with you. And to the best of my knowledge, what I remember is hearing a report that you understood that that was the decision of the administration.

Senator KYL. That you thought that I understood that from the Attorney General?

Mr. SAMPSON. No. I—to the best of my—

Senator KYL. You don't remember if it's from the Attorney General or Mr. McNulty?

Mr. SAMPSON. No. To the best of my recollection, Mr. McNulty called you. And to the best of my recollection, it was reported to me that you were fine.

Senator KYL. OK.

Mr. SAMPSON. That you understood that that was—

Senator KYL. How about if I correct the record here.

Mr. SAMPSON. That's—

Senator KYL. Because obviously you're not aware. The Attorney General called me.

Mr. SAMPSON. OK.

Senator KYL. I believe it was December 7th.

Mr. SAMPSON. OK.

Senator KYL. And I expressed some shock and dismay at the decision and asked if he could please explain to me the reasons why. He said that he would send Paul McNulty up to see me, and Paul McNulty did come to see me the next day.

At the conclusion of that meeting, I asked Mr. McNulty, given all that he explained to me about the policy differences rather than something wrong with Mr. Charlton's performance, if he would ask the Attorney General to reconsider the decision and allow Mr. Charlton to stay. You were not aware of that conversation?

Mr. SAMPSON. No. I don't—I don't remember that, Senator.

Senator KYL. One of the Department of Justice documents says that Charlton "worked outside of proper channels in seeking resources without regard to the process of the impact his action would have on other U.S. Attorneys' offices." Those are—there's a

number 168 and 169 by that. Do you know anything about that? Was that your e-mail or document?

Mr. SAMPSON. It would—it would be helpful to me if I could see that document. I don't remember precisely.

Senator KYL. Let me—I'm not sure. Maybe if you look at this you can—you can help me describe what it is. Does this look familiar to you in any way?

Mr. SAMPSON. I did not prepare this document.

Senator KYL. It looks like it might have been prepared in the House. Well, let me just ask you, in this, what appears to be a document prepared by Judiciary in the House, there's a reference to Charlton "worked outside of proper channels in seeking resources." Do you know anything about that?

Mr. SAMPSON. I think, Senator, that this was a document prepared at the Department of Justice. I don't remember it specifically, but it looks to me like a document that was prepared in advance of Mr. Moschella's testimony so that he could go and explain the reasons why certain U.S. Attorneys, these U.S. Attorneys who were asked to resign, were put on the list. I—

Senator KYL. OK. My time is up. But do you know anything about that?

Mr. SAMPSON. I have some recollection that there was some concern dating from the time that Attorney General Ashcroft was the Attorney General, that Mr. Charlton had sought, by contacting Members of Congress directly, to get resources put in his office. I only have a vague recollection of this.

Senator KYL. OK.

Mr. Chairman, if I could just conclude this with a comment. It may—although I have no idea what it refers to, I routinely met with the U.S. Attorney and his staff. Each year in December I would meet with him and I would always ask him, what do you need, what can we do to help you.

And on one occasion there was a comment about needing more attorneys on immigration cases and I think I had something to do with helping them to get some of those resources. So I wouldn't want anybody to think that it was Paul Charlton initiating a contact improperly, but it may well refer to the fact that he was responding to a question that I had asked. I'm not sure.

Thank you very much, Mr. Chairman.

Chairman LEAHY. I thank the Senator from Arizona.

The Senator from Massachusetts?

Senator KENNEDY. Thank you. Thank you, Mr. Chairman. And thank you, Mr. Sampson, for appearing here. Others have expressed that, but you've come here voluntarily and I think that's impressive in an attempt to try and respond truthfully to the questions put to you, so we thank you very much for that.

Just very quickly, and I want to move past this, I think you mentioned that you were the aggregator of input and information on U.S. Attorneys. I think, in response to Senator Whitehouse earlier, you said you kept a file on the U.S. Attorneys in the desk drawer.

Do you know where that file is? Do you know whether all of that material has been made available to the committee?

Mr. SAMPSON. Senator, what I remember—I don't remember keeping a very good file. I remember that it was a chart and notes

and that I would dump it into the lower right-hand drawer of my desk at the Department of Justice.

My understanding is that the Department has made an effort to make everything relevant available to the committee, but I resigned from the Department and don't have possession of any of my files, and I don't—I really don't know.

Senator KENNEDY. So we don't know whether everything that was in that file has been made available to the committee. We'll have to get a look at it.

Mr. SAMPSON. To the best of my knowledge.

Senator KENNEDY. OK.

Mr. SAMPSON. There wasn't really much of a file.

Senator KENNEDY. I see. OK.

Mr. SAMPSON. And I think that everything that was there has been made available, to the best of my knowledge.

Senator KENNEDY. The Justice Department has admitted now that its February 23 letter was inaccurate in asserting that the Department was not aware of any role played by Karl Rove in the decision to appoint Tim Griffin to replace the U.S. Attorney, Bud Cummins, in Little Rock, Arkansas.

Do you agree that the February 23rd letter was inaccurate?

Mr. SAMPSON. Senator, I participated in the drafting of that letter. I drafted the first draft. And at the time I drafted that letter, I was not aware of Karl Rove having expressed an interest in Tim Griffin being appointed. I remember thinking at the time, I'm not even sure Mr. Rove is in support of Mr. Griffin being appointed.

And when I drafted that letter, I was focused on the Attorney General's interim appointment of Mr. Griffin, which had happened in mid-December, and I knew that the Attorney General had independently determined to appoint Mr. Griffin. I had recommended that the Attorney General appoint him to be the interim U.S. Attorney. He asked for more information.

He determined to call Senator Pryor before doing that, and he had a couple of phone conversations with Senator Pryor and ultimately decided to appoint Mr. Griffin, but pledged to Senator Pryor that he would continue to work with him as far as getting a Senate-confirmed person in there.

But I remember at the time that I worked on the drafting of that, I was not aware, and I did not remember then and I don't remember now, whether Mr. Rove actually was interested in Mr. Griffin being appointed. I circulated the letter widely to make sure it was accurate, and no one disabused me of that idea.

Senator KENNEDY. Well, you remember the December 19th letter from yourself to the White House where you used those words, "knowing that getting him appointed," referring to Griffin, "was important to Harriet and Karl." That's what you wrote.

Mr. SAMPSON. That e-mail was based on an assumption.

Senator KENNEDY. OK.

Mr. SAMPSON. I knew that Sarah Taylor and Scott Jennings had expressed interest in promoting Mr. Griffin for appointment to be U.S. Attorney, and I assumed, because they reported to Karl Rove, that he was interested in that.

But later in February, when I participated in the drafting of that letter, I did not remember then ever having talked to Mr. Rove

about it. I don't remember, now, ever having talked to Mr. Rove about it. I'm not sure whether Mr. Rove was supportive of Mr. Griffin's appointment.

Senator KENNEDY. Well, what I'm getting at is that you did mention in your first e-mail that this was important to Karl, et cetera. And then in the general letter that was circulated to the White House, that aspect was dropped and the White House effectively approved the letter.

And today, the Justice Department has admitted that the letter was inaccurate in asserting the Department was not aware of Karl Rove. That's the sequence, as I see it. Is that about what you understand?

Mr. SAMPSON. To the—to the best of my knowledge, Senator, I don't remember Karl Rove ever talking to me about this subject, in person or on the phone. I don't remember anyone telling me that Mr. Rove was interested in Mr. Griffin being appointed, and that was my understanding at the time I participated in the drafting of that letter.

Senator KENNEDY. OK. Well, then do you know why you would mention it in your e-mail where you said that it was "important to Harriet and Karl" if there was no reason? Do you have any idea why you would write that?

Mr. SAMPSON. As I said, that was based on an assumption. I knew it was important to Sarah Taylor and to Scott Jennings, both of whom reported to Mr. Rove.

Senator KENNEDY. All right. Now we have the situation where the Justice Department has admitted that the 23rd letter was inaccurate. So—do you agree with that?

Mr. SAMPSON. I'm not aware that the Department of Justice has admitted that. It would be useful to me, if—if they've done so, if I could see where that is.

Senator KENNEDY. Yes. Well, it is in the wire story: "Assistant Attorney General Richard Hurtling said that statements made to Democratic lawmakers appear to be contradicted by Department documents included in our production."

Then it said, "The February 23rd letter, which was written by Sampson, signed by Hurtling, emphatically stated the Department is not aware of Karl Rove playing any role in the decision to appoint Mr. Griffin. It also said the Department of Justice is not aware of any lobbying effort and is now saying that that's inaccurate." OK.

Mr. SAMPSON. Again, before I could comment on that I'd need to see the Department's letter.

Senator KENNEDY. All right.

Mr. SAMPSON. I can tell you that at the time I drafted that letter, I was not aware of Karl Rove being interested in Mr. Griffin's appointment. And as I sit here today, I don't—I don't remember if that's true.

I obviously assumed that on—in December when I wrote that e-mail, but I think that the e-mail is based on an assumption, and to the best of my knowledge the letter was based on the facts as I understood them at the time.

Senator KENNEDY. Did you have any communication on the replacement of U.S. Attorneys with anyone in the Republican National Committee?

Mr. SAMPSON. Not to my knowledge.

Senator KENNEDY. And did you attend any meetings in the White House where the issues of replacing U.S. Attorneys was discussed?

Mr. SAMPSON. Yes. On—on a handful of occasions I met with Harriet Miers.

Senator KENNEDY. Can you tell us how many—can you tell us who was there at those meetings?

Mr. SAMPSON. I remember speaking with Harriet Miers and Bill Kelley about that. Sometimes this subject would come up after a Judicial Selection Committee meeting, which was a once-a-week meeting that happened in the Roosevelt Room.

Senator KENNEDY. Let me just ask you, because my time is running out, Chris Oprison. Did he attended, or did Karl Rove attend? William Kelley?

Mr. SAMPSON. Attend what, Senator?

Senator KENNEDY. Those meetings in the White House on the issue of replacing U.S. Attorneys.

Mr. SAMPSON. The issue of replacing U.S. Attorneys most frequently came up as sort of a pull-aside after a Judicial Selection meeting.

Senator KENNEDY. How many meetings, approximately?

Mr. SAMPSON. Well, Judicial Selection meeting—Judicial Selection Committee meeting happened regularly, approximately once a week. Maybe something less than that. It would be canceled from time to time.

And the issue of U.S. Attorney replacements was quite episodic in—you know, in the—in the thinking phase of this through 2005 and 2006, and it would just come up occasionally after a Judicial Selection meeting, usually between myself, Harriet Miers, and Bill Kelley.

Senator KENNEDY. Well, my time is up. But this is a matter of enormous importance, a U.S. Attorney replacement treated casually. At some time, Mr. Chairman, I'd like to find out about these meetings, who was there—who was present and what was said, and what was on the agenda. But I will wait until my next turn.

Chairman LEAHY. You're talking about the Wednesday afternoon—you're talking about the Wednesday afternoon meetings.

Senator KENNEDY. I'm talking about the meetings where the issue of replacement of U.S. Attorneys was discussed.

Mr. SAMPSON. Judicial Selection Committee was regularly scheduled for Wednesday afternoons at 4, although it moved around and changed as the principals' schedules dictated.

And the question of U.S. Attorney replacements only came up every once in a while, and it was usually after that meeting in Ms. Miers's office or sort of just off to the side in the Roosevelt Room.

Chairman LEAHY. I'm going to go to Senator Grassley. But maybe I was confused on something you said. When did you go off the DOJ payroll?

Mr. SAMPSON. On—on Wednesday, March 14th.

Chairman LEAHY. So you're off it now?

Mr. SAMPSON. Yes, sir.

Chairman LEAHY. You're getting no money at all from the DOJ?

Mr. SAMPSON. That's right, although I think the Department owes me some compensation for vacation time I never took, and I continue to get health insurance for my family through COBRA.

Chairman LEAHY. Senator Grassley?

Senator GRASSLEY. Thank you, Mr. Chairman.

Obviously we're here because Congress has received inconsistent information on firing of these attorneys. It's undisputed that the President has these people serving at his pleasure, that a President has a right to hire and fire U.S. Attorneys for most any reason, except if it's improper for them being involved for retaliatory reasons or impeding or obstructing prosecution.

You know, we all know that a President is entitled to replace his U.S. Attorneys if he wants to, particularly if—he ought to be doing it if they aren't following his prosecutorial priorities aggressively enough. And it's not against the law for a President to replace U.S. Attorneys if he wants to give other individuals an opportunity to serve in that position.

But once an administration started making representations about how and why these firings came about, those representations need to at least be accurate and complete.

The document productions have revealed conflicting information with the testimony of Justice Department officials before respective committees up here, as well as with letters that Senators have received. Any representations to Congress need to be correct or else our oversight activities won't be able to get to the truth.

The bottom line is, we shouldn't have conflicting statements coming from somebody who is the top law enforcement officer of the United States, or his staff. We expect them to be prepared to answer questions. Congress and the American people ought to get a consistent story, and we ought to be able to expect the truth.

As an aside, I'm glad that we're having a Committee hearing to sort out facts and get the story straight. Doing things out in the open, Mr. Sampson, as you're doing with us today, is very important and we thank you for being here.

Chairman LEAHY. If the Senator would yield. And I apologize.

Senator GRASSLEY. Yes. Go ahead.

Chairman LEAHY. Mr. Sampson, we've just received word that the Republicans have objected, under the Senate rules, of this meeting continuing. I think that's unfortunate, but I will follow the rules of the Senate.

Senator GRASSLEY. Does it apply to a Republican, too?

Chairman LEAHY. The Republicans are the ones that don't want to have the hearing, so Republicans have the right, under the rules, to do that. We will stand—we will not adjourn. We will stand in recess until the Senate recesses. We will come back and Senator Grassley, if he wishes to be heard further, will be the first one to be heard.

Senator GRASSLEY. Thank you.

[Whereupon, at 2:15 p.m. the hearing was recessed.]

AFTER RECESS [2:36 p.m.]

Chairman LEAHY. Just so people can understand what is going on here, the lack of permission going forward has now been changed. I had raised questions and whatever objection there was

on the Republican side has been withdrawn so that we can continue.

When Mr. Sampson comes back, we will start with Senator Durbin. I—somebody here just asked me if this all could have been just as a result of an accident that we had this lack of concurrence by the Republicans to go forward.

I grew up in a faith that believes in miracles and it's conceivable it's an accident. I've been here 33 years. I've never seen it happen before. So, maybe it was, but I suspect it was not.

Again, I would add, if people feel that somehow you can stop these hearings by having objections, and every Senator is within their right to do so, it is really not something that's going to happen because we will have the hearings if we have to have them in the evenings, or on weekends, or during recess.

Mr. Sampson, I apologize to you. You were not the one making the objection. You were not the one—it's obviously, in speaking briefly with you and your attorney out back, I suspect you want nothing more than to get this session wrapped up and not to have it interrupted.

We'll start with Senator Durbin of Illinois. It's your turn, sir.

Senator DURBIN. Thanks, Mr. Chairman.

Thank you. Thank you for testifying. I mean that sincerely and I appreciate your coming forward to answer these questions. And I read your opening statement in which you outlined what you considered to be reasonable standards to judge the performance of a U.S. Attorney, saying that Presidential appointees are judged not only on professional skills, but management abilities, relationships with law enforcement and government leaders, support for the priorities of the President and the Attorney General.

Then you go on to say, "if he or she is unable to maintain the morale and motivation of line assistants, is resistant to the President's or the Attorney General's constitutional authority, loses the trust and confidence of important local constituencies in law enforcement or government, or fails to contribute to the important non-prosecutorial activities," these are all elements that you think are reasonable in judging the performance.

Now, you produced, or the Department produced, for this hearing e-mails, one dated March 2, 2005, in which you had sent to Harriet Miers a template or chart of attorneys, U.S. Attorneys, and they were given three basic grades, as I understand it: "strike-out", removing weak U.S. Attorneys; "bold", recommending that you keep strong U.S. Attorneys; and a third category, "no recommendation—have not distinguished themselves either positively or negatively."

Subsequent to producing that document, administrative officials confirmed in the press that U.S. Attorney Patrick Fitzgerald of the Northern District of Illinois had been characterized in this March, 2005 memo to Harriet Miers as a U.S. Attorney who had not distinguished himself, neither positive nor negative.

I want to explore that for a moment, basically, from two different perspectives. First, the perspective of the New York Times this morning that talks about the Wednesday meetings at the White House, and talks specifically about Karl Rove's concerns over Patrick Fitzgerald as the Northern District of Illinois U.S. Attorney,

and second, from the perspective of the fact that I was involved in his selection.

I had to sign a blue slip for him to become the U.S. Attorney, and I did after learning that he had been the lead prosecutor in the World Trade Center bombing in 1993, and speaking to him personally, and then hearing from his colleagues that he was absolutely one of the best, no political agenda, a real prosecutor's prosecutor.

And remembering that in December, 2003 when Attorney General Ashcroft recused himself from the investigation involving Robert Novak's disclosures, that it was James Comey, the Deputy Attorney General, who picked Patrick Fitzgerald among all others to be the special prosecutor in that case.

So I'd like to ask you, by what basis did you come to the conclusion in your memo that Patrick Fitzgerald of the Northern District of Illinois had not distinguished himself?

Mr. SAMPSON. Senator, Pat Fitzgerald is widely viewed within the Department of Justice as being a very strong U.S. Attorney. He's a strong manager, he's a skillful lawyer, and is, by all accounts, a very strong United States Attorney.

That e-mail that I sent to Harriet Miers early in March was one of the first—I believe sort of the first time that I had ever aggregated information and put together a list and shared it with the White House. I knew that Mr. Fitzgerald was handling a very sensitive case and really didn't want to rate him one way or the other.

Senator DURBIN. So you're saying that you were neutral in terms of his performance because he was involved in a controversial case?

Mr. SAMPSON. Yes, Senator. To the best of my recollection, I didn't rate him any way. And after consulting with folks at the Department of Justice to get their views about the relative strengths and weaknesses of other U.S. Attorneys, I did not rate him. I knew that he was handling a sensitive case and didn't want to rate him either way.

Senator DURBIN. I have to pursue this. If the Deputy Attorney General thought so highly of him as to choose him to prosecute that controversial case, you felt that you couldn't communicate to the White House a feeling as to whether he was a strong or weak U.S. Attorney?

Mr. SAMPSON. Senator, what I remember is that that first list of U.S. Attorneys who might be considered for resignation after their 4-year terms had expired was a—a very preliminary draft. And I don't remember rating Mr. Fitzgerald one way or the other, and I—and I believe I probably did that because I didn't want to go anywhere near that.

I knew he was handling a very sensitive case and investigation that included the White House. I was communicating a list to the White House, and so I just didn't touch it.

Senator DURBIN. So were you concerned that if you gave him a positive rating, that the White House might look unkindly on that designation?

Mr. SAMPSON. I don't remember feeling that way.

Senator DURBIN. Well, I'm troubled by this because—is there anything that you knew about him to suggest that he wasn't an effective, strong U.S. Attorney?

Mr. SAMPSON. No. I believe he is a strong, effective U.S. Attorney and I don't remember ever hearing any contrary reporting from anyone within the Justice Department, or anywhere else, for that matter.

Senator DURBIN. You can see where it leads to a conclusion that, because he's involved in a case that necessarily involves people who work in the White House, that the Department of Justice, at least from your point of view, didn't want to go out on a limb and say something positive about him.

Mr. SAMPSON. To the best of my recollection, I didn't want to say anything at all about him.

Senator DURBIN. Were you ever party to any conversation about the removal of Patrick Fitzgerald from his position as Northern District of Illinois U.S. Attorney?

Mr. SAMPSON. I remember on one occasion in 2006, in discussing the removal of U.S. Attorneys or the process of considering some U.S. Attorneys that might be asked to resign, that I was speaking with Harriet Miers and Bill Kelley and I raised Pat Fitzgerald. And immediately after I did it, I regretted it.

I thought—I knew that it was the wrong thing to do. I knew that it was inappropriate. And I remember at the time that Ms. Miers and Bill Kelley said nothing. They just looked at me. And I immediately regretted it and I withdrew it at the time, and I regret it now.

Senator DURBIN. Do you recall what you said at the time about Patrick Fitzgerald?

Mr. SAMPSON. I said, "Patrick Fitzgerald could be added to this list."

Senator DURBIN. And there was no response?

Mr. SAMPSON. No. They looked at me like I had said something totally inappropriate, and I had.

Senator DURBIN. Why did you say it? Why did you recommend, or at least suggest, that he be removed as U.S. Attorney?

Mr. SAMPSON. I'm not sure. I think I—I don't remember. I think it was maybe to get a reaction from them. I don't think that I ever—I know that I never seriously considered putting Pat Fitzgerald on the list, and he never did appear on the list.

Senator DURBIN. It's interesting what has happened with the Bush Department of Justice, the Gonzales Department of Justice, recently. There was a time when Senators would suggest one name to the Department of Justice, and that was referred to in this New York Times piece that Karl Rove was quoted as saying he was upset that my former colleague, Peter Fitzgerald, only recommended one name, Patrick Fitzgerald, in this case.

Now it seems to be the custom and practice that multiple names are suggested. In Illinois, former Speaker Hastert has been told to submit at least three names.

Can you tell me why that practice has changed?

Mr. SAMPSON. I remember that at the beginning of the administration the then-counsel to the President, Alberto Gonazales—this is the best of my recollection. I believe that he sent a letter to members of the Senate with regard to judicial appointments, and perhaps also U.S. Attorney and U.S. Marshal appointments, requesting that Senators provide three names for each vacancy. And

I know that that's the general practice that the administration has followed.

Senator DURBIN. One last question. Were there any conversations between you or conversations you overheard involving Karl Rove and the appointment of Patrick Fitzgerald as U.S. Attorney for the Northern District of Illinois?

Mr. SAMPSON. Not that I remember. I really don't think so.

Senator DURBIN. Thank you very much.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Durbin.

Let me give you a copy—I'm going to do as I did with the documents before, skip the zeros. This is OAG 5–11. It's a copy of a March 2, 2005 e-mail exchange between you, White House Counsel Harriet Miers, attaching a copy of a chart entitled "U.S. Attorneys Appointment Summary". Is that correct?

Mr. SAMPSON. Yes. I have OAG Number 5.

Chairman LEAHY. Yeah.

Mr. SAMPSON. Yeah.

Chairman LEAHY. And in this version on the list of U.S. Attorney recommended for replacement, you have bolded the name of David Iglesias. Is that right?

Mr. SAMPSON. Yes.

Chairman LEAHY. And according to the key in your e-mail, by doing that that's an indication of somebody to retain, to keep as U.S. Attorney. Is that correct?

Mr. SAMPSON. At the time that I drafted this or sent this e-mail and this chart, that's correct.

Chairman LEAHY. OK.

Now, let me give you a copy of documents OAG 20 and 21, January 9, 2006 e-mail you sent to White House Counsel Harriet Miers and her deputy, William Kelley. Do you have that, sir?

Mr. SAMPSON. Yes. OAG 20 and 21?

Chairman LEAHY. Yes.

Mr. SAMPSON. I do.

Chairman LEAHY. Now, in this e-mail you recommended that the Department of Justice and the Office of the Counsel to the President work together to seek the replacement of a limited number of U.S. Attorneys. And this e-mail listed U.S. Attorneys that might be considered for removal or replacement. These are people that might be considered for removal and replacement. David Iglesias' name is not on there, is it?

Mr. SAMPSON. Correct.

Chairman LEAHY. And then let me give you a copy of a document numbered OAG 121 through 122, September 13, 2006 e-mail from White House Counsel Harriet Miers to you that you forwarded to Monica Goodling. Is that correct?

Mr. SAMPSON. Yes, sir.

Chairman LEAHY. And Goodling responded to you, and you responded to Ms. Miers with a list on September 13th last year. Now, that list of U.S. Attorneys to be replaced did not include David Iglesias, did it?

Mr. SAMPSON. No, sir.

Chairman LEAHY. Then let me give you a copy of documents number DAG 546, 547, an e-mail exchange on October 17th, a cou-

ple weeks before the elections, between you and Michael Elston, Chief of Staff to the Deputy Attorney General. David Iglesias is not on that list, is he?

Mr. SAMPSON. No, sir.

Chairman LEAHY. Now, I provide you with a copy of documents numbered DAG 548, 549, copy of a November 7th, 2006 e-mail you sent to Michael Elston, with the subject line, "U.S. Attorney Replacement Plan". You associated Mr. Elston's comment. You told him you wanted to send it to White House Counsel Harriet Miers that very night.

Now, on the November 7th list, the name of David Iglesias has now been added. Is that correct?

Mr. SAMPSON. Yes.

Chairman LEAHY. Is that the first time Mr. Iglesias's name was added to this November, the first time his name was included on the list of U.S. Attorneys to be replaced?

Mr. SAMPSON. I remember that in the weeks before this, sometime after October 17th but before November 7th, in consultation with the Deputy Attorney General and his Chief of Staff and others in the senior leadership in the Department, the Department went back and looked at the list and asked the question, is there anyone else who should be added.

Chairman LEAHY. But is this the first time you've seen him on a list?

Mr. SAMPSON. And at that time, four additional U.S. Attorneys were added to the list sometime during that period.

Chairman LEAHY. Do we have that list? I mean, supposedly we have all the things from the Department of Justice. I haven't seen any list prior to November 7th that has Mr. Iglesias's name on it. Is there—are you aware of a list somewhere that has his name on it that we haven't received?

Mr. SAMPSON. No, Senator. But if you look at this document dated November 7th, you'll see that there are three other names that are redacted. Sometime between October 17 and November 7th, four names were added, including David Iglesias.

Chairman LEAHY. Are you saying that there is a piece of paper from the Department of Justice that has Mr. Iglesias's name on it before November 7th? I mean, apparently they've told us they've given us everything with his name. Are you telling me they've withheld something?

Mr. SAMPSON. No, sir. This is the first one I'm aware of.

Chairman LEAHY. All right. That's was—

Mr. SAMPSON. To the best of my—to the best of my knowledge, this is the first time I'm aware of it.

Chairman LEAHY. That was my question.

Mr. SAMPSON. I apologize for not understanding.

Chairman LEAHY. All right. Now, I just want to make sure that I'm understanding you correctly. You are under oath and I want to make—I don't want to ask a question that might leave some ambiguity in your mind.

Mr. SAMPSON. Mr. Chairman, may I say, I left the Department and don't have possession of any of the documents.

Chairman LEAHY. No, I understand. This is the only—

Mr. SAMPSON. So I've prepared by reviewing these documents. And to the best of my knowledge, this is the—this is the first document that reflects David Iglesias.

Chairman LEAHY. But certainly it's the first one that they provided us that has his name on it. It's right after the elections.

Now, on March 5th Mr. Iglesias testified before this Committee under oath that Senator Domenici and Congresswoman Heather Wilson called him prior to the 2006 election to ask him about a pending high-profile investigation in New Mexico.

Then according to news accounts, New Mexico Party Chairman Alan Weh complained in 2005 about Mr. Iglesias to someone in the White House. Mr. Weh later asked Mr. Rove about Mr. Iglesias at a December 14, 2006 White House holiday party, and he was told by Mr. Rove that "he's gone", meaning Iglesias.

The White House has said that President Bush complained to the Attorney General in October of 2006 about certain U.S. Attorneys, although the U.S. Attorney has told us he doesn't recall that conversation with the President.

What do you recall hearing any complaints about the way Mr. Iglesias handled the corruption investigation and voter fraud cases in New Mexico?

Mr. SAMPSON. I don't remember hearing any complaints or anything about Mr. Iglesias's handling of corruption cases in New Mexico. I do remember learning, I believe from the Attorney General, that he had received a complaint from Karl Rove about U.S. Attorneys in three jurisdictions, including New Mexico, and the substance of the complaint was that those U.S. Attorneys weren't pursuing voter fraud cases aggressively enough.

Chairman LEAHY. And where did those complaints come from?

Mr. SAMPSON. I believe, to the best of my recollection, I learned of them from the Attorney General.

Chairman LEAHY. Where did the Attorney General get them?

Mr. SAMPSON. I—to the best of my recollection, I think that he told me that he got them from Karl Rove.

Chairman LEAHY. And where did Karl Rove get them?

Mr. SAMPSON. I don't remember ever knowing that. I don't know.

Chairman LEAHY. Did you receive any comments from any official in the White House complaining that David Iglesias was not aggressive enough in prosecuting voter fraud cases or corruption cases?

Mr. SAMPSON. I don't remember anything other than what I just shared with you.

Chairman LEAHY. And are you aware of anybody in the FBI getting a complaint that he wasn't being aggressive enough?

Mr. SAMPSON. I don't remember hearing that at all.

Chairman LEAHY. Do you recall hearing about the President, first-hand knowledge of the President complaining to the Attorney General about U.S. Attorneys not being aggressive enough?

Mr. SAMPSON. I don't remember hearing anything like that.

Chairman LEAHY. And you had at one time listed David Iglesias as a candidate for Principal Associate Deputy Attorney General. Is that correct?

Mr. SAMPSON. That's correct. In 2004.

Chairman LEAHY. Describing him as "a diverse up-and-comer, and solid."

Mr. SAMPSON. Yeah. When this process began in early 2005, my belief was that Mr. Iglesias was a diverse up-and-comer. As I said, I knew that diversity was important to the President and to the Attorney General. I had met David and thought very highly of him. I came to learn, over 2005 and 2006, that others in the Department had mixed views about him, and ultimately those factored into his being added to the list.

Chairman LEAHY. And you—but he never got on a list that you saw printed until immediately after last fall's elections.

Mr. SAMPSON. I don't remember one.

Chairman LEAHY. Thank you.

Senator Specter?

Senator SPECTER. Mr. Sampson, going back to the issue of whether people other than you were considering using the provisions of the PATRIOT Act to circumvent the—to circumvent the Senate, you sent an e-mail to Ms. Miers dated September 13th talking about "utilize[d] the new statutory provisions." And she comes back and says, "I'[ve] not forgotten I need to followup on the info, but things have been crazy. We'll be back in touch."

Then you're still pursuing this on an e-mail on December 19th to Christopher Operson, talking about utilizing the new procedures, saying "I think we should gum this to death, ask the Senators to give Tim a chance, meet with him, give him some time in office, see how he performs....

If they ultimately say, no, never, and the longer we can forestall that, the better. Then we can tell them we'll look for other candidates, ask them for recommendations, evaluate the recommendations, interview their candidates, and otherwise run out the clock. All of this should be done in 'good faith', of course."

Weren't you really suggesting utilizing the provisions of the PATRIOT Act, as you say, to "run out the clock", which appears to mean the end of the President's term, and never have these replacement U.S. Attorneys submitted to the Senate for confirmation? Isn't that the fair reading of that e-mail?

Mr. SAMPSON. Senator, I think—I think that that's a fair reading. I think that I was suggesting that. That was a bad idea at the staff level that was not ever accepted by the Attorney General.

Senator SPECTER. Let's—let's—let's—let's proceed. It was a bad idea. It really wasn't good faith at all, was it, to run out the clock?

Mr. SAMPSON. That wouldn't have been in good faith.

Senator SPECTER. OK.

Now, what was happening at the level of White House Counsel Harriet Miers? You have, after the memorandum, the e-mail that you sent on September 13th, and she responds on September 17th. And now we're all the way to December 19th, and you're still communicating with the White House on this plan to circumvent the Senate.

Now, is it credible that somebody in the White House at the level of White House Counsel Miers, is not going along with this idea to circumvent the Senate, when you're working on it in October, November, December, 3 months later? It doesn't sound like the kind of a matter that is a staffer's idea that has been rejected by the

White House. You're still working on it. You're in touch all the time with these folks.

Mr. SAMPSON. Senator—

Senator SPECTER. How about that?

Mr. SAMPSON. Senator, if I could draw your attention to the U.S. Attorney Replacement Plan that I drafted.

Senator SPECTER. Well, you could, but after you answer my question. If you—if you're working on it—if you're working on it for 3 months on avoiding the U.S. Senate, how can it be that you would spend three months working on something which the White House officials, like White House Counsel Miers is not going along with?

Mr. SAMPSON. Senator, I don't think the principals ever considered abusing the Attorney General's appointment authority in that way.

Senator SPECTER. Abusing the U.S. Attorney—abusing the appointment authority. Did you consider abusing it?

Mr. SAMPSON. Senator, the U.S. Attorney Replacement Plan—

Senator SPECTER. Did you consider abusing it?

Mr. SAMPSON. I recommended to Harriet Miers—

Senator SPECTER. When you were functioning not in good faith, you were abusing it, weren't you?

Mr. SAMPSON. Senator, if—if I would be permitted to give you an answer here. With regard to—

Senator SPECTER. OK. I'd like an answer. But the one I'd like, is to my question.

Mr. SAMPSON. As I testified earlier, that was a bad idea at the staff level. It was rejected by the principals. And it was rejected by the principals with regard—

Senator SPECTER. The question is, were you—were you abusing the principle? You used the word "abused". That's why I'm coming back to it.

Mr. SAMPSON. In hindsight, I believe that it would be an abuse of the Attorney General's appointment authority to—

Senator SPECTER. OK. Let's—let's go—let's go to White House Counsel Miers in a minute and 58 seconds left. The inference arises in unmistakable terms, it seems to me, Mr. Sampson, that when three months have—3 months have elapsed and you're still on this use of the PATRIOT provision to circumvent the Senate, that at least in your mind you must think it's something that can be accomplished. Isn't that minimal?

Mr. SAMPSON. I made that recommendation to Harriet Miers in September of 2006 on the theory that it would be more efficient. With 2 years left in the President's term—

Senator SPECTER. Wait a minute. I know all that. My question is, with your pursuing for some 3 months, doesn't it raise the unmistakable inference that at least you thought the White House would adopt your recommendation? You're not going to maintain a recommendation over 3 months if you believe that the White House Counsel or other equivalent authorities are opposed to it, would you?

Mr. SAMPSON. I didn't maintain it over three months, Senator. As shown in the U.S.A. Replacement Plan that I drafted, which showed that with regard to the U.S. Attorneys who would be asked to resign, that the plan, that the process would be to go to the reg-

ular process to seek input from Senators, to generate names that might be considered for nomination and confirmation.

Senator SPECTER. Well, you might have a collateral plan which would take me more than 20 seconds to explore. But staying on the documents, your e-mails which I've already familiarized you with, let me repeat the question one more time. You are working on it for 3 months. You have proposed, in your September memo, "utilizing the new statutory provision." Those are your words.

Then you come back to December the 19th, more than 3 months later, and you are proposing, in bad faith, circumventing Senate approval. Now, would you be doing something like that if, in your own mind, you thought the White House would not consider replacements using the PATRIOT Act provision?

Mr. SAMPSON. With—Senator, I—at the time that I drafted that e-mail in December of 2006, December of last year, I did not think the White House would consider doing that with regard to 92 districts, which is why, in the U.S. Attorney Replacement Plan I recommended, I drafted following the regular process.

Senator SPECTER. How about—how about—how about one district? Ninety-two districts. You're leaving one out. There are 93 districts.

Mr. SAMPSON. And that's the Eastern District of Arkansas. And at that time—

Senator SPECTER. So would you—would you think the White House would consider using the PATRIOT Act provision for that one district, Arkansas?

Mr. SAMPSON. To the best of my recollection, in my discussions at the staff level with folks at the White House, I believe it was under a consideration then. But it was not adopted by the principals. The Attorney General, after talking with Senator Pryor, was unwilling to consider that.

Senator SPECTER. Well, but it was under consideration at the White House?

Mr. SAMPSON. In conversations I had at the staff level we discussed it.

Senator SPECTER. Did you ever talk to anybody higher than staff level?

Mr. SAMPSON. I don't remember talking to Harriet Miers about that notion anytime after the September e-mail.

Senator SPECTER. How often did you talk to Ms. Miers?

Mr. SAMPSON. Oh, I would guess, on average, you know, two or three times a week.

Senator SPECTER. And had you discussed it with Attorney General Gonzales in this 3-month interim?

Mr. SAMPSON. I don't remember specifically talking with him about it. I know that in drafting the U.S. Attorney Replacement Plan that I did, Step 5 was to follow the regular procedure and consult with the Senate.

Senator SPECTER. Mr. Sampson, this is a pretty big point. Although it was overlooked in the Senate, although it was in the conference report for three months, this was something very much on your mind, right? You can't deny that, it's right here in the e-mails.

Mr. SAMPSON. After the Senate passed that provision, after the Congress passed that provision, I was aware of it.

Senator SPECTER. Yes. Well, were you aware of it before Congress passed the provision when the Department of Justice urged its adoption?

Mr. SAMPSON. I don't remember being involved in that at all.

Senator SPECTER. OK. But you were aware of it after it was passed?

Mr. SAMPSON. I was.

Senator SPECTER. You saw the Attorney General on a daily basis?

Mr. SAMPSON. Yes, I did.

Senator SPECTER. Multiple times a day?

Mr. SAMPSON. Yes, sir.

Senator SPECTER. Talking to him about—discussing with him the plan to replace U.S. Attorneys?

Mr. SAMPSON. Yes. As I stated before, you know, I kept him generally apprised of—

Senator SPECTER. OK. So you were discussing plans to replace U.S. Attorneys, but you never talked to him about utilizing the provisions of the PATRIOT Act to circumvent the Senate?

Mr. SAMPSON. Oh, I think I did, but I don't think he ever liked the idea very much.

Senator SPECTER. Well, did he say "I don't like the idea"? Did he say "I reject the idea" or did he just listen to you and go off in another direction?

Mr. SAMPSON. I don't remember him specifically rejecting the idea until after he spoke with Senator Pryor in mid-December. And I don't remember him specifically rejecting the idea until sometime in January.

Senator SPECTER. So that he was still considering the idea. He rejected it sometime in January. Still considering it in December. Then we have these e-mails, where it's still very much on your mind, and as you say, to circumvent the Senate, and what you concede is in bad faith, and it is being considered at least for one U.S. Attorney, and you don't have any recollection of Ms. Miers, or the Attorney General, or anyone of that level of authority rejecting the idea?

Mr. SAMPSON. I remember the Attorney General rejecting the idea.

Senator SPECTER. But not in December. You said in January.

Mr. SAMPSON. I remember him rejecting it soon after he had a conversation with Senator Pryor.

Senator SPECTER. Well, you just—well, you just——

Mr. SAMPSON. Let me just say—

Senator SPECTER. You just said he rejected it in January, didn't you?

Mr. SAMPSON. I remember that he spoke with Senator Pryor.

Senator SPECTER. Now, wait a minute. I'm asking you, didn't you just say he rejected it in January?

Mr. SAMPSON. Senator, I'm not sure whether he rejected it in late December or in early January. I don't know.

Senator SPECTER. Well, did he—did he reject it after the December 19th e-mail, which is the critical day? That would be late December if he rejected it after that e-mail.

Mr. SAMPSON. I believe he did reject it after that e-mail. I must say, I don't recall specifically, but I don't think the Attorney General ever liked the idea. He thought it was a bad idea, and he was right.

Senator SPECTER. Well, we've gone round and round on that and you don't have any recollection as to his specifically rejecting it. There are no e-mails on it and it has become a matter of some concern as to how the PATRIOT Act was used to get this provision in, which circumvents the Senate, and then how it was actively used, at a minimum, in one district and without a rejection, and apparently under consideration by the White House. How far up we do not know, and it was not rejected by the Attorney General until you've had this exchange of e-mails.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

I've been flexible on the time in the second—second round. Whether this provision in the Patriot Act was a good idea or not, Mr. Sampson, as you can imagine, it had one—one effect: it brought about bipartisan unity in the House and Senate.

We rejected it 94 to 2 here in the Senate, even though originally we'd heard from the White House that they opposed that. And then I forgot what the vote was in the House, but it was 4 or 5:1. And these days it's kind of hard to get that kind of unanimity. We usually can't even get it on a motion to adjourn. But on this, I think Senators, once they had a chance to watch how it was used, how everybody used it, they wanted to put it back the way it was.

Senator Schumer, again, the chair of the appropriate subcommittee, I yield to you.

Senator SCHUMER. Thank you, Mr. Chairman. I'm glad we're back and the move to not let us continue has been withdrawn.

I'd like to, first, follow on a question that Senator Durbin touched on, and that is, as you told him, your original suggestion was that Mr. Fitzgerald, U.S. Attorney from Chicago—I guess that's the Northern District of Illinois—should be fired. Now, that was in 2005, you suggested that?

Mr. SAMPSON. I believe it was in 2006, but I don't remember specifically. And as I said to Senator Durbin, it was a piece of bad judgment on my behalf to even raise it. I regret it.

Senator SCHUMER. And you realize that if he were fired as U.S. Attorney, the general consensus is, he couldn't continue as Special Prosecutor.

Mr. SAMPSON. I don't know that as a matter of law, but I'm not sure.

Senator SCHUMER. That is what—I've inquired in a number of places about that issue, and that's what most people think.

Now, it's a little—it's a little confounding to hear that you suggested that. And as I said, I respect your coming here and coming here voluntarily, but it's really a harebrained scheme that would have just blown up even more than the firing of the U.S. Attorneys has in the administration's face. I guess you see that now.

Mr. SAMPSON. Frankly, Senator, I saw that the second the words crossed my lips.

Senator SCHUMER. Who did you suggest it to?

Mr. SAMPSON. Harriet Miers and Bill Kelley.

Senator SCHUMER. OK.

Anyone else?

Mr. SAMPSON. No.

Senator SCHUMER. And despite that they kept you in charge or put you—did Attorney General Gonzales ever know that you suggested that?

Mr. SAMPSON. No, I don't think so.

Senator SCHUMER. OK.

Did Harriet Miers remain comfortable with your supervising the firing of U.S. Attorneys after you made such a suggestion?

Mr. SAMPSON. I don't know.

Senator SCHUMER. Did anyone suggest that, maybe after that suggestion, you shouldn't be in charge of firing U.S. Attorneys?

Mr. SAMPSON. I don't remember anyone raising that.

Senator SCHUMER. Yeah. Because I have to tell you, and it relates to the issue we're talking about, here is the man doing an investigation, Karl Rove had been before the grand jury, I guess, the previous—in October of 2004. This is a major investigation and you're suggesting that the chief prosecutor be fired.

It leads me to think—first, it makes you think well, if it's OK to fire Fitzgerald, who's in the middle of a major investigation, maybe it's OK to fire some of these others. But, second, it does make me question your suitability for this job. Is that an absurd conclusion?

Mr. SAMPSON. As I stated previously, Senator, it was a lapse and I regretted it the moment I said it. And to my recollection, I even said "I withdraw that, that was inappropriate".

Senator SCHUMER. Would the same thought process that made you realize suggesting firing Fitzgerald maybe come to you with the firing of others, for whatever reason, who were doing other investigations, such as Carol Lam in San Diego?

Mr. SAMPSON. During this process I never associated asking these U.S. Attorneys to resign with a particular investigation or prosecution that they were handling.

Senator SCHUMER. And I take it—

Mr. SAMPSON. To the best of my recollection, I—I never associated those things in my mind.

Senator SCHUMER. And it takes—

Mr. SAMPSON. I was aggregating information from different people at the Department, but in my own mind I—that would be inappropriate.

Senator SCHUMER. Right.

Mr. SAMPSON. Public corruption cases are important to the Department, and didn't spare Republicans. That would be wrong. I don't remember ever associating those things in my mind.

Senator SCHUMER. I understand that. You've said that before. But didn't you realize when you suggested, even the thought of suggesting Fitzgerald be fired, that it would at least be perceived as trying to stop a major investigation? That's sort of plain as the nose on one's face.

Mr. SAMPSON. I don't know what else to say, Senator. I've expressed my regret for that.

Senator SCHUMER. OK. All right.

Let me just followup on something that Senator Kennedy questioned you about as well. I have a bunch of my own questions

which we'll have, I guess, the rest of the afternoon for. But I want to do some followups here while what you said is fresh in your mind.

You told Senator Kennedy that you wrote that Griffin's appointment was "important to Karl," meaning Rove, and you based that on an assumption. That's your words, assumption, to Senator Kennedy. Well, you're an intelligent man. What was the assumption based on? Any conversations with Rove? You said no already to Senator Kennedy. Conversations—let me ask you, could it be based on conversations with Scott Jennings?

Mr. SAMPSON. Yes. I believe the—I knew that Sarah Taylor and Scott Jennings were interested in Tim Griffin having the opportunity to serve as a U.S. Attorney. And when I wrote that e-mail in December, I assumed, because Sarah Taylor and Scott Jennings report to Karl Rove, that it was important to Karl.

Senator SCHUMER. Right. But then you would still—I just want to get the exact words here. You would still draft a memo that "I am not aware of Karl Rove playing any role in the Attorney General's decision to appoint Griffin to seem contradictory." I guess you can sort of parse the words very parsimoniously, I suppose, but the two do seem in contradiction, don't they?

Mr. SAMPSON. When I drafted the letter, which I think was in February of 2007, I remember thinking to myself, am I aware that Karl Rove is interested in Tim Griffin being appointed?

And as I drafted that letter, I thought to myself, I'm not aware that Mr. Rove is interested in Mr. Griffin being appointed. For all I know, based on what I remember, I'm not even sure he does support it. I knew that his people that worked for him were interested in that happening.

Senator SCHUMER. Well, wait a second.

Mr. SAMPSON. But I wasn't sure and I—and I drafted the letter that way. In addition, I was focused on the Attorney General's appointment of Mr. Griffin to serve as the interim, which I knew the Attorney General—which decision the Attorney General made independently in mid-December after talking to Senator Pryor, and so I drafted the letter that way.

Then I circulated it widely to make sure that others thought it was accurate. And as I sit here today, I think it's accurate based on what I remember, though I can't be 100 percent sure.

Senator SCHUMER. OK. So in other words, at one point you write that Griffin's appointment was "important to Karl". Later you write, "I am not aware of Karl Rove playing any role in the Attorney General's decision to appoint Griffin."

I think, and this is not jumping to any conclusion by any stretch, that most people, if they saw that, would say there's a contradiction there, that the second letter doesn't bear out the first e-mail.

And even assuming that you based your assumption on conversations with Scott Jennings, you were basing the assumption not on what Scott Jennings thought, but what Karl thought. That's what the first e-mail said, "it's important to Karl".

And so then to later say he didn't play any role, the very fact that you imputed—you decided to go along or to appoint Griffin. You imputed the Scott Jennings conversation to mean that Karl

thought it was important, and then later say Karl played no role in it, it seems directly contradictory.

I'm not the only one who thinks so, because there's the—sort of the—well, would you explain that for a minute? How—how can the two not be contradictory? Scott Jennings. You say, that means to me, "it's important to Karl", and then you say, Karl had no—Karl had—did not play any role.

Mr. SAMPSON. Senator, I don't really have anything to add to my—to my previous answer to that.

Senator SCHUMER. Well, I will say this, and I think this is in the record—if not, I'd ask unanimous consent—the letter of March 28 from the Department of Justice to Senator Leahy and myself in reference to the letter that Senators Reid, Durbin, Murray and I wrote you.

They think it's contradictory because they write, "on review, it appears that certain statements in the February 23rd letter are contradicted by Department documents included in our production in connection with the committee's review of the resignations of U.S. Attorneys. We sincerely regret any inaccuracy."

Seems pretty clear that the Justice Department itself—letter signed by Richard Hurtling, the Acting Assistant Attorney General, feels that there was an inaccuracy, an inconsistency, a contradiction, don't they?

Mr. SAMPSON. I really—

Senator SCHUMER. Well, doesn't the letter say that?

Mr. SAMPSON. I haven't seen the letter, Senator, and I wouldn't want to comment on a letter from the Justice Department. I don't work at the Justice Department.

Senator SCHUMER. Well, I'll let the—I'll let the public and the rest of the Committee and the other members of the Senate decide. I just want to reiterate the words.

Chairman LEAHY. The letter will be put in the record.

Senator SCHUMER. Thank you, Mr. Chairman.

"On review, it appears that certain statements in the February 23rd letter are contradicted," their words, not mine, "by Department documents included in our production in connection with the committee's review. We sincerely regret any inaccuracy." It seems that something isn't right.

Let me just ask you one other thing. Did Karl Rove have anything to do with your suggestion that Fitzgerald be fired?

Mr. SAMPSON. I don't remember. I don't remember anything like that. I don't think so. I don't remember—

Senator SCHUMER. Can you sort of search your memory and be sure of that?

Mr. SAMPSON. I don't remember ever speaking—I don't—Senator, I just want to answer to the best of my recollection. I don't remember ever speaking to Karl Rove about anything related to Patrick Fitzgerald.

Senator SCHUMER. How about to any of his people who worked in his office or worked for him?

Mr. SAMPSON. I don't remember any such conversation.

Senator SCHUMER. OK. Is it possible? Because you're not ruling it out.

Mr. SAMPSON. To the best of my recollection, no, I don't remember that.

Senator SCHUMER. Well, "I don't remember it" or "it's not possible"?

Mr. SAMPSON. I don't think it happened.

Senator SCHUMER. You don't think it happened would mean there's a chance that it's possible. Correct?

Mr. SAMPSON. Senator, I don't think it happened. I don't remember any such conversation.

Senator SCHUMER. OK. But you're not willing to say, unequivocally not.

Mr. SAMPSON. I don't remember any such conversation.

Senator SCHUMER. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator Hatch?

Senator HATCH. Well, I was certainly interested in those questions and your response as well, because I don't know how you can be any more forthcoming than you were.

Now, this claim that Carol Lam was removed because of her prosecution of Republicans has been repeated so many times that it seems to have taken on a life of its own. I ran into it just yesterday when I was on a panel with a member of the House in front of 400 editors in this country.

And since there has never been any evidence for this claim, maybe those making it think that repetition, rather than proof, will just make it so. Now, thank goodness prosecutors cannot get away with just telling stories without any real evidence.

Because that claim has been repeated so often, let me just ask you one more time, yes or no, did the Cunningham public corruption case or any other Member of Congress who might have been accused have anything whatever to do with recommending Carol Lam's removal?

Mr. SAMPSON. To my knowledge, it did not.

Senator HATCH. Another one of the former U.S. Attorneys, David Iglesias of New Mexico, has done a lot of media interviews since this flap has occurred and made some very public and specific claims.

Now, since you were head of this project and know more than anyone why he and others were asked to resign, I would like your response to the following. He told Tim Russert that he absolutely believes he was removed from what he called "political reasons". He was on Chris Wallace's program and said, "Performance has nothing to do with this. This is a political hit."

He wrote an op-ed in the New York Times in which he said he was fired for "not being political" and that this group of U.S. Attorneys "had apparently been singled out for political reasons."

Now, accusations and rhetoric like this are precisely why I think it's so important to clarify the standards the administration used in making their decisions in these matters. You were in charge of this project. You know better than anyone else the reasons why these U.S. Attorneys were recommended for removal. So let me just ask you directly, was the decision to—regarding Mr. Iglesias, was it a political hit?

Mr. SAMPSON. Not to my knowledge, Senator. I was not—I aggregated information from other people and—and I was not aware of Mr. Iglesias. I don't remember anyone. To my knowledge, it was nothing of the sort.

Senator HATCH. Was Mr. Iglesias removed because he refused to be political?

Mr. SAMPSON. Senator, as I said in my opening statement, the political- and performance-related distinction is sort of an artificial distinction in my mind based on the criteria that we use to look at candidates who—U.S. Attorneys who might be considered for replacement.

Senator HATCH. Were these—were these U.S. Attorneys singled out for political reasons?

Mr. SAMPSON. To my knowledge, they were singled out because they—because issues and concerns had been raised about them. Some of those things might be considered political, such as a failure to carry out the President's priorities.

Senator HATCH. Sure.

Mr. SAMPSON. But I'm not aware, and I wasn't aware, and I don't remember ever hearing that a factor for David Iglesias or any of the other U.S. Attorneys was that there needed to be an effort to influence a particular case for political reasons.

Senator HATCH. Was he asked to resign because of performance?

Mr. SAMPSON. Yes.

Senator HATCH. OK. As you know, the documents we received, including e-mail's—and by performance you mean the broad definition of performance, not the narrow one that some of our friends on the other side would like to have.

Mr. SAMPSON. Yes. Thank you for that correction.

Senator HATCH. And by "political" you mean the narrow reasons, from political, which our friends on the other side broaden greatly, the narrow reasons of interfering with an ongoing investigation or ongoing criminal trial.

Mr. SAMPSON. To my—

Senator HATCH. Is that a fair statement?

Mr. SAMPSON. I think so. To my knowledge, based on everything I observed and heard, Mr. Iglesias was not added to the list and asked to resign in an effort to influence a case for political reasons.

Senator HATCH. Well, let me make that even more clear. As you know, the documents we received included e-mails, which are conversations, which Mr. Iglesias asked if both Attorney General Gonzales and Deputy Attorney General McNulty would be referenced for future employment. They both agreed they would be references for him, even after this. Right?

Mr. SAMPSON. They did.

Senator HATCH. Yes or no?

Mr. SAMPSON. Yes.

Senator HATCH. Mr. Iglesias has now said in numerous media interviews, this was actually not an honest, straightforward request, but a little test. He says that there's simply no way they would agree to be a reference if he had actually been asked to resign for performance-related reasons.

The fact that they did agree to be references proves, as he put it in one interview, "that the true nature was political, not performance."

Now, you've already said that this category of performance was very broad and included more than competence or statistical measures, but such things as priorities, management, policy, et cetera.

Now, you were the Attorney General's Chief of Staff. Does the fact that he agreed to be a reference for Mr. Iglesias in any way prove that this was all about politics and not about performance?

Mr. SAMPSON. Senator, if I could say two things to that. The first, is that I think David Iglesias is a fine man and a skilled lawyer. And when he asked if the Attorney General would serve as a reference for him, I remember asking the Attorney General if he had any problem with that, and he didn't, and I didn't. And so I communicated back to Mr. Iglesias that the Attorney General would agree to do that.

With regard to your earlier question about politics and politics being involved, what I remember is that Mr. Iglesias was added to the list late in the process after folks at the Department went back and looked and asked the question, should—are there any others that should be added? And four close cases were added, including Mr. Iglesias.

Ultimately, three of those came off the list. And I recall, in conversation as we were finalizing the list, I remember asking what folks thought about keeping Mr. Iglesias on the list. I remember the Deputy Attorney General mentioning that that wouldn't create any problems with the home State Senators because he knew that Senator Domenici was not pleased with Mr. Iglesias' performance.

Senator HATCH. OK.

Mr. SAMPSON. So there was that—you know, that was considered in keeping Mr. Iglesias on the list.

Senator HATCH. Well, I would like to clarify something that was raised this morning regarding Monica Goodling, Counsel to the Attorney General, who—who has said that she will assert her constitutional right against self-incrimination.

Now, this morning one of my Democratic colleagues said that a jury in a civil case may draw a negative inference from someone asserting the Fifth Amendment right, but in response to Mrs.—Ms. Goodling's assertion, the Chairman issued a statement acknowledged that—acknowledging "that everybody has the constitutional right not to incriminate themselves with regard to a criminal conduct.

The American people are left to wonder what conduct is at the base of Ms. Goodling's concern if she may incriminate herself in connection with criminal charges if she appears before the Committee under oath." The Supreme Court has said over and over that no negative inference may be drawn.

In *Griffin* v. *California*, the court held that the Fifth Amendment quote for bids, either comment by the prosecution on the accused's silence or instructions by the court and such silence—that such silence is evidence of guilt."

Not only that, but if I'm not mistaken, a Federal prosecutor who makes such a comment would not only provide grounds for a mis-

trial, but might even be subject to investigation by the Office of Professional Responsibility within the Department of Justice.

Now, I'd like to read a portion of the editorial titled "Political Spectacle" from the Washington Post of March 22nd and ask if you think this is a reasonable or accurate description of the situation.

Mr. Chairman, I do ask consent to place this editorial titled "Political Spectacle" in the record.

Senator SCHUMER. Without objection.

Senator HATCH. Mr. Sampson, do you think that this is a reasonable or accurate description of the situation, that the President has the authority to remove U.S. Attorneys to make room for others to serve or because they were not pursuing the right priorities with sufficient vigor, that there is no evidence of anything nefarious in the dismissal process and no evidence that the administration is trying to short-circuit prosecutions? That is the conclusion of the Washington Post—of the Washington Post, and I'm wondering if you think, in your perspective, they got it right.

Mr. SAMPSON. Well, in my opinion, based on the information that I know and remember, I think that's fair.

Senator HATCH. All right.

Senator SCHUMER. Thank you.

Senator HATCH. Mr. Chairman, could I ask one other question?

Senator SCHUMER. Please. You're a little bit over, but not too bad.

Senator HATCH. I understand.

Our committee's Ranking Republican, Senator Specter, was on Chris Wallace's show on the Fox News channel about 10 days ago. And he said in his practical, common sense way, that the question is not whether the President had the authority to remove U.S. Attorneys, but whether he did it for "a bad reason". Senator Specter gave us an example, removing a U.S. Attorney for not responding to pressure to prosecute or pressure to not prosecute.

Now, once again, you were in charge of this project. You were in charge of the evaluation and recommendation process. Were any of the U.S. Attorneys asked to resign for such a bad reason, that they would not give in to pressure to prosecute or not prosecute a particular case?

Mr. SAMPSON. Based on what I observed and heard, that was not the case.

Senator HATCH. OK.

Senator SCHUMER. Thank you.

Senator HATCH. Can I clear up the one PATRIOT Act thing to the extent that I can?

Senator SCHUMER. OK. You have to go after this.

Senator HATCH. I appreciate you granting that.

Senator SCHUMER. Senator Hatch has one more question.

Senator HATCH. OK.

As you probably know, lots of claims have been flying around about a grand scheme in which the Justice Department sought to change the procedure in the PATRIOT Act for appointing interim U.S. Attorneys, and then outed U.S. Attorneys, so their replacement could serve indefinitely without Senate confirmation. That's something that bothers all of us up here, if that were true. Now, that's the story, as best I can recall it.

In your statement, you indicate that the decision to begin evaluating U.S. Attorneys for possible replacement was made at the end of 2004. Is that correct?'

Mr. SAMPSON. Yes, that's correct.

Senator HATCH. OK. Now, the documents we received from the Justice Department indicate that he discussion of policy reasons to change the procedure for appointing interim U.S. Attorneys began at least as early as July, 2003. Is that correct?

Mr. SAMPSON. I don't remember that.

Senator HATCH. OK.

Mr. SAMPSON. I don't know.

Senator HATCH. We also—well, that's what—that's what the documents we received say. We also know that the Justice Department did not ask that this change be made in the Patriot Act until late 2005, long after you began the process of reviewing ongoing U.S. Attorneys.

Now, was your project for evaluating U.S. Attorneys and recommending some for replacement motivated in any way by an initiative to change the procedure for replacing interim U.S. Attorneys?

Mr. SAMPSON. I think the initiative behind seeking that change, that amendment that was included in the PATRIOT Act, was an incident that occurred in December of 2005 with the U.S. Attorney appointment in the District of South Dakota.

Senator HATCH. Right.

Mr. SAMPSON. And there was, you know, a conflict there with the—with the district judge, who wanted to appoint a U.S. Attorney from outside the office who had not had a background check and was not authorized to see sensitive law enforcement information.

And I don't remember all the details of that, but my recollection is that that was the impetus to seek the amendment that ultimately was included in the Patriot Act conference. I really wasn't involved in that, though.

Senator HATCH. All right. Thank you.

Thank you, Mr. Chairman.

Senator SCHUMER. Thank you, Senator Hatch. And we're going to go in the order that we did the first time around, so Senator Feinstein is next.

Senator FEINSTEIN. Thank you, Mr. Chairman.

Mr. Sampson, who decided on who would be added to the termination list?

Mr. SAMPSON. I was the keeper of the list and so—

Senator FEINSTEIN. That's not my—I know that. That's not my question. Who made the decision who would be added to that list?

Mr. SAMPSON. It was based on an aggregation of input that came in to me, and then I added people to the list. And in—

Senator FEINSTEIN. So you made the decision of who would go on the list?

Mr. SAMPSON. In the—before the final decision was made by the Attorney General, I was the person who kept the list, and as information came in, I added people to the list based on the input of others.

Senator FEINSTEIN. You made a list. You aggregated a list and you took it to the Attorney General. Is that correct?

Mr. SAMPSON. Ultimately, in the fall of 2006, he approved the final list.

Senator FEINSTEIN. And when did he—when, exactly? Was that at the meeting 10 days before December 7th?

Mr. SAMPSON. I don't remember specifically. I think it was before that. But it was—

Senator FEINSTEIN. How did it go to the Attorney General, in what form?

Mr. SAMPSON. I believe it was, you know, done on an oral basis but I don't recall specifically.

Senator FEINSTEIN. And you told him who was on the list?

Mr. SAMPSON. I don't remember specifically. I might have shown him the list, I might have told him—I remember him directing me to make sure that there was a good process, that I had consulted with the Deputy Attorney General and others who would have reason to make an informed judgment about the U.S. Attorneys, and I assured him that I did, and would.

Senator FEINSTEIN. All right.

Now, on November 21st you sent an e-mail entitled, "Meeting for next Monday regarding U.S. Attorney appointments, AG, me," meaning you, "Monica, Deputy Attorney General, Moschella, Elston, Battle, 1 hour, AG's conference room." Do you recall that e-mail?

Mr. SAMPSON. I—I reviewed that e-mail in preparation for this hearing, and so I remember it now.

Senator FEINSTEIN. And you were present at that meeting that took place on the 27th?

Mr. SAMPSON. Yes.

Senator FEINSTEIN. And what took place at that meeting?

Mr. SAMPSON. I believe, to the best of my recollection, we discussed where things stood. I reported that I had been—I had coordinated with the White House and they were—that I'd asked them to make sure they touched all the bases that were relevant.

Senator FEINSTEIN. Had they signed off on the list of attorneys?

Mr. SAMPSON. I just don't remember the time line exactly, Senator.

Senator FEINSTEIN. Well, either the White House signed off on it at that point or did not.

Mr. SAMPSON. My recollection—

Senator FEINSTEIN. Did the White House sign off on the list before that meeting on the 27th?

Mr. SAMPSON. What I remember, is that the White House really didn't—I don't remember receiving input during this time period from the White House on who should be on the list and who should be off. I remember—

Senator FEINSTEIN. Well, that's not my question. You told me you had aggregated a list that you had selected, you had put together, and you took that list to the Attorney General and the Attorney General approved the list.

I then asked you in what form, and you said, oh, by conversation. So then I went to the meeting on the 27th and who was present at the meeting, and you said, I believe—I can ask the transcript be re-read—that the White House had approved the list.

Mr. SAMPSON. I don't remember. I don't remember when the Attorney General specifically signed off on the list or in the idea of proceeding and moving forward, and I don't remember specifically whether he made those approvals based entirely on an oral presentation or on seeing the list.

I do remember that he was concerned about process. He directed me to make sure that the senior leaders in the Department all agreed that these were the people that should be on the list. And that list—

Senator FEINSTEIN. Well, wait 1 second. Someone takes responsibility for this. This was not the usual order of business. In the last 25 years, only two U.S. Attorneys have been fired and they have never been fired in bulk to the tune of seven on 1 day, that's for sure. So this was unusual.

You, yourself, in e-mails to others, said that it was unusual. And you yourself pointed out the hazards. Someone approved that list. And what I thought you told me was, the Attorney General approved the list. Is that not correct?

Mr. SAMPSON. The Attorney General approved the list, Senator. I just don't remember specifically in this time period when he did that.

Senator FEINSTEIN. All right. But at the meeting on the 27th, what—what business was conducted for one hour on these appointments?

Mr. SAMPSON. I remember that I did have some concern about making sure everyone understood what was—what we were talking about doing here, what the recommendation was and what the decision would be.

And I remember calling the meeting to make sure that the Deputy Attorney General, the Attorney General, and the other people that you listed all were in agreement about the list and about going forward.

Senator FEINSTEIN. Was there dissent in the room?

Mr. SAMPSON. I don't remember any dissent.

Senator FEINSTEIN. So everyone was agreed to proceed. Was the date that the calls would be made mentioned?

Mr. SAMPSON. I don't remember specifically if that was discussed at the November 27th meeting, but I do remember having conversations about that. If I may, Senator, one other thing that I remember about the November 27th meeting.

I think, to the best of my recollection, is that after the meeting, after the Attorney General left, I remember the Deputy Attorney General calling me back, and I believe that it's then that he suggested that Kevin Ryan needed to be added to the list.

Senator FEINSTEIN. All right. So you had a list. Leaving that meeting, you had a list.

Mr. SAMPSON. Yeah.

Senator FEINSTEIN. And I believe you sent an e-mail then indicating who would call the Republican Senators. Only the Republican Senators of the States concerned were to be advised. None of the Democratic Senators of the States affected were to be apprised of what the situation was. Is that correct?

Mr. SAMPSON. Senator, the—

Senator FEINSTEIN. It is correct.

Mr. SAMPSON. Senator, it is correct. The view of the assembled group was that Democratic Senators wouldn't have a view about the notion of replacing one Republican appointee with another Republican appointee. It was a lack of foresight.

In hindsight, we obviously should have thought of that. But I remember, the discussion at the time was that we needed to speak with the Republican home State Senators because it was replacing—because the idea was to replace one Republican appointee with another Republican appointee.

Senator FEINSTEIN. But just as a courtesy, it wouldn't occur to anybody to pick up the phone and call a Senator, particularly in a State where you're replacing two U.S. Attorneys from two of the largest cities in the State.

Mr. SAMPSON. In hindsight, Senator, we obviously should have done that.

Senator FEINSTEIN. OK.

There was a hiatus in e-mails from the 15th to the 27th. It's my understanding that the President was traveling and that the Justice Department was awaiting White House approval during that period of time, that you'd asked for approval and that it had not been forthcoming. Is that correct?

Mr. SAMPSON. To the best of my recollection, I think that's what was going on. There was the Thanksgiving holiday during that time as well.

Senator FEINSTEIN. So the meeting on the 27th was following Thanksgiving and I would assume that you had that approval at that time to proceed.

Mr. SAMPSON. I don't remember. I believe—I remember that there is a document that has been produced to the Senate that shows the White House communicating back that we had the approval to proceed, but I think that was later. I don't remember here. I think that was maybe on December 4th.

Senator FEINSTEIN. To the best of your recollection, who in the White House would be responsible to sign off on this—this effort?

Mr. SAMPSON. I don't know. I communicated that with Bill Kelley, the Deputy Counsel to the President, and just suggested to him that he, you know, let us—let us know.

Senator FEINSTEIN. You weren't curious as to who would—who would sign off on it?

Mr. SAMPSON. I thought perhaps it would be Harriet Miers, the Counsel to the President, but I—but I wasn't sure, and I don't know.

Senator FEINSTEIN. OK. Is my time up?

Senator SCHUMER. More than. Two minutes. You're 2 minutes over.

Senator FEINSTEIN. I beg your pardon.

Senator SCHUMER. Do you want to ask one other?

Senator FEINSTEIN. No. I beg—that's fine. I'll wait. Thank you.

Senator SCHUMER. We don't have—I don't know why, but we don't have too many of these and it flops around, so it's hard to see.

Senator FEINSTEIN. I don't—can't see. Thank you.

Senator SCHUMER. Senator Sessions?

Senator SESSIONS. Thank you.

Well, I think U.S. Attorney Whitehouse had some good questions this morning—Senator, now. But I do think there was some lack of comprehension on the part of the team around the Attorney General and the Attorney General himself, who also never had any experience in actually being a U.S. Attorney or in the Department of Justice and understanding why these issues are sensitive and difficult to do.

I suspect that anyone at the White House or the President would think, of course I can replace a U.S. Attorney. I want to get rid of a U.S. Attorney, I don't have to answer to Congress. I can just replace them. And, technically, he can. But there's more to it than that, as we've seen. So, that's part of it.

I also am troubled by a Department of Justice official asserting that they can't tell the truth because it mind tend to incriminate them. I know you can't say that in a trial. They used to. You would call the witness on the stand and make them take the Fifth in front of the jury, and they've all said you can't do that any more.

But my recollection, Senator Whitehouse, is that a police officer who takes the Fifth is off the force, or at least off the streets. Did I read that this individual that took the Fifth is on administrative leave now? Did I see that in the paper?

Mr. SAMPSON. Senator, I don't—I've been gone from the Department for a couple of weeks now.

Senator SESSIONS. Well, I think I may have seen that. That probably is appropriate. I think that's what happens if you're investigating a police officer and they take the Fifth. So these are matters that have cast a cloud over the Department, and it's very sad.

I don't think that we have people here with a kind of malicious intent to do wrong that has been suggested. I reject that. But a series of misjudgments in overreaching and pushing harder than should be, perhaps, or something has resulted in a situation that's not healthy.

Again, I just was noticing this e-mail from Colin Newman, the White House counsel—I guess Harriet Miers is shot—said to David Leech, January 1905—this is when you really should have been talking about who's going to be replaced. This is early in the second term.

"Karl Rove stopped by to ask you," talking about David Leech, "roughly asked how we planned to proceed regarding U.S. Attorneys, whether we're going to allow all to stay, request resignations from all and accept only some of them, or selectively replace them, et cetera."

Now, that doesn't indicate to me he was trying to dictate to the Department of Justice how the U.S. Attorneys should be handled, does it to you?

Mr. SAMPSON. I remember it coming in as a question, as an inquiry.

Senator SESSIONS. Now, Carol—on the question of Carol Lam, I want to be clear about this. She seemed to be a very impressive U.S. Attorney and very capable lawyer. But it does appear to me her priorities were not the priorities of the Department of Justice.

And my impression, when I was U.S. Attorney, was there was always quite a few out there that thought they knew better than ev-

erybody else what they wanted to do in their district. Sometimes they were right, sometimes they weren't right.

I've often thought they were given too much rein. I mean, these people are given money from the taxpayers of America to execute policies and they're not accountable to anybody, really, but the President. And they have to be held to account to utilize that money consistent with legitimate policies that the President has promised in his campaign, or the people want.

Her prosecutions in 2004 over immigration cases—and these were serious immigration cases, not just border crossings. These were people who were involved in smuggling and things of that nature—feel from 2,054 to 1,453, and that's more than a quarter, more than 25 percent.

Her prosecutions for firearms offenses are just stunning to me: 2002, 24, 2003, 17, 2004, 18, 2005, 12, 2006, 17. Southern District of Texas was averaging, at that time, let's see, about 200 a year. The Southern District of New Mexico, over 100 a year. The Southern District of Arizona, almost 200 a year.

So it seems to me that Operation Safe Neighborhoods, which emphasized, from the President on down, it was a clear priority of Department of Justice, was not being effectively carried out in the Southern District of California, which I'm not surprised that the Senator wrote a letter—Senator Feinstein wrote a letter asking about some of these things, an inquiry.

Other Congressmen wrote letters about this. Not that she wasn't a good person or an honorable person, but her priorities weren't what other people thought they should be. Why did you all write a letter to defend her?

Mr. SAMPSON. I don't remember, Senator.

Senator SESSIONS. And who wrote it?

Mr. SAMPSON. I remember concern being expressed about that office along the lines of what you've set forth with regard to gun prosecutions and border enforcement. And I don't remember specifically, that letter, in response. I believe that there were some incoming letters from Members of Congress and a response was prepared that did its best to defend the work of the Department.

Senator SESSIONS. Well, I think that's a typical reaction of the Department of Justice, to defend itself against criticism when perhaps you should examine the validity of the criticism. It sounds to me like it was fairly legitimate.

Now, I was curious about this e-mail on February 7th of this year from Brian Roehrkasse to Kyle Sampson. The Morning Clips. The subject is "The Morning Clips". He read the newspaper that morning, got the summary newspaper.

"The Attorney General is upset with stories on the U.S. Attorneys this morning. He thought some of the DAG's statements were inaccurate." The Deputy Attorney General.

What did he think was inaccurate about that?

Mr. SAMPSON. It would be helpful to me if I could see a copy of that e-mail, Senator. I apologize.

Senator SESSIONS. That's all it said. Well, it was from Brian to you and Tasia Scolionas, dated February 7th.

Mr. SAMPSON. To the best of my recollection, the Attorney General was traveling overseas and Brian Roehrkasse was a deputy in

the Office of Public Affairs who was traveling with him. And the Attorney General had been out of the office for a week and was learning for the first time in the newspaper clips about the Deputy Attorney General's testimony.

Senator SESSIONS. Was it the question that he had stated that all had been terminated for office procedures or was it a question—was that the question, he thought all were, and Deputy Attorney General McNulty, apparently telling the truth, said that really there wasn't performance problems with Mr. Cummins in Arkansas, it was just that they wanted to make a change.

Mr. SAMPSON. What I remember is that, prior to the Deputy Attorney General's testimony, the position of the Department was that there would be no public discussion about the reasons that the U.S. Attorneys were asked to resign. And I think because the Attorney General was traveling overseas, he was caught by surprise that the Deputy Attorney General, in his testimony, had said "performance related reasons".

Senator SESSIONS. My time is up, Mr. Chairman. I'm sorry.

Senator SCHUMER. Thank you, Senator Sessions.

Senator Cardin?

Senator CARDIN. Thank you.

Who added David Iglesias to the list?

Mr. SAMPSON. I'm sorry, Senator?

Senator CARDIN. Who was responsible for your consideration of David Iglesias to be added to the list?

Mr. SAMPSON. What I remember, is that sometime after October 17th the—an effort was made to go back and look at the list of U.S. Attorneys whose 4-year terms had expired.

Senator CARDIN. Effort made by whom?

Mr. SAMPSON. An effort made by myself, the Deputy Attorney General, his Chief of Staff, Monica Goodling, perhaps others who were in this group.

Senator CARDIN. Four additional names came forward?

Mr. SAMPSON. Including Iglesias.

Senator CARDIN. And one went beyond that.

Mr. SAMPSON. Ultimately—

Senator CARDIN. Who suggested that David Iglesias remain on the list that would be ultimately recommended for termination?

Mr. SAMPSON. I don't—what I remember, Senator, is that the discussion was, should each of these four stay on the list, and for various reasons the other three came off. And in discussing Iglesias, all I remember is the Deputy Attorney General saying Senator Domenici won't mind if he stays on the list. Senator Domenici's dissatisfied with him.

Senator CARDIN. And the four that were selected. How did you come up with those four? Did you just go to your—your master list that was in your drawer and circle four names? How did you come up with these four being the next to be considered?

Mr. SAMPSON. I think they were all close cases. They were sort of—

Senator CARDIN. Close cases because of performance?

Mr. SAMPSON. Because there weren't specific policy conflicts or significant management challenges. They were close cases because

they were four U.S. Attorneys where the aggregation of information coming in was, we can do better here, a change would be beneficial.

Senator CARDIN. And Mr. Iglesias remained on the list because you felt that the Senator would not object?

Mr. SAMPSON. He remained on the list because nobody suggested that he come off.

Senator CARDIN. Who suggested that—what—who were—who was there really promoting that he remain on the list in your—among your group?

Mr. SAMPSON. I don't remember anyone promoting that he remain on the list. The default was sort of the opposite, that he was a close case, along with the other four, and that's how he came on the list. And then the question was, who of these should stay on the list? The effort was to winnow the list to the smallest amount where everyone, in a consensus fashion, agreed.

Senator CARDIN. You've indicated that when the recommendations were made to the Attorney General, that there was an additional name that was added after the meeting.

How many of the recommendations you made were turned down by the Attorney General?

Mr. SAMPSON. I don't remember any of them being turned down by the Attorney General.

Senator CARDIN. Were there additional names that you wanted included on the list that did not get suggested by the Attorney General?

Mr. SAMPSON. I don't remember the Attorney General suggesting names to go on or to come off.

Senator CARDIN. Did you—did you want additional U.S. Attorneys asked to resign that were not ultimately asked to resign?

Mr. SAMPSON. The way the process worked, is that if any one of those people involved in developing the list, the Deputy Attorney General—

Senator CARDIN. Were you responsible for the list going to the Attorney General?

Mr. SAMPSON. Yes, I believe I was.

Senator CARDIN. Was there any names that you wanted on that list that didn't get on? Were there any names that were on that—that you wanted on that list that didn't get on that list?

Mr. SAMPSON. It just wasn't like that. It wasn't that I wanted names on the list. I was the aggregator of information that came in from a variety of sources.

Senator CARDIN. And other than—

Mr. SAMPSON. I don't remember any one specific U.S. Attorney being on the list because I personally thought they should be on the list.

Senator CARDIN. Let me try to go through this because I'm having a hard time following the sensitivity to the point that you bring up over and over again when asked by Senator Hatch whether you believe there was any information that these requests had any impact on pending investigations or decision not to investigate. And you said, to the best of your knowledge, you didn't believe that was the case.

Now, you also acknowledged that there were political considerations, political considerations meaning support within the district of the U.S. Attorney. So, there were political considerations.

You also acknowledged that there were sensitive political corruption cases in these jurisdictions. In one case, it was being expanded, which the Republicans weren't happy about. In another case, there were prosecutions not brought that the Republicans were unhappy about.

Now, you acknowledged in Chicago the insensitivity of your comment. Didn't any red flag go off in your mind that maybe there is an inappropriate political circumstances that's being in your equation that at least should be investigated a little bit before you take the responsibility to recommend to the Attorney General the dismissal of a U.S. Attorney?

Mr. SAMPSON. In my mind, Senator, I did not make that connection. It was a lack of foresight. I was gathering information from people who had served as U.S. Attorney, from people who were senior officials in the Department, and—but all I can say is what I remember and what I know, and I think that I failed to consider that sensitivity of that perception as I—as I told you before.

Senator CARDIN. Well—and now we've talked about the Chicago circumstance, which—I'm just concerned that you put in your statement that the limited category of improper reasons includes an effort to interfere with—interfere with or influence the investigation or prosecution of a particular case for political or partisan advantage. That's in your statement. That's in your written statement.

Mr. SAMPSON. I agree with that.

Senator CARDIN. What safeguards did you have in the process to make sure that wasn't being done?

Mr. SAMPSON. Senator, as I testified to you before, I don't feel like I had any safeguards in that process. I was the aggregator of information. I wish that I would have thought of that eventuality. I wish that someone else in the process would have thought of that eventuality. I failed to do that and that's one of the reasons I resigned.

Senator CARDIN. Well, I appreciate your frankness in that regard. I just find it very difficult to understand that you understand that it would be inappropriate to dismiss a U.S. Attorney for that reason, and yet you are acknowledging to us there is at least information that has been presented that would raise that issue.

And were there discussions among the senior advisors when you were discussing this as to whether there was any impact on a pending investigation? Did that come up in your discussion? Was there discussion about what was going on in California or New Mexico?

Mr. SAMPSON. I don't remember any such discussion. To my knowledge, that was never considered.

Senator CARDIN. But you did consider the local political issues in those jurisdictions.

Mr. SAMPSON. To my knowledge, Senator, I personally didn't consider that, but I generally—

Senator CARDIN. I thought you told me earlier, to answer a question, that you did, that that was one of the considerations. You had

gotten—when I asked you about the local support with government, you said, yes, we had gotten calls from Senators and we had gotten calls that people were upset. I thought you were—you said you had that information.

Mr. SAMPSON. The Department had that information. Let me—

Senator CARDIN. The Department means you. You were the person who got all the information together.

Mr. SAMPSON. Others in the Department had that information and I think I may have generally been aware of that information. I don't remember whether, at the time, I considered that information.

And as I said before, I don't remember ever hearing or observing anything about—that connected the notion of asking a U.S. Attorney to resign with influencing a particular case for political reasons.

Senator SCHUMER. Senator?

Senator CARDIN. I've been told, even though I have 7 minutes remaining, that my time really has expired.

Senator SCHUMER. I think this is your third seven minutes. We will have a third round. Mine is going to be a little longer.

Mr. SAMPSON. Mr. Chairman? Excuse me, Mr. Chairman.

Senator SCHUMER. Would you like to take a break?

Mr. SAMPSON. Would that be OK?

Senator SCHUMER. Could we just go through Mr. Whitehouse? Because he's been waiting.

Senator WHITEHOUSE. There's no need for that if you prefer to take a break now.

Senator SCHUMER. Do you want to take the break now?

Mr. SAMPSON. If I could take a break, that would be good.

Senator SCHUMER. OK.

Mr. SAMPSON. Thank you.

Senator SCHUMER. We will resume at 4:10.

Mr. SAMPSON. Thank you.

[Whereupon, at 4:03 p.m. the hearing was recessed.]

AFTER RECESS

[4:14 p.m.]

Senator SCHUMER. OK. The hearing will resume.

Thank you, Mr. Sampson. I know it's a long day. We've a lot of questions. But if we can get them all done today, we don't have to do this again.

Senator Whitehouse?

Senator WHITEHOUSE. Thank you, Mr. Chairman.

Mr. Sampson, wouldn't you agree that it's a little hard to tell whether the U.S. Attorney has, in fact, rejected your Patriot Act strategy when the "pledge to desire a Senate-confirmed U.S. Attorney" is, in fact, a part of that gumming to death strategy, and Tim Griffin is, in fact, still in place in Arkansas?

Mr. SAMPSON. Senator, I think you'd have to ask the Attorney General. What I believe, is that he decided that was a bad idea and continued in conversations with Senator Pryor, asked Senator Pryor if he would support Mr. Griffin for nomination.

Senator Pryor said no, and Mr. Griffin was withdrawn. And I've left the Department, but I understand and would hope that they're working with Senator Pryor to get a Senate-confirmed—

Senator WHITEHOUSE. But you—

Mr. SAMPSON.—a person selected who could be nominated and confirmed.

Senator WHITEHOUSE. But you do concede that pledging to desire a Senate-confirmed U.S. Attorney was part of that gum to death strategy?

Mr. SAMPSON. Senator, I think after I drafted that—I believe you're referring to a December 19th e-mail.

Senator WHITEHOUSE. Yes.

Mr. SAMPSON. After that, the Attorney General made a decision—the Attorney General made a decision that the administration would be committed to having a Senate-confirmed U.S. Attorney in every Federal district.

Senator WHITEHOUSE. Yeah. And my point is, that's exactly—

Mr. SAMPSON. And I understand that to be—

Senator WHITEHOUSE.—consistent with pledging to desire a Senate-confirmed U.S. Attorney, which is part of your strategy. It's sort of a conundrum, isn't it?

Mr. SAMPSON. As I said, that was a bad idea from staff. It was not adopted by the principals.

Senator WHITEHOUSE. Let me ask a question that is very, very important, to me, anyway. It has to do with the statement in your testimony that the limited category of improper reasons for removal of a U.S. Attorney includes an effort to interfere with, or influence, the investigation or prosecution of a particular case for political or partisan advantage.

Now, I think everybody in this room can agree that that would be improper. But not only would that be improper, it would be wildly improper and well beyond the boundary distinguishing a proper from an improper reason. Wouldn't you agree?

Mr. SAMPSON. I agree.

Senator WHITEHOUSE. And, in fact, even if there were no particular case involved, if you were removing a U.S. Attorney simply because they didn't have the right sort of partisan tone with no particular case in mind, wouldn't that injection of partisan spirit into the office of the U.S. Attorney also be improper?

Mr. SAMPSON. Senator, I don't—I don't know. I don't feel comfortable commenting on the hypothetical that you pose. I mean, I don't know. The former—the—what I set forth in my opening statement as being improper, I believe, is improper.

Senator WHITEHOUSE. But there's a lot more that's improper than that. That's not the only thing that's improper in this consideration, that you don't have to attach a particular U.S. Attorney to a particular case, to a particular partisan bias, before you have an impropriety in the administration of justice, do you?

Mr. SAMPSON. I don't know, Senator.

Senator WHITEHOUSE. You don't know?

Mr. SAMPSON. Senator, I'm not 100 percent clear about the—about what you're getting at.

Senator WHITEHOUSE. Well, let me leave this point with the closing lines of Justice Jackson's speech when he was Attorney Gen-

eral, who said, "The citizens' safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches this task with humility."

I think any attempt to inject factional purposes is an impropriety, and I would wish that you and the Department of Justice would both agree with that.

My question earlier—it's been brought up since—with respect to Monica Goodling, is that I'm a little surprised that she's still there after having taken the Fifth. And I'm concerned about the signal that's being sent out of the Department. Let me give another example, because you were there at the time. I know you haven't been there for this.

Michael Elston made a call to Bud Cummins, that Bud Cummins described as having a threatening undercurrent to it. The Department denied that the call took place. Before us, Bud Cummins produced a contemporaneous e-mail that pretty well confirmed that the call actually did take place.

And when I pressed the matter a little further, every single one of those four U.S. Attorneys allowed as how, if that type of a contact had been made to a witness of theirs before a grand jury, they would open an obstruction of justice case to inquire further.

Now, I'm not suggesting that Michael Elston has obstructed justice with his call. I don't want to go that far. But I do want to inquire whether, in response to both the Department's statement that this was a fabrication, which as proved wrong by the subsequent appearance of the e-mail, and the very fact of the call having been made in the first place in very untoward circumstances, I think you might concede, has any action of any kind in the time that you were there, was it considered or taken with respect to Michael Elston over this incident? Was there any wood-shedding? Was there any disciplinary action? Was there any consequence whatsoever from this?

Mr. SAMPSON. I don't remember any.

Senator WHITEHOUSE. OK.

To followup on your conversation with Senator Feinstein and the immigration issue and the real problem we have right now with Carol Lam, it strikes me that when the Chief of Staff to the Deputy Attorney General of the United States has a real problem, that's a matter of pretty significant weight. And when he says he has a problem right now, that temporal element is also pretty significant.

And I ask you, with respect to the immigration prosecutions undertaken by her district, what was the problem right now that fits into that temporal urgency that is described in your e-mail? What, right now, made something different about the immigration thing?

Mr. SAMPSON. What I remember was going on at that time was there was a robust debate going on in the Congress about comprehensive immigration reform and a robust debate going on within the administration about how the administration could show that we were doing everything we could with regard to securing the border. I remember—

Senator WHITEHOUSE. So the problem was not so much with a change in her conduct as with outside atmospherics that affected your view of the importance of the immigration issue.

Mr. SAMPSON. I remember, the Attorney General felt some exposure because the Department was being criticized soundly for not doing enough to enforce the border, and there was a debate going on in the administration about how to show that the administration was doing more to enforce the border.

And at that very time there was discussion between the Department and the White House about the notion of militarizing the border. In fact, on May 15th the President announced that he was going to send National Guard troops to the border.

I remember also that—I believe around that time, I think even on May 11th, there was a meeting that had been scheduled to meet with House Republicans who'd expressed concern about border enforcement with either the Attorney General or the Deputy Attorney General.

I don't know that that meeting every happened, but I remember at the time there was real discussion in the senior management offices of the Department of Justice about how we could fix that problem, how we could get some immigration deliverables. And I remember at our senior management meeting sometime in the weeks before that, there was a specific discussion about the U.S. Attorney's office in San Diego.

And Bill Mercer, who, I think at the time was the Principal Associate Deputy Attorney General, came to the meeting having pulled a bunch of statistics from the Sentencing Commission comparing the offices along the Southwest border, and was adamant about Carol Lam and that office's failure to understand what was going on politically and reorient resources to bring more border enforcement, notwithstanding the fact that she had been the recipient of a lot of criticism from Members of Congress.

And there was a view expressed at the time that Ms. Lam just had her own independent views about what kind of cases she wanted that office to work on and—and had not pushed her office to follow the Attorney General's priorities with regard to immigration, and also in the background of that was with gun cases.

Senator WHITEHOUSE. May I ask one last question? I know my time is over.

Senator SCHUMER. Yes.

Senator WHITEHOUSE. And it's really more of an observation than a question, but you've left the Department so there's no point quarreling with you about it.

But with respect to this question of U.S. Attorney independence, I just want to point out that it's my very distinct and very deeply held conviction that the independence of the U.S. Attorneys collectively from the Department of Justice, to a reasonable degree, is an asset in the administration of justice in this country. And the way that I have seen this handled is highly destructive of that asset. That's my two cents' worth. Thank you.

Senator SCHUMER. Worth more than two cents, Senator. OK.

We're beginning the third round. We only have three of us here. I know Senator Specter is returning. We're going to do 10-minute rounds, but I'll tailor, it because Senator Feinstein has to leave at 5, to make sure she gets her third 10 minutes in. OK.

Mr. SAMPSON, I want to talk a little bit about, now, replacements. You had said in your written testimony today, "with the ex-

ception of Bud Cummins, none of the U.S. Attorneys was asked to resign in favor of a particular individual who had already been identified to take the vacant spot." The statement, however, is inconsistent with your views expressed in e-mail exchanges that took place as far back as last fall.

In an e-mail on September 13th—this is OAG 34—didn't you write to Harriet Miers that you were "only in favor of executing on a plan to push some U.S.As out if we really are ready and willing to put in the time necessary to select candidates and get them appointed. It will be counterproductive to DOJ operations if we push U.S.As out and don't have replacements ready to roll immediately." Those are your words. Is that correct?

Mr. SAMPSON. It would be useful to me if I could see that document, Senator.

Senator SCHUMER. Yes. It's an e-mail of September 13, 2006. OK. So here's all I want to ask you. You don't have to study the document too—it is your document, though, right? You recognize it?

Mr. SAMPSON. Yes. The—the—

Senator SCHUMER. Yes.

Mr. SAMPSON. The middle e-mail on the e-mail chain is mine. Senator SCHUMER. Correct. OK.

Here's what I want to ask you. Did you or did you not have in mind specific replacements for the dismissed U.S. Attorneys before they were asked to resign on December 7th, 2006?

Mr. SAMPSON. I personally did not. On December 7th, I did not have in mind any replacements for any of the seven who were asked to resign.

Senator SCHUMER. Did anyone around you that you were aware of?

Mr. SAMPSON. I don't remember anyone having anyone in mind.

Senator SCHUMER. Really? You're sure?

Mr. SAMPSON. Yeah. In fact, I remember, Senator, as we were finalizing the list, I remember saying, not knowing who will be the replacement, do we still want to go forward with asking these seven to resign?

Senator SCHUMER. Now, the Department admitted that you replaced Bud Cummins to give a chance to Tim Griffin. Right?

Mr. SAMPSON. Tim Griffin was—

Senator SCHUMER. Was before. That was not December 7th.

Mr. SAMPSON. That's right. That was before. And the White House had expressed interest in Mr. Griffin having the opportunity to be appointed.

Senator SCHUMER. And you were aware that that was the case?

Mr. SAMPSON. Yes.

Senator SCHUMER. OK.

And isn't it a fact that the reason given by Associate Attorney General Bill Mercer to Dan Bogden and Paul Charlton that they were being fired, is because they had a better replacement for them?

Mr. SAMPSON. I was not a party to that conversation. I—I did prepare talking points for Mr. Mercer to use if he was contacted by any of the U.S. Attorneys who had been asked to resign.

Senator SCHUMER. Well, they claim—each of them claims that was the reason given. You have no reason to doubt that?

Mr. SAMPSON. I don't know one way or the other.

Senator SCHUMER. OK.

So here we have—and was there a pool of identified possibilities for some spots, a group? It might be one of these six, one of these four, one of these two.

Mr. SAMPSON. To my knowledge, not as of December 7th. I did not have any pool of replacement candidates in mind.

Senator SCHUMER. OK.

And did you identify replacements for any of the—OK. This is really the same question that you've answered. OK.

Now, you mentioned before that there were some people you recommended be removed to warrant. Can you give us those names?

Mr. SAMPSON. I think I didn't recommend that they be removed. As the list was developed, they came—people came on the list and went off the list.

Senator SCHUMER. OK.

Mr. SAMPSON. And what I remember—

Senator SCHUMER. Well, give me the couple of names of people who were on the list and then removed from the list, and the reason why.

Mr. SAMPSON. I guess I would hesitate to do this in this open setting, name additional U.S. Attorneys who we considered removing from the list. If—if you insist, I will do that.

Senator SCHUMER. I will insist. I understand the sensitivity, but this is serious stuff.

Mr. SAMPSON. I understand.

Senator SCHUMER. And the—and the—

Senator SPECTER. Well, Mr. Chairman, if I might interject, may we have a clarification as to precisely what Mr. Sampson has been asked and what he's about to testify to?

Senator SCHUMER. Yes. What he has been asked, is names who were on the list at one point but then removed from the list. I think that's very important to know.

Senator SPECTER. These are people on the list to be asked to resign as U.S. Attorneys?

Mr. SAMPSON. Some of whom are—some of whom are current U.S. Attorneys

Senator SCHUMER. Yes

Senator SPECTER. I think that's fair

Senator SCHUMER. Thank you, Mr. Ranking Member. Go ahead, Mr. Sampson

Mr. SAMPSON. At one point in time the U.S. Attorney for the Middle District of North Carolina was on a tentative preliminary list that I had

Senator SCHUMER. Who was that?

Mr. SAMPSON. Her name is Anna Mills Wagoner.

Senator SCHUMER. Why was she removed?

Mr. SAMPSON. A suggestion was made by Ms. Goodling that she be removed. It's in one of the e-mails and says that she recommends that the U.S. Attorney in the Western District of North Carolina be removed.

That was a misprint. It was really the Middle District of North Carolina. And Ms. Goodling suggested that she be removed because Ms. Goodling was aware that Ms. Wagoner had a good PSN pro-

gram and had done some good work in preparing and organizing a gang conference. That's to the best of my recollection

Senator SCHUMER. Any others?

Mr. SAMPSON. After October 17th, I recall that four additional U.S. Attorneys were added to the list, including David Iglesias, but ultimately three of those came off.

Senator SCHUMER. And who are they?

Mr. SAMPSON. Those are all redacted in one of the documents, and I think I remember who the three are. I have not had the opportunity to review unredacted documents, so I hesitate, again, to name these because I—it's to the best of my recollection.

Senator SCHUMER. Well, here's what I'd like you to do. Name them, and if you find—if you go back and look at the documents or whatever else in terms of your recommendation, you are incorrect, you can notify the Committee and we'll change the record.

Senator SPECTER. Well, Mr. Chairman, may I suggest that if the witness knows the identity, as I've already agreed, fine. But if he doesn't know them—

Senator SCHUMER. OK

Senator SPECTER.—if he's speculating or his recollection is hazy, you're going to be identifying people who are inappropriately—

Senator SCHUMER. Let's do this.

Mr. SAMPSON. That's precisely my concern, Mr. Chairman.

Senator SCHUMER. Let's do this. I understand that. Why don't we ask you to go look and see if you have the document.

Mr. SAMPSON. I don't have it under—I have the document in its redacted form.

Senator SCHUMER. Right.

Mr. SAMPSON. And so I think I know who those three were, but I'm not 100 percent sure.

Senator SCHUMER. Why don't you go try to figure out who they are, and I would ask you, in a couple of days in writing, to submit names that you're sure of in addition. Would you be willing to do that?

Mr. SAMPSON. I could do that. Yes, I could do that. Yes, sir.

Senator SCHUMER. OK.

I just—for any of these people who might have been replaced but weren't, were there any people being groomed for those jobs?

Mr. SAMPSON. To the best of my recollection, no. If I'm correct about the ones I'm thinking about, the answer is no.

Senator SCHUMER. OK.

And did Harriet Miers agree with you that it would be counterproductive to fire attorneys unless replacements—you had replacements in mind?

Mr. SAMPSON. I don't remember her views one way or the other

Senator SCHUMER. All right.

The thing I just find terribly befuddling about all of this—worse than befuddling, confounding—is this is such serious stuff, to fire U.S. Attorneys, do it the way you did it, and there's so little of a system, so little recollection by you, the center of it all, no real file, no—no knowledge of who was part of the system of rejecting it.

It—it's a pretty severe indictment of the Justice Department in which you served, even if everything you're saying is true, because when you do something like this there ought to be a careful sys-

tem, and there doesn't seem to be. It seems sort of ad hoc. It seems that records weren't kept. It seems that the story keeps changing. It's terribly confounding. But you don't have to—I'm just making that comment myself.

Here's something else I'd like to ask you. When we talked earlier, you said that the Department, including you, had "mishandled the preparation for Mr. McNulty's testimony." That's your quote. And the Department of Justice acknowledged that Mr. McNulty's testimony was incomplete, correct?

Mr. SAMPSON. I don't—I don't know that

Senator SCHUMER. OK

Mr. SAMPSON. I think I had—I left the Department and I'm not aware what they've acknowledged or not acknowledged

Senator SCHUMER. They have.

Mr. McNulty testified for this Committee on February 6th. You watched his testimony, did you not?

Mr. SAMPSON. I did not watch his testimony.

Senator SCHUMER. So you're not familiar with his testimony at all?

Mr. SAMPSON. I remember reviewing portions of the transcript of his testimony later in preparing—

Senator SCHUMER. Right.

Mr. SAMPSON.—Congressional correspondence, but I didn't watch his testimony and I didn't review the entirety of his transcript, and I only reviewed parts of it later.

Senator SCHUMER. When you reviewed parts of it, when you heard/read about what happened in the newspapers, secondhand accounts, didn't you realize that his testimony was incomplete?

Mr. SAMPSON. I didn't realize it.

Senator SCHUMER. You didn't?

Mr. SAMPSON. I didn't at the time

Senator SCHUMER. Can you explain that?

Mr. SAMPSON. I didn't focus on it. The Deputy Attorney General came back to the Department and reported that he felt things had gone well, that he had been able to give the Committee some information and promised to come up and give the Committee more information about the specific reasons that these U.S. Attorneys were asked to resign. And I didn't—I didn't focus on—I didn't review his transcript and I didn't focus on his testimony. I was busy with other things and I didn't focus on it until much later.

Senator SCHUMER. How about when it sort of came out in the newspapers that his testimony was incomplete, that he felt—I think there was a story a week or so later in Newsweek, or one of the—I don't remember where it was, but there were stories out that created quite a buzz, that he felt that he didn't give straightforward testimony and that he'd been ill-prepared for the meeting by you and others.

Mr. SAMPSON. Senator, I never intended to mislead Mr. McNulty, or the committee, or Mr. Moschella. I did my level best in the preparation to inform them of everything I knew. We failed collectively to gather all the documents and go back and look at the history.

Senator SCHUMER. I'm not—that's not the line of my questioning here.

Mr. SAMPSON. I'm sorry.

Senator SCHUMER. It's a little different. It's OK. When did you realize that his testimony was incomplete?

Mr. SAMPSON. Senator, I'm not—Senator Schumer. Well, you realize it now because you stated it.

Mr. SAMPSON. I obviously, you know, realized that—I realized on Friday morning, March 9th, that there was some concern. The Attorney General, the day before, had come up and met with you and with Senator Specter and with Senator Feinstein and agreed to make all of his—five of his staff people available, and that day agreed essentially that we would make—the Department would make all of the relevant documents available.

And at that time I went back and pulled a few of my documents and spoke with Mr. McNulty and Mr. Moschella about them, and there was concern, but, you know, I knew that I had done my best to prepare them at the time. Our failure was one in failing to organize a good preparation and communication failures.

Senator SCHUMER. That seems to be endemic in this area all the way through. OK.

What I was trying to get at is, when you learned it, did you try and correct the record?

Mr. SAMPSON. The first time that that idea ever crossed my mind was on Friday, March 9th, and I offered my resignation to the Attorney General that day.

Senator SCHUMER. So your solution—your solution was to resign. OK. Fair enough.

Mr. SAMPSON. Well, Senator, if I may, my—what I recommended at the time was that the Department step back and pull all the documents and do what it could to provide a response to the Congress, and I offered my resignation.

Senator SCHUMER. I'm not being critical of you resigning for that reason, I'm just drawing a conclusion. OK.

One last. Let me see here. I want to make sure Senator Feinstein—Senator Specter, would you mind if I have one little, before I go to another? But Senator Feinstein has to leave by 5. Could we call on her next?

Senator SPECTER. OK

Senator SCHUMER. Thank you. So I'm just going to go over this last little bit.

Senator SPECTER. She's not going to take between now and 5 though, is she?

Senator SCHUMER. No. She only needs 10 minutes. But she'd go past the 10 minutes if you went and then—if I finish this little section, you went, and then she went.

Senator SPECTER. That's—that's agreeable.

Senator SCHUMER. Thank you. OK.

Are you aware of whether anyone at DOJ who has—whether anyone at DOJ has asked applicants for career positions—not political positions, line positions—questions about any of the following: their support for the President?

Mr. SAMPSON. I'm not aware of that.

Senator SCHUMER. How they voted in any election?

Mr. SAMPSON. I don't remember. I did not participate in career hires and I'm not aware of people doing that.

Senator SCHUMER. You're not aware. That's my question.

Mr. SAMPSON. I don't—I don't—

Senator SCHUMER. Were you aware of anyone doing that?

Mr. SAMPSON. Let me be precise. I don't remember ever being aware of anything like that.

Senator SCHUMER. OK.

Whether they were registered Democrats or Republicans?

Mr. SAMPSON. I don't remember being aware of anything like that.

Senator SCHUMER. OK. And what their political leanings were?

Mr. SAMPSON. I don't remember anything—I don't remember anything like that.

Senator SCHUMER. OK. So you have no knowledge if such questions were ever asked of line level Assistant U.S. Attorney applicants?

Mr. SAMPSON. Senator, I don't have any recollection of anything like that.

Senator SCHUMER. OK.

Mr. SAMPSON. I was not—did not participate in the hiring of Assistant U.S. Attorneys.

Senator SCHUMER. Would it be appropriate to ask such questions?

Mr. SAMPSON. I understand that Assistant U.S. Attorneys are career employees and so it would not be appropriate.

Senator SCHUMER. Thank you.

Let me just ask you a couple more on this. Did you know whether Ms. Goodling or anyone else asked such questions? Let's ask Ms. Goodling. So you have no knowledge that Ms. Goodling asked such questions of such people?

Mr. SAMPSON. Of career applicants?

Senator SCHUMER. Career. Correct.

Mr. SAMPSON. I don't remember any questions like that that she would ask

Senator SCHUMER. OK. OK.

Senator Feinstein?

Senator FEINSTEIN. Thank you, Mr. Chairman.

I'd like to place in the record a letter of August 23rd signed by William Moschella which defends Carol Lam's immigration record, pointing out that she has devoted substantial resources to investigating and prosecuting border corruption cases which pose a serious threat to both national security and continuing immigration violations, and it goes on and essentially answers the questions that I had asked by saying that the office had made great strides. So, I would ask that letter go into the record. Mr. Chairman, may that letter just go in?

Senator SCHUMER. Without object. I apologize. Without object.

Senator FEINSTEIN. Thank you very much.

Mr. Sampson, did you or anyone else in your office call Carol Lam and tell her that you were concerned about her immigration record?

Mr. SAMPSON. I did not and I don't remember anyone in my office doing that.

Senator FEINSTEIN. Well, we've asked her that question, and no one did. I want the record to reflect that as well.

I also want to—and this, Mr. Chairman, is the caliber of U.S. Attorney that just got peremptorily fired. The Areano Felix cartel. Are you aware of that cartel?

Mr. SAMPSON. Generally. I've—I've heard the name. I understand it's—

Senator FEINSTEIN. It is one of the most vicious drug cartels on the planet. And as of December 19th, Ms. Lam announced an indictment against the younger brother, Fransciso Javier Areano Felix, and Manuel Arturo Villareal Herada, with racketeering, drug trafficking, money laundering.

But I want you to listen to what the indictment also charges: Areano and/or Villareal with specific violent acts, including, but not limited to, the murder of Fernando Gutierrez in 1996, the kidnapping of individuals in January 1902 and the spring of 1904, and in January 1905, the murder of deputy police chief Ugo Gabriel Corono-Vargas in Tijuana in 1905, the murder of Jorge Baldoa-Sirron in Tijuana in February 1905, the kidnapping, murder, and beheading of three Rosarito police officers and one civilian in June 1906.

I can tell you that this drug cartel has been the scourge of the southern border. The arrests were made, the indictment has been issued. I've just learned the judge has delayed the prosecution over death penalty issues. But this was a key and critical case that, in my view—this is just my view—is worth virtually solid gold to get these people out of commission. They are vicious and they are unrelenting.

So it's rather hard for me, knowing some of these cases that she was involved in, when no one spoke to her about immigration, for you to be here and tell us that the reason that she was terminated was because of an immigration record that, as of August of 2006, your Department was ardently defending.

And I must go back to the problem we have with Carol Lam right now. The day before you wrote that e-mail, she noticed the Department that two search warrants were issued. When a U.S. Attorney notices the Department, how does she do that, or how does he do that?

Mr. SAMPSON. Senator, as I testified before, I don't remember receiving any notice of that, myself. There is a system where U.S. Attorneys may submit an urgent report. I believe it goes to the Executive Office of U.S. Attorneys.

Senator FEINSTEIN. And I believe that's what she did. She submitted an urgent report. And you're saying you knew nothing about it and no one told you?

Mr. SAMPSON. I don't remember ever hearing about those—those searches at that time. I received—

Senator FEINSTEIN. You're under oath. You—no one told you about those searches?

Mr. SAMPSON. Senator, I don't remember ever hearing about those searches, and I certainly didn't associate in my mind the idea of asking Carol Lam to resign with the fact that she was—her office was doing an investigation of Mr. Foggo and Mr. Wilkes. I—her—that office's investigation and prosecution of Duke Cunningham was a good thing, and any investigations that carried

on from that conviction were viewed in the Department as a good thing.

No one at the Department had a brief to carry for Duke Cunningham. When I said in that e-mail—I referenced a problem that we have with Carol Lam, I was referencing immigration enforcement.

Senator FEINSTEIN. You were, and yet you didn't ever, as the Chief of Staff to the Attorney General of the United States, pick up the phone and call her and say, we have a problem with your record, nor did anyone else in the Department?

Mr. SAMPSON. Senator, I recall that I suggested that that be done. I recall that in the spring, around that time, the Attorney General had asked the Deputy Attorney General's office, the Deputy Attorney General and his office, to work on the—improving the immigration numbers and getting some immigration enforcement deliverables out of that office.

And I remember that he specifically tasked the Deputy Attorney General to do that. And I remember asking, has anyone called Carol Lam, and I think that my words were "wood-shedded Carol Lam about immigration enforcement".

Senator FEINSTEIN. And what was the answer?

Mr. SAMPSON. My recollection of the answer was that the Deputy's office had not done that.

Senator FEINSTEIN. That's correct.

So if this—I mean, this is a woman that was handling big, big cases, the biggest—some of the biggest cases in the United States. And you've got a problem with her and you're adding her to the list, and it's immigration, and no one picks up the phone to call her and say, we want you to know we have this problem? Gun cases.

Mr. Comey talked to her, then said he was satisfied with what she had done. But immigration, which is the major issue that you are firing someone on, and no one gave her any notice. We have asked her.

Mr. SAMPSON. I don't have anything to add. I'm not suggesting that someone did give her notice. I think we did not give—no one, to my knowledge, talked to Carol Lam about the concerns that were had in the leadership of the Department about her office's immigration enforcement.

Senator FEINSTEIN. Was any consideration given to the cases that she had brought, or was in the process of bringing, in which the Areano Felix cartel was at the top of the list in terms of major cases or the Foggo—Mr. Foggo was No. 3 at the CIA. This is a big deal when a search warrant goes out.

Mr. SAMPSON. Senator, all I can tell you is what I know. I was the aggregator of information that came in, and it came in from the Deputy Attorney General who was a former U.S. Attorney and had served with Carol Lam. It came in from the principal Associate Deputy Attorney General Bill Mercer, who was a U.S. Attorney and had served with Carol Lam. It came in from David Margolis, who was—

Senator FEINSTEIN. I'm sorry. What came in?

Mr. SAMPSON. Information about concerns about U.S. Attorneys, including Carol Lam.

Senator FEINSTEIN. I would appreciate it if you—

Mr. SAMPSON. I trusted the information that came in.

Senator FEINSTEIN.—would provide the Committee with that information. You said it came in, and I trust it came in in writing.

Mr. SAMPSON. No. No—

Senator FEINSTEIN. We would like to have that information.

Mr. SAMPSON. Senator, let me be clear. As I said in my opening statement, the process was not scientific and it wasn't well documented. I compiled a list based on information that came in from folks in the Department who would have reason to make an informed judgment about the performance of U.S. Attorneys, including former U.S. Attorneys who were then serving as the Deputy Attorney General and the Acting Associate Attorney General, including the career—senior career official in the Department, David Margolis, including the Director of EOUSA, and these—this information that came in to me, I aggregated into a list and compiled in a list. But it was not scientific and it was not well documented.

Senator FEINSTEIN. And it was not filed? I mean, you know, the credibility of this thing diminishes. You are the Chief of Staff to the Attorney General. This is unpredecented. You are aggregating, by your own word. You are the one that put the cases together. You effectively selected those who were going to go to the Attorney General for his approval for dismissal, and there is no file?

Mr. SAMPSON. Senator, I didn't decide those. It was based on a consensus decision of senior Department of Justice officials.

Senator FEINSTEIN. Well, then who did decide? Give us the deciders' names, please.

Mr. SAMPSON. The Attorney General is the one that decided. He's the one that made the final decision that we would proceed and go ahead and do this, and that these were the U.S. Attorneys who would be asked to resign. He's the Attorney General, I was the staff person.

Senator FEINSTEIN. Yes. But you brought this information to him and he signed off on it. Is that not correct?

Mr. SAMPSON. I did bring it to him, along with the Deputy Attorney General and others in the Department. I was the keeper of the list. Absolutely.

Senator FEINSTEIN. But the list had no documentation. Is that correct?

Mr. SAMPSON. The documents that the Department has provided to the committee, I think, show some of the reasons. But there's no documentation for the specific list. I think that's accurate.

Senator SCHUMER. Senator Feinstein, can we—

Senator FEINSTEIN. Yes. Thank you very much. I appreciate it.

Senator SCHUMER. Senator Specter?

Senator FEINSTEIN. Thank you, Senator Specter. I appreciate your courtesy. Thank you.

Senator SPECTER. You're entirely welcome, Senator Feinstein.

Senator FEINSTEIN. Thank you.

Senator SPECTER. On the issue about the appointment of Mr. Fitzgerald to be Special Counsel on the Libby matter, I think it ought to be noted that, while Mr. Fitzgerald was appointed in his capacity as an employee of the Department of Justice by virtue of being a U.S. Attorney, that he could have been appointed under the regulations, 28 Code of Federal Regulations, Section 600.3 which

says "the Special Counsel shall be selected from outside the U.S. Government," so that terminating him as U.S. Attorney would not necessarily have terminated him as Special Counsel. He could have been appointed to carry on the duties in that capacity. I just want to clarify the alternative procedure here.

Mr. SAMPSON. Senator, to my knowledge—

Senator SPECTER. There's no question—

Mr. SAMPSON. I'm sorry. To my knowledge—

Senator SPECTER. There's no question pending for you, Mr. Sampson. You'd be well advised not to answer when you don't have to.

Mr. SAMPSON. Thank you. Thank you, Senator.

Senator SPECTER. You might be well advised not to answer when you have to.

Mr. SAMPSON. Thank you, sir.

Senator SPECTER. But not when you don't—when you don't have to. We heard what you said about your thought of termination, but there's no suggestion that there was a serious consideration of terminating him, asking him to resign. But I just want to have the record straight on the alternative procedure.

I'm very much concerned, Mr. Sampson, about this issue of circumventing the U.S. Senate, and I'm concerned about it for a couple of reasons. One reason is that Senators traditionally have had substantial input on who the U.S. Attorney is, and there has to be a blue slip signed if it's somebody not in the party, as Senator Durbin commented about signing the blue slip for Mr. Fitzpatrick. If you're the same party, the White House looks to Senators in the party to make recommendations up to the President as prescribed under the Constitution, but to make recommendations.

And I'm very much concerned about what happened with the provision in the PATRIOT Act. It was there in the Conference Report for three months and nobody knew about it. But when I see a picture unfolding, that there was a conscious effort by the Department of Justice to utilize that provision to circumvent the Senate, then I'm really intensely interested in it and frankly feel sort of victimized by it, especially when you say that the process was used in bad faith.

Now, there's another e-mail. There are a lot of e-mails to go into. It may be that Senator Schumer will run out of questions before I run out of e-mails; who knows?

Senator SCHUMER. We shall see.

Senator SPECTER. Who knows how long C–SPAN 3 can carry this? Who knows if anybody's watching C–SPAN 3? We may be boosting the ratings of Fox with all of this talk.

But there is an e-mail dated November 15, 2006 from you to Harriet Miers, whom we talked about before, and you enclosed in it your "plan for replacing" certain U.S. Attorneys and you have in this plan a reference to, we will work with you to make sure there is a smooth transition, but intend to have a new acting or interim U.S. Attorney in place by the end of the year.

Well, the Acting U.S. Attorney would be under the Vacancies Act, but the interim U.S. Attorney would be under the PATRIOT Act.

Then on Step 4 you have, "Evaluation and selection of interim candidates. During November/December 2006, the Department of Justice, in consultation with the Office of the Counsel to the President," that's Ms. Miers, of course, "evaluates and selects candidates for Attorney General appointment (or candidates who may become Acting U.S. Attorneys by operation of law) to serve upon the resignation of above-listed U.S. Attorneys." Now, it is true that you have on Step, "The selection and nomination or appointment of U.S. Attorneys in regular course." But we already know, from your e-mail and your admission, that you wanted to run out the clock and run out the balance of the President's term.

But the question I have for you here doesn't—your e-mail of November 15th to Ms. Miers, and specifying her role in the evaluation and selection of interim candidates, raises a pretty clear inference that it was more than just a staff recommendation, that there had been, at a minimum, acquiescence in this process to use the Patriot Act to circumvent the Senate?

Mr. SAMPSON. Senator, I don't—I don't remember it that way. The e-mail that I sent on December 19th was with regard to Griffin only.

Senator SPECTER. I'm on the e-mail of November 15th, which—which references your plan for replacing certain U.S. Attorneys, where you talk about interim attorneys. And this e-mail goes to Ms. Miers, White House counsel and you're talking about—about her role.

Mr. SAMPSON. I guess it would be helpful to me if I could look at that document as you question me about it.

Senator SPECTER. Well, here it comes.

Mr. SAMPSON. Thank you.

Senator SPECTER. Mr. Chairman, I'd ask that the clock be stopped.

Senator SCHUMER. The clock is stopped.

Senator SPECTER. This may be the most refreshing and appreciated moment of this entire proceeding.

Senator SCHUMER. Enjoy it while it lasts. The clock now resumes.

Senator SPECTER. No, no. He's reading the document. Stop the clock. You're not going to run out the clock like they were doing, are you?

Mr. SAMPSON. Senator, no.

Senator SCHUMER. Senator Specter, I've let you go beyond the 10 minutes, and the 7 minutes before, and I'll do it again. So, don't worry.

Mr. SAMPSON. Senator, I don't remember—

Senator SPECTER. I don't want largesse, I want the clock stopped. Go ahead.

Mr. SAMPSON. I don't remember serious consideration ever being given to what I've described as a bad idea by staff to use the Attorney General—to have the Attorney General appoint interim U.S. Attorneys and then not consult with the Senate over a candidate who then could be nominated and confirmed.

Senator SPECTER. Well, what happened—

Mr. SAMPSON. I don't think that was ever adopted.

Senator SPECTER. What happened as a result of your submitting that e-mail with the plan to her with reference to interim attorneys under the PATRIOT Act and her role in it? She said nothing? She didn't at least say, don't do this, I'm opposed to it? If she accepts that and asks nothing, doesn't that raise an inference of agreement?

Mr. SAMPSON. Senator, as—

Senator SPECTER. Isn't that—isn't that sort of analogous to an adoptive admission?

Mr. SAMPSON. As I read the document and as I—when I drafted this document, it was not—I don't remember it being in my mind that the administration would not then work with Senators to identify candidates for nomination in these seven districts. I mean, Step 5—

Senator SPECTER. Now, Mr. Sampson, that's what your other e-mails talk about. Your other e-mails talk about running out the clock, and in bad faith consulting with Senators, interviewing them and running out the clock. You—you had that not only in your mind, but in the e-mails that you were not going to utilize the confirmation process in the Senate, didn't you?

Mr. SAMPSON. Senator, that e-mail was with regard to the Eastern District of Arkansas.

Senator SPECTER. Well—

Mr. SAMPSON. I don't know what more I can say about this, Senator, except to say that I did have that idea and I did recommend it, but it was not adopted by the Attorney General and it was not adopted or rejected by Ms. Miers, to my recollection.

Senator SPECTER. OK. So you're saying that after she got that e-mail and got the plan which talked about interim attorneys which would circumvent the confirmation by the Senate and her role in it, that she just stood by and let you proceed as you chose?

Mr. SAMPSON. I don't read this document as suggesting interim appointments that circumvent the Senate. To the contrary, Step 5 sets forth the regular—followed the regular process of consulting with Senators to identify candidates who would be nominated and confirmed.

Senator SPECTER. Yes, it does. And I said Step 5 did, but you have Step 4, interim appointments, which is the PATRIOT Act to circumvent the Senate, and you had already utilized that, at least in Arkansas.

Mr. SAMPSON. Senator—

Senator SPECTER. Well, let me move—

Mr. SAMPSON. Well—

Senator SPECTER. Let me move to another—do you want to say something further?

Mr. SAMPSON. If I may.

Senator SPECTER. Yeah.

Mr. SAMPSON. The plan, as I understood it then and as I understood it now, contemplated asking seven U.S. Attorneys to resign and to ask them to resign, you know, by January 31st. It says, "By its terms, ask them to resign by January 31st." In our discussions within the senior leadership of the Department, the view was to ask them to resign by January 31st, but then work with them and extend time and ensure that there was a smooth transition.

Whenever a U.S. Attorney resigns, someone has to be appointed interim U.S. Attorney. The first Assistant can automatically become Acting U.S. Attorney under the Vacancies Act, or the Attorney General can appoint someone. And after the PATRIOT Act amendments, that's the only other option, is to use the Attorney General's appointment authority to appoint an interim U.S. Attorney.

And my recollection is, with regard to these seven who resigned, some of them, the first Assistant became the Acting U.S. Attorney, and in other cases the Attorney General appointed an interim U.S. Attorney.

In my view, that's not—the idea of the Attorney General appointing an interim U.S. Attorney and the idea of the administration being committed to have a Senate-confirmed U.S. Attorney are not mutually exclusive, so long as the administration is committed to working with Senators to identify a candidate for nomination.

Senator SPECTER. Well, wouldn't you agree, Mr. Sampson, that on this state of the record where you have a request by the Department of Justice for this new procedure under the PATRIOT Act, and you have the plans set forth allowing for the interim attorneys and you have, at least as to Arkansas, which raises the inference that it could be beyond Arkansas, to run out the clock, that that was what you wanted to do, that the Department of Justice had it in mind at the outset to get this law changed and then to use it for replacing U.S. Attorneys who were asked to resign and use the shenanigans, or bad faith, as you yourself characterized it, to run out the clock and have all of these U.S. Attorneys serve the balance of the President's term without Senate involvement or Senate confirmation. Isn't that inference pretty apparent?

Mr. SAMPSON. Senator, I—as I testified before, this was considered at the staff level. It was a bad idea. It was recommended by staff, including me, and it wasn't adopted by the principals. And I'm not aware of it ever being seriously considered, by the Attorney General, at least.

Senator SPECTER. Was the modification in the PATRIOT Act a bad idea, too, to circumvent the U.S. Senate?

Mr. SAMPSON. I can understand why that would raise a question for a U.S. Senator. I think at the time it was on the heels of a controversy in the District of South Dakota about a court appointment and about an Attorney General appointment, and so I think it was well-intentioned at the time. But I really don't remember and I didn't participate in that, to the best of my recollection.

Senator SCHUMER. Senator Hatch?

Senator SPECTER. Well, that's all very interesting. But was it a bad idea?

Mr. SAMPSON. In hindsight it seems like a bad idea.

Senator SPECTER. Thank you.

Senator SCHUMER. Senator Hatch?

Senator HATCH. Well, thank you, Mr. Chairman. I appreciate that.

Now, I just want to start by saying that you've served well here in the Senate, and I think in the executive branch. You've made some mistakes, but that's true of all of us. We all make mistakes. None of us are perfect. But you've owned up to them, and to the

point of resigning, which I didn't think you particularly had to do, between you and me.

You owned up to these mistakes all day long through this intensive hearing. If you're as tired as I am from this, I wouldn't blame you. I commend you for your sense of accountability that made you resign on your own, and I think anybody with brains has to respect that.

I want to—you know, I want to thank you for being as forthright and candid as you've been. You're doing your best to be honest and forthright with us, and I think we ought to give you credit for that.

Now, we're supposedly trying to get the truth here. That means going with the evidence. There is substantial evidence, dating back to at least 2003, about Carol Lam's performance. Now, I happen to think she's a fine lawyer, just like you have said here. I happen to think she did a pretty good job in many respects.

But I have to tell you, there is no evidence regarding interference with any case, not one shred of evidence. You know, that's the evidence here today: there is no evidence of interference with any particular case.

Now, it may not be enough for certain Senators, but that's the evidence, that the decision was the administration's to make. You know, if you look at it, I can see why the administration might want to have somebody else. She's had the opportunity. She's an excellent person.

She's going to be able to do well in the private sector, no question, or the public sector if she wants to go into State government. But the fact of the matter is, there were performance problems that this particular administration wanted to clear up and take care of.

And you can't ignore the facts here, you know. From the Sentencing Commission data, only 29 defendants have been sentenced for firearms offenses in the Southern District of California in the past 2 years. This is a big issue to this administration. It's always accused of supporting gun rights and so forth. Well, one of the reasons we believe we brought crime down is because we have gone after the misuse of guns. Well, there were 29 defendants that have been sentenced for firearms defenses in the past 2 years; only 88 have been sentenced for firearms offenses in the last 5 years. That's under 18 U.S.C. Sections 922 and 924.

Now, let me just give you a contrast for the same period between 2000 and 2006. The Southern District of Texas, in retrospect, got 946, just one district; the Western District, 894; the District of Arizona, 897; the District of New Mexico, 437. You know, I just don't think you should be pilloried because—because the administration decided it was time to make a change there.

Now, I think the administration mishandled it. They should have just said flat-out, you served well, we appreciate you, but now we want to give somebody else a chance. Had they done that, it would have been a lot better for everybody concerned.

The same thing with Mr. Iglesias, you know. You know, I don't think anybody here wants to run the guy down from the standpoint of being a good lawyer or a decent U.S. Attorney, but to be honest with you, there were reasons, performance reasons, that were legitimate reasons.

On immigration cases, look, I looked and contrasted her with some of the people in Texas. She had maybe 1,000 immigration cases to 4,000. That may not be totally accurate, but it was at least 2:1 in Texas. These were important issues. Immigration smuggling was one of the administration's major, major concerns, and especially in the Southern District of California, especially there.

Well, now, let me ask you this. Did Carol Lam have a legal right to hold onto this position, you know, if the President, you know, exercised his right to remove her for any reason other than the two bad reasons that we've all admitted the President should not do, or neither should you or anybody else in the Justice Department?

Mr. SAMPSON. My understanding is, U.S. Attorneys are political appointees and so they don't have tenure protection.

Senator HATCH. They have no right to hold onto the job. Now, she might have wanted to. You've heard Senators on this Committee who have been U.S. Attorneys who say it's the best job they've ever had, including the Senate.

And, frankly, I don't blame anybody for wanting to hold onto it, but I also don't blame the President for wanting to give some other people an opportunity, especially if some of the performance wasn't up to what they really wanted them to do.

She was doing a lot of other good things, there's no question about it. She's an excellent lawyer. She did an excellent job. She did a lot of good things. But I saw the letters from—I think there were like 20 Members of Congress who were concerned about the lack of prosecution in these areas.

And, of course, I saw Senator Feinstein's letter. Now she's saying, well, she corrected that. Well, I don't think that's necessarily the evidence either. Now, these positions serve at the pleasure of the President.

How important were gun prosecutions to this administration?

Mr. SAMPSON. Project Safe Neighborhoods was the President's signature domestic policy initiative, at least in the law enforcement area, during the first term. And I recall that—I recall General Ashchroft frequently touting the successes that the Department had had in that area. The Department, to my recollection, had increased gun prosecutions by 70 percent as of, 2004 or 2005, and so they were very important.

Senator HATCH. Well, how important were immigration smuggling cases, and especially in the Southern California District?

Mr. SAMPSON. They were very important, Senator, especially as the administration was trying to persuade the Congress to enact comprehensive immigration reform. And one of the criticisms was that it should be enforcement only, that the focus should be on sealing the border before considering the question of the 6 million, or 8 million, or 10 million illegal immigrants that were in the country. And so border enforcement was very important as a way to assist the administration in promoting comprehensive immigration reform.

Senator HATCH. So if you look through the President's eyes, these are matters of great concern to the President and to this administration.

Mr. SAMPSON. Yes. In the spring of 2006 when the immigration bill was being debated, I remember a robust discussion in the exec-

utive branch about the things that could be done to help get that legislation through, the things that could be done to more effectively prosecute illegal immigration on the Southwest border.

Senator HATCH. Well, and you did a very good job of explaining why performance is a broader—of broader significance than our friends who are criticizing have allowed here, and the political side of it was interpreted more narrowly, just to the cases where there was an ongoing investigation or case in esca. I don't know how anybody can really disagree with that.

Now, let me ask you another question. When the Washington Post article appeared, I called the Attorney General and said, what about this? And he said, yes, I had a general knowledge about what was going on, but I didn't have the specific knowledge because I hadn't concentrated on that. And he relied on you and others, and there were plenty of others working on this at the Department of Justice. Is that a fair appraisal of the way he feels, at least to the knowledge that you have of it?

Mr. SAMPSON. Yeah. I can only speak to what I know, and I feel like I kept him generally aware of the process.

Senator HATCH. Generally aware.

Mr. SAMPSON. Yes. I briefed—I spoke with him every day. I talked to him about the things that I was doing and the conversations I was having. I don't remember sharing any paper with him on it, but I remember that we generally talked about it.

Senator HATCH. He admits that. But do you understand why he feels like he didn't know all the specifics about this?

Mr. SAMPSON. I think he—well, look. I don't want to speculate to—to what he thinks. I can only tell you what I think, which is that I believe I kept him generally aware. And then as the process came to a decision point, that he approved the idea of going forward and asking—

Senator HATCH. In the end, he did. Did he understand all these nuances that you've been questioned about today?

Mr. SAMPSON. To the best of my knowledge, he understood some of them, and others he didn't have as much understanding on.

Senator HATCH. Well, that's my point. So for us to hang the man in the press and everywhere else for not understanding aspect of this that it's taken you all day long to explain, it seems to me it's wrong. Would you agree with that?

Mr. SAMPSON. I wouldn't want to—I—I don't know—

Senator HATCH. I'm giving you a chance here.

Mr. SAMPSON. Look, I think the—

Senator HATCH. You don't have to—you don't have to answer that question. I understand.

Mr. SAMPSON. I only—I want to come and testify what I know, and I think the Attorney General is a good man who's doing his level best to—to do his best.

Senator HATCH. Did he have any intention, to your knowledge, or did he indicate any intention of doing wrongful acts here?

Mr. SAMPSON. Not to my knowledge.

Senator HATCH. Or of hurting anybody?

Mr. SAMPSON. No, not that I recall.

Senator HATCH. Or of smearing any of these eight U.S. Attorneys.

Mr. SAMPSON. To the contrary. He was concerned about that. He felt that the Department's position should be to not talk about the reasons they were asked to resign that related to their—to their—the way they were doing their jobs.

Senator HATCH. Thank you, Mr. Chairman.

Senator SCHUMER. Thank you, Senator. OK.

We're on round four here. I want to talk a little bit about David Iglesias. First, just a specific question and then we'll get into more detail.

You mentioned earlier, I believe, that the Attorney General talked to you about Karl Rove, relaying complaints about Mr. Iglesias. Correct?

Mr. SAMPSON. I remember him doing that, but I don't remember when.

Senator SCHUMER. That was my question: when? Do you have some idea?

Mr. SAMPSON. I think it was—

Senator SCHUMER. Can we get a year?

Mr. SAMPSON. I think it was in the fall of 2006 in the run-up to the midterm elections

Senator SCHUMER. Right. Because I believe that he was—Karl Rove was called a few times, or the Attorney General himself was called on it as well. Right?

Mr. SAMPSON. I remember learning from the Attorney General that Mr. Rove had complained to the Attorney General about U.S. Attorneys in three districts—

Senator SCHUMER. And do you think that—

Mr. SAMPSON.—and the substance of the complaint was that they weren't aggressively pursuing voter fraud cases.

Senator SCHUMER. And you think, with Mr. Iglesias, it's likely to be the fall of 1906?

Mr. SAMPSON. I think so, but I

—Senator SCHUMER. OK.

Mr. SAMPSON.—don't remember specifically.

Senator SCHUMER. All right.

Let's go through Iglesias a little bit, because this one is one of the most befuddling of all, and none of the explanations really add up right now. Now, you say you don't know a lot, including who put his name on the list at the late date, which is a mystery that we have to figure out. That's at the core of this whole—this whole investigation. But, here, I just want to go over some facts.

On March 1, Brian Roehrkasse, the Justice Department spokesperson, said, "There is a lengthy record from which to evaluate Iglesias' performance as manager and we made our decision not to extend his service based on performance-related concerns."

So I want to examine that "lengthy" record. Jim Comey, the former Deputy Attorney General who directly supervised Iglesias said, "he was one of our finest and someone I had a lot of confidence in as Deputy Attorney General." Isn't that correct?

Mr. SAMPSON. I don't know if Mr. Comey said that or not. I don't know.

Senator SCHUMER. It's in the Washington Post of March 1, 2007.

On 29 April 2004, you yourself named Iglesias for a candidate for a promotion to head the Executive Office of U.S. Attorneys, did you not?

Mr. SAMPSON. I—I—I believe that I had him on a list of possible candidates who—

Senator SCHUMER. Here's—here's how you described him. It's in a memo. Let me refresh your memory. You described him as "a diverse up-and-comer, solid." Is that wrong?

Mr. SAMPSON. I believe that I believed that at the time that I wrote the memo.

Senator SCHUMER. Yes. OK.

November of 2005, Iglesias received an "Excellent" office evaluation which stated that he was "experienced in legal management and community relations work and is respected by the judiciary agencies and staff.

The U.S. Attorney's Office had a well-conceived strategic plan that complied with Department priorities and reflected the needs of the district. Isn't that right?

Mr. SAMPSON. I don't remember that. I don't know that I knew that.

Senator SCHUMER. It's not wrong, is it? You have no reason to doubt it? I'm telling you it's in—it's in the office evaluation.

Mr. SAMPSON. I don't have any reason to doubt it.

Senator SCHUMER. OK.

And as recently as 2006, he received a letter from Michael Battle recognizing "his exemplary leadership in the Department's priority programs." Any reason to doubt that?

Mr. SAMPSON. I don't—I don't know one way or the other.

Senator SCHUMER. OK.

Mr. SAMPSON. I don't have any reason to doubt it.

Senator SCHUMER. OK. So we have a lengthy record.

So let's try to delve into how Mr. Iglesias ended up on the hist list. On March 2, 2005, you yourself recommended that he be one of the people who should be retained. Correct?

Mr. SAMPSON. I think that's correct.

Senator SCHUMER. Yes. In your—in your March, 2005 list, his name is in bold, meaning that he's in the category "Recommend retaining strong U.S. Attorneys who have produced well, managed well, and exhibited loyalty to the President and Attorney General."

And, in fact, when you sent lists of attorneys to consider pushing out to Harriet Miers on September 13th and to Michael Elston on October 18th—on October 17th, excuse me, Mr. Iglesias did not appear on this list in either of its reiterations. Is that right?

Mr. SAMPSON. I think that's right.

Senator SCHUMER. OK.

In fact, he doesn't appear on the hit list until November 15th, 2006 and I want to ask you questions about why that is so. And let me be clear. None of us is passing judgment in any way on the people who might have made complaints about David Iglesias. Our focus is on the Department, on you, and others in the Department, how they dealt with those complaints, OK? OK.

Can you tell us on what date Mr. Iglesias was added to the list of names of U.S. Attorneys to be fired?

Mr. SAMPSON. I don't remember the specific date. I remember—

Senator SCHUMER. Approximate time.

Mr. SAMPSON.—Sometime before November 7th, I had discussions with others at the Department of Justice about U.S. Attorneys who we might consider adding to the list, and those resulted in four additional names being added, including Iglesias'.

Senator SCHUMER. OK.

Mr. SAMPSON. I remember speaking to—at some point prior to this, I remember in my mind, in the best of my memory, knowing that Bill Mercer, who had previously served as the principal Associate Deputy Attorney General, was a fellow U.S. Attorney of Mr. Iglesias, had expressed negative views about Mr. Iglesias.

He had served with Mr. Iglesias on the Attorney General's Advisory Committee and recommended that he not be reappointed, recommending that he be replaced as chair of the Border Committee.

Senator SCHUMER. When was that? When was that?

Mr. SAMPSON. That would have been in 2005.

Senator SCHUMER. 2005. And you had a recollection of that?

Mr. SAMPSON. I did. And I knew generally—

Senator SCHUMER. But it didn't stop you from—or it didn't cause you to put him on the list in October or September of 2006, correct?

Mr. SAMPSON. That's right.

Senator SCHUMER. And yet he ended up—so it must have been something that happened between October 17th and November 15th of 2006 that made Mr. Iglesias be added to the list. I'm not saying something you did, but something must have happened that made this change, right?

Mr. SAMPSON. If I may share just two points.

Senator SCHUMER. Please.

Mr. SAMPSON. I also remember that at some point Mr. David Margolis, the Associate Deputy Attorney General, had indicated to me that his—some negative views about Mr. Iglesias, that he wasn't a strong manager, that he delegated a lot to his first assistant. And so I knew in my mind those two criticisms from Mr. Mercer and Mr. Margolis.

Senator SCHUMER. Any just approximate idea of when Mr. Margolis made those suggestions to you?

Mr. SAMPSON. I don't remember.

Senator SCHUMER. Were they before October 17 of 2006?

Mr. SAMPSON. I think so, to the best of my memory.

Senator SCHUMER. Before.

Mr. SAMPSON. Yeah. I think—

Senator SCHUMER. So it didn't cause you to add him to the list that you gave to, I guess it was, Mr. Elston. Was it before September 13th of 2006?

Mr. SAMPSON. I don't remember specifically when I heard those criticisms from Mr. Margolis. I think that what happened is that—

Senator SCHUMER. Oh, but wait. I just want to—I'm sorry to interrupt you. I just want to get a date set here or a time. Was it in 2006? Was it fairly recent? I mean, that's not hard to—

Mr. SAMPSON. I don't—I don't remember. I don't think it was that recent.

Senator SCHUMER. No. So it could have been a while back?

Mr. SAMPSON. Yes.

Senator SCHUMER. So the question remains, why those comments by Mr. Margolis, by all reports a respected member of the Justice Department, didn't trigger Mr. Iglesias' name on the lists of September and October of 2006, but did put him on the list of November?

There must have been something else. Is there anything else you can recall that happened in the interim that—not that you did, but that somebody told you, somebody mentioned?

Mr. SAMPSON. As best as I can remember sitting here today, and I've thought back about this, sometime in late October those who—in the senior management of the Department, the Deputy Attorney General, his Chief of Staff, myself, Monica Goodling, went back and looked at the list to see if there was anyone else who should be added.

Senator SCHUMER. Uh-huh.

Mr. SAMPSON. And four U.S. Attorneys were added, including Mr. Iglesias. Three ultimately came off. We've talked about that.

Senator SCHUMER. Who were the people at this discussion? You said Monica Goodling—

Mr. SAMPSON. I don't remember it being one discussion. It was just—

Senator SCHUMER. Who were the people involved in the general discussions?

Mr. SAMPSON. The Deputy Attorney General, his Chief of Staff, Monica Goodling.

Senator SCHUMER. Yourself.

Mr. SAMPSON. Myself.

Senator SCHUMER. Anyone else?

Mr. SAMPSON. I don't remember if Bill Mercer was involved at that time or previously.

Senator SCHUMER. Got it.

Mr. SAMPSON. I don't remember specifically if David Margolis was involved that time or previously. They had been folks who had been consulted previously on the issue.

Senator SCHUMER. I'll ask you a few more questions. Did you have any communication with any member of Congress or Republican party official in New Mexico in October, or any Republican party official, in October of 2006 about Mr. Iglesias?

Mr. SAMPSON. I didn't.

Senator SCHUMER. OK.

To your knowledge, did Attorney General Gonzales have any communication with any of those groups in October of 2006?

Mr. SAMPSON. Not to my knowledge.

Senator SCHUMER. Not to your knowledge? OK.

To your knowledge, did Karl Rove have any communication with any Member of Congress or Republican party official in October, 2006 about Iglesias?

Mr. SAMPSON. I don't know.

Senator SCHUMER. OK.

And you wouldn't know—you would have no recollection if any of those people, Members of Congress, Republican party officials, Attorney General Gonzales, Karl Rove had any discussions with any other members of the group. You didn't hear anything to that effect?

Mr. SAMPSON. Not that I remember.

Senator SCHUMER. OK. OK.

Mr. SAMPSON. And, Senator, in reviewing the documents, I understand that Monica Goodling met with some New Mexico Republican, but I don't—I don't remember anything more than that.

Senator SCHUMER. And was it about that time?

Mr. SAMPSON. I don't remember.

Senator SCHUMER. OK. Well, we'll check the documents.

Mr. SAMPSON. I think it's in the documents. I don't—I did not remember that until reviewing the documents.

Senator SCHUMER. OK.

So do you have any reason to disbelieve the view? Because if you look at all the facts, it's kind of logical that the only reason Mr. Iglesias was put on the list and removed was calls from Members of Congress in 2006 of October? Do you have any reason to doubt that?

Mr. SAMPSON. I'm sorry. Can you say it again?

Senator SCHUMER. Any reason to doubt that the reason Mr. Iglesias was put on the list and removed—and then eventually removed were calls from members of Congress in October, 2006? Do you have reasons to doubt that?

Mr. SAMPSON. I just don't know. I don't remember.

Senator SCHUMER. OK.

Mr. SAMPSON. As I testified before, I remember, after he was on the list, having a conversation with the Deputy Attorney General and the Deputy Attorney General said—suggested that Senator Domenici wouldn't have any concern about us asking David Iglesias to resign because he was dissatisfied with him.

Senator SCHUMER. Right. In fact, you write to Ms. Goodling that "the White House wants"—and you have a name redacted—"for New Mexico U.S. Attorney, but Domenici is not so sure. Domenici is going to send over some names tomorrow." Now, that was a little bit later, right?

Mr. SAMPSON. I don't remember. It would be helpful if I could see that document.

Senator SCHUMER. It's OAG 125. I'll keep—I'm not going to stop the clock. I'm going to keep asking questions while you look at that document and then we'll come back to it. OK.

Let's go through some of these so-called performance problems Mr. Iglesias allegedly had. One of the complaints made against him was lack of aggressiveness in indicting election fraud cases. In fact, even the President passed along complaints of this nature. We know that. That's in the record.

Dan—the President said so. Dan Barlett, counselor to the President, said, according to the Washington Post, President Bush told Attorney General Gonzales about such complaints and specifically cited New Mexico as one of the three States where the complaints had arisen. You were aware of such complaints about Mr. Iglesias, were you not?

Mr. SAMPSON. I don't remember the Attorney General telling me about his—

Senator SCHUMER. I didn't ask that. I just asked if you were aware of complaints about Mr. Iglesias on voter fraud—on voter fraud cases.

Mr. SAMPSON. Yes. At the—at the time I was aware that the Attorney General—the Attorney General informed me that he had received a complaint from Karl Rove about U.S. Attorneys in three districts, as I've testified already.

Senator SCHUMER. On voter fraud?

Mr. SAMPSON. And the substance of his complaint was voter fraud—

Senator SCHUMER. Right. Not doing enough.

Mr. SAMPSON.—and their failure to aggressively pursue it

Senator SCHUMER. Right.

Now, you are aware that Mr. Iglesias was one of two U.S. Attorneys invited to teach a voting integrity symposium in October of 2005 sponsored by the Justice Department's Public Integrity and Civil Rights Section, and attended by 100 prosecutors from around the country, right?

Mr. SAMPSON. I didn't know that.

Senator SCHUMER. OK. Well, if he was so bad at voter fraud, why would he be one of two chosen to do this?

Mr. SAMPSON. I don't know.

Senator SCHUMER. I don't either. It's a good question, I think.

FBI Director Mueller testified on Tuesday that he was not consulted on the U.S. Attorneys' firing and he wasn't aware of any election fraud case since 2001 that he thought should have resulted in an indictment, but did not.

Did you or anyone else at Justice consult with the FBI to evaluate any of these complaints about voter fraud, not pursuing voter fraud cases?

Mr. SAMPSON. I didn't and I'm not—I don't remember doing that and I don't remember anyone else doing it.

Senator SCHUMER. This goes to a more general question. When you heard complaints about these U.S. Attorneys, the ones who were fired, Iglesias included, did you ever check, did you ever ask them? According to them, in most cases, not, although I believe early on Ms. Lam was talked to about immigration cases. Did you ever do independent research?

Mr. SAMPSON. I did—I don't remember every doing any. I didn't do any.

Senator SCHUMER. So these folks were fired without any independent checking? Just, sort of, complaints out of nowhere. We don't know who they came from. You've not been able to identify the people. We don't have a file and they are fired. Isn't that—doesn't that trouble you?

Mr. SAMPSON. Senator, the process, as I described it, was my role was aggregating information that came in from senior leaders in the Department. And I just relied on that information. It came in from David Margolis and Paul McNulty and Bill Mercer.

Senator SCHUMER. But they need a senior leader who made a specific complaint about a U.S. Attorney, and then what you did when you got it.

Mr. SAMPSON. I remember the Deputy Attorney General asking me to add Kevin Ryan to the list. I remember concerns being expressed—Senator Schumer. And did you go—did you go check and see if the—what the Deputy Attorney General had heard about Kevin Ryan might be true?

Mr. SAMPSON. I did not. I relied on the Deputy Attorney General.

Senator SCHUMER. So in other words, someone brought up a name, brought up a complaint, and they were just put on the list?

Mr. SAMPSON. They were put on a list that was then circulated among the senior leadership of the Department—

Senator SCHUMER. Right. Right

Mr. SAMPSON.—and approved and ultimately brought to the Attorney General and approved.

Senator SCHUMER. And "approved" meant no one said "take the name off"?

Mr. SAMPSON. Essentially.

Senator SCHUMER. OK. So there was very little research that went behind this after somebody in the Department put the name on a list.

Mr. SAMPSON. The somebody in the Department were the senior leaders of the Department who oversaw the work of the U.S. Attorneys, the Deputy Attorney General.

Senator SCHUMER. I understand who the somebodies were.

Mr. SAMPSON. His deputy. And I relied on that information.

Senator SCHUMER. My good friend and colleague here is importuning me on. I'm just going to try to be as quick as I can here because I don't want to hold him up here.

Senator SPECTER. Wait a minute. I'm importuning you off.

Senator SCHUMER. Off. Exactly.

[Laughter.]

Well, on and then off.

But we have no real written documentation of any problem with election fraud prosecutions by Mr. Iglesias. Correct? You're not aware of any written documentation?

Mr. SAMPSON. I'm not aware of any.

Senator SCHUMER. OK.

There was a complaint he was an absentee landlord, but he was in the National Guard. We've been through that in previous discussions and hearings, so I'm not going to ask you to respond to that.

Now, on border enforcement, which was the third complaint, we heard about the rankings of the borders—of the border States. Isn't it true that, of the five border districts, New Mexico ranks second in immigration cases handled per AUSA per year in 2004?

Mr. SAMPSON. I don't have any reason—I don't know, Senator, but I don't have any reason to doubt that.

Senator SCHUMER. OK.

So he wasn't absentee. We have no written document of voter fraud. He did a good job on immigration. I'll just introduce into the record, for the sake of time, all the other things that can be said positively about him doing border.

Senator SPECTER. Are you asking for unanimous consent?

Senator SCHUMER. I am asking for unanimous consent.

Senator SPECTER. OK.

Senator SCHUMER. Thank you, Mr. Ranking Member.

Here's the conclusion I reach: Iglesias began as one of our finest, was considered for promotions, was trained to—was selected to train others in election fraud, had one of the best border records, and yet was fired for not doing a good enough job, all of a sudden

between October and November of 2006 on facts that were never checked on.

Do you still think David Iglesias deserved to be fired?

Mr. SAMPSON. Senator, looking back on all of this, you know, I wish that we could do it over again.

Senator SCHUMER. So are you saying you think he shouldn't have been fired?

Mr. SAMPSON. Senator, I don't know. That was a decision that was made. In hindsight—in hindsight I wish that the Department hadn't gone down this road at all, and I regret my role in it.

Senator SCHUMER. I understand.

Mr. SAMPSON. And that's one of the reasons I resigned.

Senator SCHUMER. So if the choice were up to you, just thinking back on that fateful December 7th, would you now, knowing what you know now, have put David Iglesias on a list, a choice solely up to you that he should be fired?

Mr. SAMPSON. In hindsight, sitting here today—

Senator SCHUMER. Correct.

Mr. SAMPSON.—I don't—I would not.

Senator SCHUMER. Thank you. Just one final point before I turn the final line of questioning over to my good colleague, Senator Specter, who may go as long as he wishes, given that he has reminded me every minute that I have gone over each minute.

You—one of the things you stated, is you were not aware of people being fired because they would or would not prosecute specific cases. No one has said anything that contradicts that you were not aware of them. That would come from other witnesses if that proves to be the case.

But it is—I just want the record to show that it's certainly possible that people were fired for political reasons and you didn't know about them. Somebody in the White House political section A calls up somebody in Justice B and says, we want to fire U.S. Attorney C for political reasons, but come up with another reason and tell Sampson to put them on the list. That would be possible. I'm not saying it happened, but it certainly would be possible, right?

Mr. SAMPSON. Senator, that would be possible.

Senator SCHUMER. Sure.

Mr. SAMPSON. I'm not aware of that being—

Senator Schumer. I understand.

Mr. SAMPSON.—the motivating factor. And I can only speak to what I'm aware of.

Senator SCHUMER. The only—Mr. Sampson. I don't know what other people were aware of.

Senator SCHUMER. The only point I'm making is, your lack of awareness doesn't prove that it didn't happen, correct?

Mr. SAMPSON. Yes

Senator SCHUMER. Thank you.

Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman.

Senator Schumer and I had an arrangement where he would go for 10 minutes and I would go for 5, and we would terminate. I'd like unanimous consent to enter this document in the record.

Senator SCHUMER. Read it.

Senator SPECTER. Where I pointed out when he was three and a half minutes over time, and I struck that out and put four and a half minutes, struck that out, five and a half minutes, struck that out, six and a half minutes. I gave him a break at seven and a half, put it at eight and a half minutes, nine and a half minutes, and I'd like this in the record.

Senator SCHUMER. Without objection and with pride.

[Laughter.]

Senator SPECTER. Mr. Sampson, I had a few more questions in mind, but we have now passed a violation of the Eighth Amendment, prohibition against cruel and unusual punishment. But your questioning has been cruel, but usual in Hart 216.

I think you've summed it up very well when you said that, by hindsight, the Department went down the wrong road. I think that is a pretty good summation. Again, I thank you for coming in because you came in voluntarily and you've been asked a lot of difficult questions, and I think your responses have been well within the ambit of being reasonable.

We look for your recollection. It's not easy to do. We look for inferences, and you have held your ground on those matters. I started off on two issues. One was the candor of the Attorney General and whether he was candid in the March 13th news conference saying that he was not involved in "discussions", contrasted with the e-mails.

And we will hear from him. I do believe that Attorney General Gonzales has a record of public service as a Supreme Court Justice in Texas and as White House counsel, and Attorney General now for more than two years, and he's entitled to his day in court, so to speak. We ought to hear from him and ought not to make judgments until we do hear from him.

I am very much concerned about what was done with the PATRIOT Act provision to circumvent the Senate. I say that out of respect for the Senate's prerogatives, contrasted with the prerogatives of the Executive, and also with what happened on the provision being inserted into the PATRIOT Act where it's questionableness comes into sharp focus on the way it was used.

But we have—we've gone into these matters in very, very substantial detail and, as usual in Washington, it is not really what was done because the President had the right to terminate the U.S. Attorneys.

I think the better judgment would have been not to have characterized them or found fault with them. It's better simply to have—simply to have said we stand on the President's standing to do what he has done.

Had that been done, I don't think U.S. Attorneys would have come forward to complain, and I think their complaints were well justified once their professional careers were at issue. And as I said in an earlier hearing, I thought the Attorney General was wrong when he said the reputation of the Department was more important than the reputation of the individuals.

These clouds will last a lifetime, a professional lifetime for them, whereas, the Department of Justice will survive. It will survive. And I think a good lesson has been learned, not from what was

done, but from failure to be candid and a failure to respond in a—you don't have to be wise and judicious, just sensible.

But again, you have been a stalwart witness. It's been a long day for you, and we thank you for coming in.

Mr. SAMPSON. Thank you.

Senator SCHUMER. And I'm going to use Senator Specter's remaining 37 seconds, which he stayed within the limit of. I want to thank you as well. It's been a long day. I think I speak on behalf of everyone on this committee, we appreciate your coming before the Committee voluntarily. We appreciate you doing your best to answer a whole lot of questions and going through a long day, and appreciate your being here.

The record will remain open for 1 week where we may submit—members may submitted written questions to you, Mr. Sampson, and we will recess. The Chairman asked me to say we would recess, in consultation with the Chairman, to see if anybody felt a strong need to ask you to come back again, which I hope for your sake doesn't happen.

With that, we are recessed.

[Whereupon, at 5:40 p.m. the hearing was recessed.]

[A question and answer and submissions for the record follow.]

QUESTION AND ANSWER

Response of Kyle Sampson to
Written Question of Senator Sam Brownback

Pornography:

I am increasingly concerned about the pervasiveness of pornography and obscenity in our culture, and I appreciate the priority the Department of Justice has placed on prosecuting obscenity violations. In reviewing the email correspondence between you and various Department officials, I was particularly interested in an email you received from Brent Ward, head of the DOJ Obscenity Task Force, on September 20, 2006. The subject line of that email is "Obscenity Cases," and in the email Mr. Ward informs you that two U.S. Attorneys are "unwilling to take good cases." Those two U.S. Attorneys, according to the email, are Paul Charlton and Dan Bogden. With regard to Charlton, Ward says "this is urgent."

At his confirmation hearing in January 2005, the Attorney General pledged to me that he would make obscenity prosecutions a DOJ priority. If the Attorney General had U.S. Attorneys who were unwilling to prosecute these cases, I support his decision to find others who would.

Did you feel that replacing Paul Charlton and Dan Bogden would promote the Department's efforts to prosecute obscenity cases?

Answer:

I understand that issues and concerns had been raised about the willingness of the U.S. Attorneys in the District of Arizona and the District of Nevada to work with the Criminal Division's Obscenity Prosecution Task Force to investigate and prosecute obscenity in those districts. I believe that those issues and concerns factored in to the decision to ask those U.S. Attorneys to resign in December 2006. Although other issues and concerns also played a role, the collective judgment of the Department was, to the best of my recollection, that a change of U.S. Attorney in those districts would likely prove beneficial to the Department's efforts to place a higher priority on obscenity cases.

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SUBMISSIONS FOR THE RECORD

The Associated Press State & Local Wire

March 20, 2007 Tuesday 10:04 PM GMT

Fired U.S. attorneys ranked above peers in prosecutions

BYLINE: By LARA JAKES JORDAN, Associated Press Writer

SECTION: STATE AND REGIONAL

LENGTH: 867 words

DATELINE: WASHINGTON

Six of the eight U.S. attorneys fired by the Justice Department ranked in the top third among their peers for the number of prosecutions filed last year, according to an analysis of federal records.

In addition, five of the eight were among the government's top performers in winning convictions.

The analysis undercuts Justice Department claims that the prosecutors were dismissed because of lackluster job performance. Democrats contend the firings were politically motivated, and calls are increasing for the resignation or ouster of Attorney General Alberto Gonzales.

Immigration cases a top Bush administration priority, especially in states along the porous Southwest border helped boost the total number of prosecutions for U.S. attorneys in Arizona, Nevada, New Mexico, San Diego, San Francisco and Seattle.

Four of the prosecutors also rated high in pursuing drug cases, according to Justice Department data analyzed by the Transactional Records Access Clearinghouse at Syracuse University. Only one of the eight received a better-than-average ranking in prosecuting weapons cases.

Several of the attorneys who were told last Dec. 7 to resign complained their reputations were sullied when the Justice Department linked the firings to underwhelming results in each of the eight districts in Arizona, Little Rock, Ark., Grand Rapids, Mich., Nevada, New Mexico, San Diego, San Francisco and Seattle.

"I respectfully request that you reconsider the rationale of poor performance as the basis for my dismissal," Margaret Chiara, the former prosecutor in Grand Rapids, Mich., complained in an e-mail. The description, in part, she said, "is proving to be a formidable obstacle to securing employment."

Top Justice aide Michael Elston wrote back that "our only choice is to continue to be truthful about this entire matter."

"The word performance obviously has not set well with you and your colleagues," wrote Elston, chief of staff to Deputy Attorney General Paul McNulty. "By that word we only meant to convey that there were issues about policy, priorities and management/leadership that we felt were important to the Department's effectiveness."

The data on prosecutions and convictions, provided to TRAC by the Justice Department's executive office that

oversees U.S. attorneys, indicates the majority of the fired prosecutors were hardly slackers.

They show:

Except for Chiara and Bud Cummins in Little Rock, the group ranked in the top third among the nation's 93 U.S. attorneys in contributing to an overall 106,188 federal prosecutions filed last year.

Of those six, all but Kevin Ryan in San Francisco also scored among the top third in winning a collective 98,939 convictions.

Three districts Arizona, New Mexico and San Diego were among the five highest in number of immigration prosecutions. Given their proximity to the Mexican border, the results come as little surprise. The Justice Department, however, attributed former San Diego prosecutor Carol Lam's firing in part to lagging immigration prosecutions and convictions.

The TRAC data confirm immigration prosecutions in San Diego dropped from 2,243 in 2002 to 1,715 in 2006. Meanwhile, convictions dropped from 1,763 to 1,449 over the five-year period Lam led the office.

In drug prosecutions, Arizona, New Mexico, San Diego and Seattle were ranked among in the 20 highest number of cases brought. Only Little Rock fell into the bottom third among all 93 U.S. attorneys' offices.

Seven of the eight districts received mediocre rankings in weapons prosecutions. The exception was Arizona, which prosecuted 199 of the nation's 9,313 weapons cases the tenth highest in the country.

None of the eight districts ranked particularly high in bringing terrorism or public corruption cases.

Justice spokesman Brian Roehrkasse attributed the high number of prosecutions and convictions in the border states to immigration cases that inflated overall statistics there. He called the number of immigration convictions last year "the highest ever."

Justice officials have cited poor management skills, insubordination and, in Cummins' case in Little Rock, political favoritism for replacements as other factors that led to the firings.

That underscores another apparent consideration in the dismissals: loyalty to the Bush administration, said former Justice Department inspector general Michael Bromwich.

"The notion that the rug can be pulled out from under them because they may not toe the line on death penalty issues or their immigration prosecution statistics may not be high enough really undermines the system of independent U.S. attorneys," said Bromwich, inspector general during the Clinton administration and now a partner in Washington law firm Fried, Frank, Harris, Shriver and Jacobson.

An estimated 3,000 pages of e-mails and other Justice Department documents released this week indicate anew that the White House was eager to bring in new blood to the politically appointed prosecutors' posts.

"Administration has determined to ask some underperforming USAs to move on," wrote Kyle Sampson, Gonzales' former chief of staff, in a Dec. 5, 2006, e-mail to Associate Attorney General Bill Mercer. The term "USAs" is shorthand for U.S. attorneys.

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610 W Ash Street, Suite 1200
San Diego, CA 92101

FEB 15 2007

U.S. Customs and Border Protection

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

Dear Ms. Lam:

On behalf of the San Diego Field Office (CBP), I would like to thank you for your support and commitment to the mission of U.S. Customs and Border Protection as the United States Attorney for the Southern District of California.

Under your leadership many initiatives have been undertaken that have strengthened the efforts of CBP to combat migrant smuggling.

To enhance communication, you encouraged your supervisory AUSA to meet with CBP management in an ongoing monthly forum in which "hot topic" CBP issues of interest are raised and discussed.

To address the alien enforcement issue, your office supported the implementation of the Alien Smuggling (1324) Fast Track Program and has demonstrated a commitment to aggressively address the alien smuggling recidivism rate.

In support of CBP referrals for prosecution, your office maintains a 100% acceptance rate of criminal cases, while staunchly refusing to reduce felony charges to misdemeanors and maintaining a minimal dismissal rate, and supporting special prosecution operations

In validation of CBP enforcement initiatives, your staff aggressively prosecuted enrollees in the SENTRI program who engaged in smuggling to support a zero tolerance posture. They have focused on cases of fraud, special interest aliens, the prosecution of criminal aliens, and supported our sustained disrupt operations.

To further officer effectiveness with your staff, you endorsed the CBP Enforcement Officer liaison program that provides periodic training to enhance the performance and development of CBP Enforcement Officers.

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I would like to expand on our joint accomplishments for fiscal year 2006 that support our mission and furthered the goals of the San Diego Office of Field Operations.

- CBP-Prosecutions Unit presented four hundred sixteen (416) alien smuggling cases, which represents a thirty-three percent (33%) increase over the three hundred fourteen (314) cases presented in 2005.

- CBP-Prosecutions Unit identified and pursued the prosecution of several recidivist alien smugglers and presented thirty (30) non-threshold alien smuggling cases for prosecution, resulting in a one hundred percent (100%) conviction rate. This represents a three hundred twenty nine percent (329%) increase over the seven (7) non-threshold cases presented in 2005.

- CBP-Prosecutions Unit conducted four (4) short-term Disrupt Operations in coordination with the USAO San Diego that focused on combating active human smuggling cells. These operations have led to the prosecution of an additional sixteen (16) non-threshold alien smuggling cases.

- The CBP-OFO Prosecutions Unit worked jointly with ICE HTIII and the United States Attorney's Office in the arrest and successful prosecution of two active duty U.S. Navy men engaged in the smuggling of undocumented aliens through the San Ysidro Port of Entry.

- The CBP-OFO Prosecutions Unit worked collaboratively with the Office of Border Patrol (OBP) and the USAO to engage in the investigation of marine interdiction alien smuggling cases. In 2006 the CBP-OFO Prosecutions Unit presented for prosecution two (2) cases involving aliens being smuggled on private sailing vessels.

- The United States Attorney's Office approved a CBP Prosecutions Unit investigative proposal to develop proactive alien smuggling cases.

The aforementioned 2006 enforcement successes have directly contributed to the reduction by at least fifty percent (50%) the number of smuggled aliens encountered at the San Diego ports of entry.

I speak for my entire staff when I say that we are honored to have had the privilege of working with you and your staff for the past four years. I am sure we

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will use what we learned from our collaborative efforts to advance our enforcement efforts.

Again, thank you for your support; you will be missed. I wish you continued success in your future endeavors.

Adele J. Fasano
Director, Field Operations

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June 6, 2006

MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL

THROUGH: William Mercer
Principal Associate Deputy Attorney General

FROM: Daniel Fridman
Counsel to the Deputy Attorney General

SUBJECT: Analysis of Immigration Prosecutions in the Southern District of California

The United States Attorney's Office for the Southern District of California has come under criticism for ostensibly weak enforcement of federal immigration criminal offenses. Most recently, Representative Darrell Issa released to the Associated Press an internal 41-page report written last August by the Border Patrol in San Diego claiming that the lack of federal immigration prosecutions in San Diego is hurting morale within the Border Patrol. Specifically, the report points to low numbers of prosecutions of alien smugglers and large numbers of case declinations by SDCA. Carol Lam, the U.S. Attorney for SDCA, responded publicly that the report is an unauthorized, altered version of an old report. Regardless of the authenticity of the report, media attention is now focused on SDCA's handling of immigration cases with discussions about the office appearing on the Lou Dobbs show and in network news reports.

The purpose of this white paper is to analyze the situation in SDCA by using staffing and prosecution data maintained by EOUSA, case data maintained by the U.S. Courts and the U.S. Sentencing Commission, an EARS evaluation of SDCA, and self-reported statements by U.S. Attorney's Offices on their prosecution guidelines for immigration offenses. The report will compare data from the SDCA to the situation of the U.S. Attorney's Offices in Arizona and New Mexico, two other border districts.

Background on the San Diego Border District

SDCA is within the San Diego Sector patrolled by the United States Border Patrol. San Diego is California's second largest city and the seventh largest city in the country. The San Diego Sector consists of 66 linear miles of international boundary with Mexico. Although the land border in the district comprises only 7 percent of the entire U.S./Mexico border, 60 percent of the people who live along the entire 2,000 mile border live in, or on the Mexican side adjacent to, the Southern District of California. Directly to the south of San Diego lie the Mexican cities of Tijuana and Tecate, Baja California - with a combined population of more than 2 million people.

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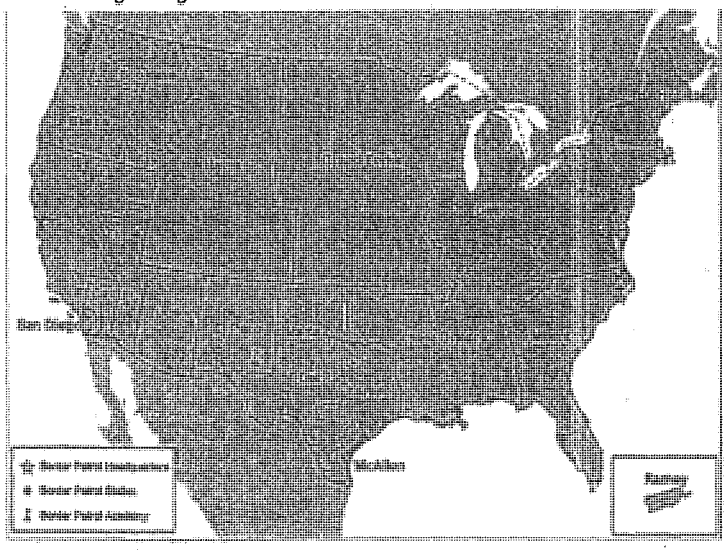
According to Carol Lam, Border Patrol made 140,000 immigration arrests in the Sector last year. The chart below shows border patrol stations near the San Diego border with Mexico, as well as the stations in the neighboring border states.



SDCA Staffing

As of June 1, 2006, SDCA has a total of 125 authorized FTE AUSA positions, with 111 actually filled. This is an 11.2% vacancy rate, higher than the national average of 10%. SDCA appears to be looking at a potentially higher effective vacancy rate with three AUSAs on extended medical leave, one AUSA awaiting disability retirement, and four AUSAs in the military reserves who have received formal notice they may be called to active duty in the coming year. Without including a natural rate of turnover, this would give SDCA a worst-case vacancy rate of 19.8% if the reservists get called and the AUSAs on medical leave do not return.

Of the 111 AUSAs currently employed, 51 are assigned to the General Crimes Section, primarily responsible for border related prosecutions, and two are assigned to the Civil Section, working on civil immigration cases. According to an EARS report analyzing SDCA, 95% of the reactive cases handled by the General Crimes AUSAs involve border immigration or drugs, and AUSAs split their time 50-50 between reactive cases and proactive investigations.

By way of comparison, further east along the border, Arizona currently has 116 AUSAs and New Mexico has 59. These two border districts can serve as points of comparison to the Southern District of California on overall effectiveness in immigration prosecutions.

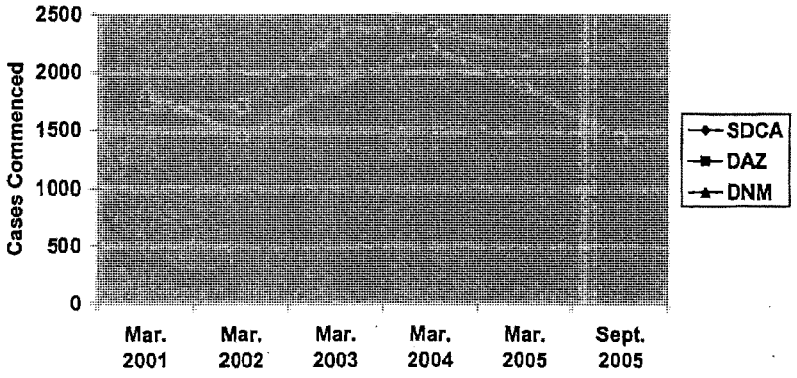
SDCA also employs about 50 contractors, many of which are supposed to provide support for the immigration caseload. The EARS report is critical about the use of contractors at SDCA and concludes that, in many instances, the contractors are needlessly consuming office resources without assisting in processing immigration cases.

Immigration Enforcement Data

According to data obtained from the U.S. District Courts for the period from September 30, 2004 to September 30, 2005, the Southern District of California had 398 prosecutions for illegal reentry by an alien and 1041 prosecutions for "other" immigration offenses. The U.S. Courts data includes all felony and class A misdemeanor cases. This is the most recent data available from the courts.

The U.S. Courts website has historical data on prosecution cases commenced broken down by district and by type of crime from 2000 to 2005. The chart below contains a line graph of the trends in immigration prosecutions for SDCA, Arizona, and New Mexico. Since the fiscal year ending in March 2001, Arizona and New Mexico have had an upward trend in their immigration prosecutions. SDCA peaked in 2003-04 and has since had a precipitous decline. Comparing SDCA's performance using 111 AUSAs and New Mexico's higher case commencement numbers using 59 AUSAs, it seems that SDCA should be doing much more. In fairness, there may be differences in each district not reflected in a simple line graph that could account for the disparity, but the data helps to focus attention on the problem.

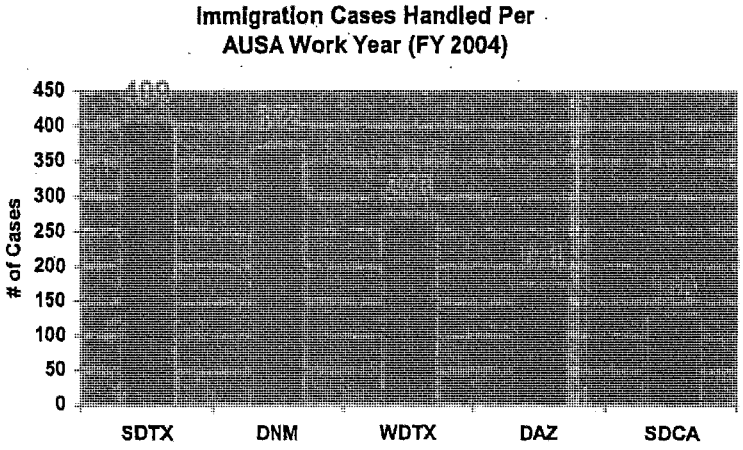
Trends in Overall Immigration Prosecutions by District (Felonies and Class A Misdemeanors)



Data Source: United States Courts

AUSA Productivity

Another way of comparing SDCA's performance to other border districts is to examine how many immigration cases SDCA is handling per AUSA work year.[1] This is essentially a measure of productivity and efficiency for each district in handling immigration cases. This analysis shows that SDCA is lagging far behind the other districts. SDCA handled about 130 immigration cases per AUSA work year, half the average of 271 cases for the other border districts. In FY 2005, the data looks even less favorable for SDCA. In the first quarter of 2005, the number dropped to 56.34 immigration cases handled per AUSA work year.



SDCA provides three main reasons for the disparity in the EARS report. First, SDCA states that its data includes time spent by appellate and supervisory personnel working on immigration cases. If they only reported line AUSA time spent on immigration cases, as they believe other districts do, SDCA states that their numbers would be higher. Second, SDCA mostly files felony immigration cases and the other districts file misdemeanor cases which take less time and resources. Third, the public defender is more aggressive in San Diego, and as a result, they take more immigration cases to trial. SDCA had 42 immigration cases disposed of by trial in FY 2004, while the next highest districts had 29, 21, and 11. Overall, the data suggests that SDCA could be doing more and should be able to change its prosecution guidelines to handle more misdemeanor cases and increase the numbers of cases their AUSAs are handling.[2]

[1] The number of work years spent on immigration cases is determined by aggregating the number of hours AUSAs in the district reported spending on immigration cases in their USA-5 time entries.

[2] The EARS report was also critical of SDCA's use of contractors to help process immigration cases, when other border districts do not have the benefit of such a substantial contractor support force. The report concludes, "San Diego appears to be handling fewer cases per AUSA, but with more resources, both AUSA and support (contractor and civil service), than other districts."

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Prosecution Guidelines

The prosecution guidelines employed by SDCA may help explain why their immigration prosecutions have declined in the past two years and are lower that the other border districts. SDCA does not prosecute purely economic migrants. SDCA directs its resources to bringing felony charges against the most egregious violators, focusing on illegal aliens with substantial criminal histories such as violent/major felons, recidivist felons, repeat immigration violators on supervised release, and alien smugglers and guides. SDCA does not prosecute foot guides that do not have a serious criminal history.

SDCA has a fast track charge bargain program in place for illegal reentry cases and for alien smuggling cases, but the number of fast track prosecutions they have done has declined. In their supplementary materials requesting reauthorization of the fast track program, SDCA admits its prosecution guidelines have resulted in fewer cases being filed: "[i]n 2004, we adjusted our prosecution guidelines to, among other things, eliminate a large number of criminal alien cases where the alien was a suspected foot guide without a serious criminal history. This change in the prosecution guidelines resulted in a decrease of approximately 360 cases in 2005."

New Mexico has a lower threshold for accepting immigration cases for prosecution. New Mexico accepts illegal reentry cases even when the illegal alien has no prior criminal record. New Mexico also takes in alien smuggling cases, focusing on cases where there is evidence of a profit motive or where the health and safety of the persons transported was jeopardized.

Analysis of Specific Immigration Offenses Being Prosecuted

The differences in prosecution guidelines are borne out by the case filing data from each district. When the immigration prosecutions are broken down by specific offense, it is apparent why SDCA is now lagging behind the other border districts in the number of prosecutions.

According to the data, SDCA is doing as well as any other district, except for SDTX, in alien smuggling prosecutions under 8 U.S.C. 1324. In 2005, SDCA filed 484 alien smuggling cases with 554 defendants, a number comparable to Arizona, which filed 380 alien smuggling cases with 585 defendants. New Mexico had far fewer alien smuggling cases in 2005 with 111 cases filed with 145 defendants.

SDCA filed far fewer illegal entry cases under 8 U.S.C. 1325 than Arizona and New Mexico. In 2005, Arizona filed 3409, New Mexico filed 1194, and SDCA filed 470 illegal entry cases.

SDCA is also lagging far behind other border districts in the number illegal reentry prosecutions under 8 U.S.C. 1326. In 2005, Arizona filed 1491 illegal reentry cases, New Mexico filed 1607 illegal reentry cases, and SDCA filed 422 illegal reentry cases. SDCA filed almost half as many illegal reentry cases in 2005 than it did in 2004.

U.S. Sentencing Commission Data

SDCA's emphasis on prosecuting more serious felony immigration cases is borne out by data maintained by the U.S. Sentencing commission. For FY 2005, the mean and median sentence in an immigration case in SDCA was about 24 months. New Mexico's sentencing data reflects lower

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sentences with a mean sentence of about 15 months and a median sentence of 8 months. Arizona's mean and median sentences were slightly higher than SDCA at about 26 months.

Conclusions and Recommendations

It appears that SDCA is employing prosecution guidelines that are more restrictive than other districts in immigration prosecutions. The most immediate fix would be to change the prosecution guidelines so they are more in line with the guidelines employed by other border districts. In particular, SDCA should place a greater emphasis on pursuing more illegal reentry cases and alien smuggling cases and to also begin prosecuting more misdemeanor illegal entry without inspection cases.

Any additional resources provided to the district to lower the vacancy rate should be done with a clear understanding that they will supplement current resources focused on criminal aliens. To the extent that Border Patrol is dissatisfied with the level of immigration prosecutions, Customs and Border Protection or the Bureau of Immigration and Customs Enforcement should provide SDCA with Special Assistant United States Attorneys to focus on immigration prosecutions and improve the manpower issues.

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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 28, 2007

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Schumer
Chairman
Subcommittee on Administrative Oversight
and the Courts
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Messrs. Chairmen:

I am writing with regard to the testimony to be provided the Senate Judiciary Committee on March 29, 2007, by the former Chief of Staff to the Attorney General, Kyle Sampson, concerning the Department's requests for the resignations of certain United States Attorneys.

As we have stated in our previous letters (copies enclosed) to the Senate and House Judiciary Committees regarding the Committees' requests for documents, the Department is greatly concerned about any public disclosure of the identities of the U.S. Attorneys who were considered for possible replacement but not asked to resign. Such a disclosure would be fundamentally unfair to those U.S. Attorneys and would compromise the ability of Main Justice to work with them and all other U.S. Attorneys. Similar concerns apply to the redacted names of other individuals who may have been considered as possible candidates to replace U.S. Attorneys. For those reasons, we have asked that Committee Members and staff accept our invitation to review the unredacted records containing that information, and that the Committees defer their requests to receive copies of the unredacted records.

While we are continuing to discuss with the Committees the Department's concerns about public disclosure of this information, we respectfully request that Mr. Sampson not be asked by the Committee to identify those U.S. Attorneys or replacement candidates when he testifies at the upcoming hearing. Similarly, we respectfully request that Mr. Sampson not be

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asked to testify about other information that has been redacted or excluded from the documents we have produced to the Committees, as described in our letters of March 19, 2007, and March 26, 2007.

Please do not hesitate to contact this Office if you would like to confer about this matter.

Sincerely,

Richard A. Hertling
Acting Assistant Attorney General

Enclosures

cc: The Honorable Arlen Specter
The Honorable Jeff Sessions

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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 19, 2007

The Honorable Charles E. Schumer
Chairman
Subcommittee on Administrative Oversight
and the Courts
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman

This supplements our previous responses to your letter, dated March 12, 2007, which requested documents and other information about the request for the resignations of eight United States Attorneys. Under the extraordinary circumstances of this matter, it is important for the Congress and the people it represents to understand both the reasons for our decisions to request these resignations and our efforts to provide testimony to Congress about this matter. It would be improper to remove a United States Attorney for partisan reasons in retaliation for bringing or failing to bring, or in an effort to prevent the U.S. Attorney from bringing, a particular prosecution or enforcement action -- such as for failing to pursue a public corruption case. Because the American public must have confidence that such considerations of partisan gain did not factor into the decision to ask for the resignation of these eight federal prosecutors, we are providing the Subcommittee with confidential, deliberative documents that disclose the process through which the Department reached those decisions and prepared for testimony. The release of such deliberative materials is virtually unprecedented and reflects the Department's commitment to ensuring that all the relevant information underlying these decisions is available to Congress.

Enclosed are over 3,000 pages of documents responsive to your request. Consistent with our prior production, we will make unredacted copies of these documents available for review at the Department by Subcommittee staff. The enclosed documents were located in the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, and the Executive Office for United States Attorneys. As indicated in our letter of March 13, 2007, we are redacting personal information based upon individual privacy interests. Also redacted is information from multi-subject documents about other subjects, completely unrelated to the removal of any U.S. Attorneys; a few of these redactions concern non-public information about open criminal investigations, which will not be made available for review.

Additionally, we are redacting information that would identify other U.S. Attorneys who were considered for possible removal but ultimately were not asked to resign, and information

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about candidates to replace those who were removed unless that information played a role in the removal decision. We also have made a few redactions of information about consideration of candidates for judicial appointments. In making the redactions, we are seeking to preserve the privacy and professional viability of those who are continuing to serve as U.S. Attorneys as well as individuals who have been considered but not selected as nominees for that position. While we appreciate the Subcommittee's interest in confirming the character of these redactions, we are unaware of any value in publicly disclosing the unredacted documents that would outweigh the damage to the individuals involved and their ability to function effectively as U.S. Attorneys or professionals in other roles. It would be patently unfair to the individuals and also risk destruction of the trust and collegiality that is critical to the Department's relationship with these and all other U.S. Attorneys. We are, of course, prepared to respond to Subcommittee staff questions about particular redactions in these records.

We have identified three categories of documents that raise such significant confidentiality and privacy interests that we need to limit our response to making the documents available for Subcommittee staff review at the Department or your personal review at your office. One category consists of documents relating to a request by the U.S. Attorney for the Western District of Michigan for an Office of Professional Responsibility (OPR) investigation into a leak of information about an ongoing OPR investigation regarding the conduct of an Assistant U.S. Attorney in that office. The second category consists of documents relating to the U.S. Attorney's Office in the Northern District of California, including internal management issues and a special EARS investigation. These documents include communications confidentially submitted to Department officials by career attorneys, and we believe that preservation of their confidentiality is important to preserving the candor of such communications in the future. As you may recall, we have previously produced the final EARS reports for the offices of the U.S. Attorneys who testified before the Committee. The final category consists of recommendation memoranda submitted in connection with Attorney General decisions on whether to seek the death penalty in individual cases, which are extremely sensitive law enforcement deliberative materials.

As described above, we have made the full disclosure of deliberative documents leading up to the Department's decision to request the U.S. Attorney resignations because we recognize the Subcommittee's interest in obtaining information about the reasons for that decision. And consistent with that rationale, we have also provided documents relating to our communications with those U.S. Attorneys both before and after December 7, 2006, the date the resignations were requested.

Our response regarding the remaining documents generated after December 7th is based on different considerations. We are providing another category of documents generated after that date, but are doing so to satisfy another legitimate Subcommittee purpose: its interest in examining the Department's provision of incomplete information to Congress. We are providing deliberative documents concerning the preparation of the congressional testimony by Department officials in order to clarify the integrity of our process for preparing the testimony.

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Except as previously indicated and consistent with long-standing Executive practice, however, we are not providing other documents generated within the Exec for the purpose of responding to the congressional (and media) inquiries about the The appropriate functioning of the separation of powers requires that Executive Br preserve the ability to communicate confidentially as they discuss how to respond t from a coordinate branch of government. Such robust internal communications wc effectively chilled, if not halted, if they were disclosed, which could substantially i agency's ability to respond to congressional oversight requests. That result would to the operations of both the Branches and serve no useful purpose.

Memos on memos

Finally, although we have made available documents that concern our identification of replacement candidates for the U.S. Attorney positions prior to December 7th – because that information may have relevance to the decision to request the resignations, we are not releasing information about the Department's ongoing, confidential consideration of candidates to fill these positions, which began after December 7th. That consideration is integral to the exercise of the President's constitutional authority to appoint Executive Branch officials, and it implicates significant privacy interests for the individuals who may be, or may have been, subject to consideration for these positions.

We believe that the provision of the enclosures completes our response to your document request, although we will certainly supplement this response if we identify additional responsive documents. We hope that this information is helpful and would appreciate the opportunity to confer further with the Subcommittee if you have further questions about this matter.

Sincerely,

Richard A. Hertling

Richard A. Hertling
Acting Assistant Attorney General

cc: The Honorable Jeff Sessions
Ranking Minority Member

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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 26, 2007

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Linda T. Sanchez
Chairwoman
Subcommittee on Commercial and
Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman and Madam Chairwoman:

This responds to your letter, dated March 22, 2007, seeking production of a variety of Department documents, including those that have been made available for your review. We request that the Committee defer any action to issue subpoenas relating to these materials until we have an opportunity for meaningful discussion about our concerns regarding public disclosure of these documents.

Our fundamental concern about producing the unredacted documents is that it would be deeply unfair to the U.S. Attorneys who were not asked to resign to publicly disclose the Department's internal deliberations over their possible replacement. These dedicated public servants, who continue to serve in their offices, were not in fact asked to resign and had no involvement in the current controversy. They do not deserve to have their reputations maligned unnecessarily by public disclosure as they attempt to continue to tackle the Department's law enforcement mission. In light of the fact that the Department has offered Members and staff the opportunity to review the unredacted documents privately, we ask you to consider the damage that such disclosures would cause to individual U.S. Attorneys and the Department.

Consistent with the extraordinary circumstances of this matter, we have offered access to information that is virtually never disclosed outside of the Department. As set forth in our previous correspondence, we have furnished you with more than 3,100 pages of documents in the past week, from which we have redacted information that implicates individual privacy interests

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and significant institutional equities of this Department. We have offered you access to the complete and unredacted versions of those same documents at the Department (or on the Hill for individual Members), with a separate collection set aside for the majority and the minority in each Committee so that your respective staffs can mark and tag documents as they see fit. To date, Committee staff have reviewed only the first 143 pages of unredacted documents on March 19, 2007; no staff or Members have accepted our offer to review the far larger number of unredacted pages and other documents that are now available for your review.

While we understand that you may disagree with the Department's decisions relating to the requested resignations of the eight United States Attorneys, we trust that you have no interest in damaging the Department's ability to serve the Nation as the federal Government's primary law enforcement and litigating agency. Under those circumstances, we believe it is important that we work together to develop an accommodation of your information needs that is consistent with the Department's law enforcement and litigation responsibilities. Some of the particular requests set forth in your letter would materially and adversely affect the Department's operations in ways that serve no useful purpose. Most importantly, disclosure of the names of U.S. Attorneys who were considered for replacement but ultimately not asked to resign would only compromise, for no public gain, the Department's effective relationships with them and do substantial harm to their reputations and their ability to do their jobs effectively. The relevance of such information is attenuated because their resignations were not in fact requested, and disclosing such internal deliberations would also discourage the robust exchanges of views that are important to the Department's management of its leadership resources.

We have not, of course, redacted information about candidates for U.S. Attorney if their consideration was related to the decision to seek a particular resignation. We have redacted names of candidates whose consideration was not related to that decision, and the basis for your further request for such information remains unclear. If the candidate was irrelevant to the U.S. Attorney's resignation, then the relevance of information concerning that individual to your oversight interest is unclear. Moreover, the public identification of such individuals implicates their privacy interests and would chill the internal deliberative process that remains on-going within the Department to select replacements.

Your letter also asks about our withholding of a category of documents "generated for the purpose of responding to the congressional (and media) inquiries." You have suggested that this category is "crucial to [y]our oversight interests." Although we agree that Congress has a "legitimate interest in examining the Department's [assertedly] incomplete and inaccurate responses and testimony to Congress on this subject," it is only a small sub-set of this category that addresses that interest – and we have already produced those documents. As we stated in our March 19th response, we have provided our "deliberative documents concerning the preparation of the congressional testimony by Department officials in order to clarify the integrity of our process for preparing the testimony." These documents included preparatory materials related to congressional briefings. We believe that production, together with the interviews our officials will provide, should satisfy that oversight interest.

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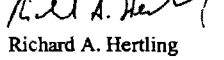
In producing those documents, we made a careful and reasonable exception in these unique circumstances, based on the particularized need relating to the assertedly incomplete testimony, to our longstanding position that it is in the interests of neither the Legislative nor the Executive Branch for agencies to be required to produce their informal communications – whether with Members of Congress or their staff or within the Executive Branch – regarding matters under inquiry by Congress. The withheld documents in this category do not relate to possible inaccuracies or misrepresentations in congressional testimony, but instead reflect the myriad of confidential communications that arise in the course of responding to inquiries about matters being reviewed by Congress.

We believe that there would be a substantial inhibiting effect on future informal communications between agencies and congressional representatives, both majority and minority, if informal communications – to use hypothetical examples, a suggested response for a Member to make to a constituent's inquiry about the matter under review or a candid communication from a Member's staff regarding the Member's view of the matter – were to be produced in the normal course of congressional oversight. This would be especially problematic in this era of emails and Internet posting.

We also hope that you will appreciate our concern with respect to the internal Executive Branch communications in this category. A common sub-category of documents in this category consists of emails and drafts of letters responding to committee requests for documents or information. These draft or informal documents are analogous to documents recording communications between committee staff and Members regarding the drafting of the committee requests themselves. Just as the confidentiality of communications between congressional staff and their principals is essential to the conduct of the public business, so too it is essential for the Executive Branch. Moreover, it would introduce a significantly unfair imbalance to the oversight process if committees were able to obtain internal Executive Branch documents that are generated in order to assist Executive Branch officials in determining how to respond to an inquiry by the very committee seeking the documents or other information.

We earnestly hope that you will accept our offer to review the redacted documents before taking further action. We are available to confer with you about these matters at your convenience.

Sincerely,



Richard A. Hertling
Acting Assistant Attorney General

cc: The Honorable Lamar Smith
The Honorable Christopher B. Cannon

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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 28, 2007

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Schumer
Chairman
Subcommittee on Administrative Oversight
and the Courts
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairmen Leahy and Schumer:

The Department of Justice has received a number of inquiries from congressional staff relating to the Department's letter of February 23, 2007, which I sent in response to a letter of February 8, 2007, from Senators Reid, Durbin, Schumer, and Murray. On review, it appears that certain statements in the February 23 letter are contradicted by Department documents included in our production in connection with the Committees' review of the resignations of U.S. Attorneys. We sincerely regret any inaccuracy.

As explained in the letter that accompanied our production on March 19, 2007, the Department has provided deliberative documents concerning the preparation of the congressional testimony by Department officials on the resignations of the U.S. Attorneys out of concern that Department officials may have provided inaccurate or incomplete information on those occasions. Because of the apparent contradiction between the February 23 letter and Department documents included in the production, we now conclude that the same reasoning applies to the Department's internal documents reflecting the preparation and transmittal of the February 23 letter. Accordingly, I enclose with this letter an additional 202 pages from the Office of the Attorney General, Office of the Deputy Attorney General, and Office of Legislative Affairs (Bates numbers OAG000000958-OAG000001050, DAG000002228-DAG000002293, and OLA000000001-OLA000000043). These documents reflect the preparation and transmittal of that letter. They include minimal redactions of personal information.

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The Honorable Patrick Leahy
The Honorable Charles E. Schumer
Page Two

We hope that the enclosed information is helpful. We will continue to review the materials we have collected to determine if additional disclosures are warranted. Please do not hesitate to contact this Office if you would like to confer about this matter.

Sincerely,

Richard A. Hertling
Acting Assistant Attorney General

Enclosures

cc The Honorable Arlen Specter
The Honorable Jeff Sessions
The Honorable Harry Reid
The Honorable Richard J. Durbin
The Honorable Patty Murray

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Opening Statement Of Senator Patrick Leahy, Chairman, Senate Judiciary Committee
Hearing On "Preserving Prosecutorial Independence: Is The Department Of JusticePoliticizing The Hiring And Firing Of U.S. Attorneys? – Part III"
March 29, 2007

Today the Committee proceeds with another hearing into the mass replacements of U.S. attorneys. This morning we will hear testimony from D. Kyle Sampson, the former chief of staff to Attorney General Gonzales. He is represented by another attorney who served in the White House Counsel's office for this White House, Bradford Berenson. We thank Mr. Sampson for appearing voluntarily and testifying.

I hope that this hearing will provide us with an opportunity to learn additional facts and help us get beyond the shifting stories to the truth. Our goal is to get to the bottom of what happened, why it happened, and who was involved in devising and implementing this plan to replace so many United States attorneys across the country.

At his press conference two weeks ago -- and again this week in an interview -- Attorney General Gonzales seemed to heap much of the responsibility for this matter on Mr. Sampson. The "mistakes" the Attorney General admits were made seem, according to him, to have been made mostly by Mr. Sampson. He was one of the people in charge of assembling the list of U.S. attorneys to be fired. The Attorney General indicated he was also one of the people who concealed information from others at the Department of Justice so that there was, in the words of the Attorney General, "consequently information shared with the Congress that was incomplete."

This hearing gives Mr. Sampson a chance to answer these charges by the Attorney General and present the facts as he knows them. We ask only that Mr. Sampson share with us the truth and the whole truth with regard to these matters.

I want the American people to have a Justice Department and United States Attorneys offices that enforce the law without regard to political influence and partisanship. I want the American people to have confidence in federal law enforcement and I want our federal law enforcement officers to have the independence they need to be effective and to consistently merit the trust of the American people. Regrettably, what we have heard from the Administration has been a series of shifting explanations and excuses and a lack of accountability or acknowledgement of the seriousness of this matter.

This investigation stems from this Committee's responsibilities to the American people. The Judiciary Committee has the authority to conduct oversight and investigations related to the Department of Justice and U.S. attorneys' offices. We have the authority to examine whether inaccurate or incomplete testimony was provided to this Committee, to consider legislation within our jurisdiction, and to protect our role in evaluating nominations pursuant to the Senate's constitutional responsibility to provide advice and consent. Indeed, it was in light of this jurisdiction -- the confirmation power vested in the Senate, and the jurisdiction of this Committee over the review of U.S. attorney nominations -- that our Ranking Member observed early on that we have "primary"

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responsibility to investigate this matter.

The answers to our questions at the January 18 hearing with the Attorney General and the February 6 hearing with the Deputy Attorney General, as well as a series of statements by White House spokespeople and other Justice Department officials in private briefings, have been contradicted by the testimony of the former United States Attorneys. They have been contradicted also by the limited e-mails and other documents we have obtained from the Department of Justice. Despite the initial denials of White House involvement, it is now apparent that White House officials were involved in the planning and replacement of U.S. attorneys and the subsequent misleading explanations from Justice Department officials.

U.S. attorneys serve at the pleasure of the President. But justice does not serve at the pleasure of this or any White House.

Our law enforcement and justice system is the envy of the world. It is one of our country's greatest strengths. It is built on a foundation of checks and balances and the people's faith in the rule of law without fear or favor. That foundation can be easily eroded, and we need to be vigilant in protecting it.

The dismissed U.S. attorneys have testified under oath and said in public that they believe political influence was applied. They have given chapter and verse and specific examples. If they are right, that mixing of partisan political goals into federal law enforcement is highly improper. It corrodes the public's trust in our system of justice. It is wrong. That is what we are seeking to determine through our investigation of the facts. We need a thorough and fair investigation into what happened and why and who was involved.

# # # # #

United States Senate
Committee on the Judiciary

Prepared Statement of
D. Kyle Sampson

March 29, 2007

Mr. Chairman and members of the Committee, good morning. As you know, I have come here voluntarily to answer your questions. I have been a public servant for the past eight years. During the past several years, I have served Attorney General Gonzales in a staff position, culminating in my service to him as his Chief of Staff. In that role, I was responsible for organizing and managing the process by which the U.S. Attorneys were asked to resign. From that vantage point, I believe I was well positioned to observe and understand what happened in this matter. I can't pretend to know or remember every fact that may be of relevance, but I am pleased to share with the Committee today those that I do know and remember. I will be glad to stay here as long as necessary to ensure that you have the answers you need.

After the 2004 election, the White House inquired about the prospect of replacing all 93 U.S. Attorneys with new appointees. I believed, as did others, that less sweeping changes were more appropriate. The Department of Justice then began to look at replacing a limited number of U.S. Attorneys in districts where, for a variety of reasons, the Department thought change would be beneficial. Reasonable and honest people can differ, and in fact did at various stages of the process, on whether particular individuals should have been asked to resign. But the decision to ask them to do so was the result of an internal process that aggregated the considered, collective judgment of a number of senior Justice Department officials.

I would be the first to concede that this process was not scientific, nor was it extensively documented. That is the nature of presidential personnel decisions. But neither was the process random or arbitrary. Instead, it was a consensus-based process based on input from senior Justice Department officials who were in the best position to develop informed opinions about U.S. Attorney performance.

When I speak about U.S. Attorney performance, it is critical to understand that performance for a Senate-confirmed presidential appointee is a very different thing than performance for a civil servant or a private sector employee. Presidential appointees are judged not only on their professional skills but also their management abilities, their relationships with law enforcement and other governmental leaders, and their support for the priorities of the President and the Attorney General. A United States Attorney may be a wonderful lawyer and wonderful person – as I believe are all of the individuals whose resignations were eventually sought – but if he or she is unable to maintain the morale and motivation of line assistants, is resistant to the President's or the Attorney General's constitutional authority, loses the trust and confidence of important local

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constituencies in law enforcement or government, or fails to contribute to the important non-prosecutorial activities that come with positions of leadership in the Justice Department, then that U.S. Attorney is not performing at a high level.

Thus, the distinction between "political" and "performance-related" reasons for removing a United States Attorney is, in my view, largely artificial. A U.S. Attorney who is unsuccessful from a political perspective, either because he or she has alienated the leadership of the Department in Washington or cannot work constructively with law enforcement or other governmental constituencies in the district important to effective leadership of the office, is unsuccessful.

With these standards for evaluation of U.S. Attorney performance in mind, I coordinated the process of identifying U.S. Attorneys that might be considered for replacement after their four-year terms had expired. I received input from a number of senior officials at the Department of Justice who were in a position to form considered judgments about our U.S. Attorneys. These included not only senior political appointees such as the Deputy Attorney General but also senior career lawyers at the Department of Justice such as David Margolis, a man who has served Justice for more than forty years under Presidents of both parties and who probably knows more about United States Attorneys than any person alive.

I developed and maintained a list that reflected the aggregation of views of these and other Department officials over a period of almost two years. I provided that information to the White House when requested, and reviewed it with and circulated it to others at the Department of Justice for comment. The list changed over time as new information was received and incorporated. By and large, the process operated by consensus: when any official whom I consulted felt that an individual name should be removed from the list, it generally was.

Although consideration of possible changes had begun in early 2005, the process of actually finalizing a list of U.S. Attorneys who might be asked to resign, and acting on that list, did not begin until last fall. The process of finalizing the list of recommendations and receiving the approval of the required principals is reflected in many of the more than 3,000 documents that have been produced. In the end, eight total U.S. Attorneys were selected for replacement: one, Bud Cummins, in mid-2006, and the other seven in a group in early December, 2006.

With the exception of Bud Cummins, none of the U.S. Attorneys was asked to resign in favor of a particular individual who had already been identified to take the vacant spot. Nor, to my knowledge, was any U.S. Attorney asked to resign for an improper reason. As presidential appointees, U.S. Attorneys serve at the "pleasure of the President" and may be asked to resign for almost any reason with no public or private explanation. The limited category of improper reasons includes an effort to interfere with or influence the investigation or prosecution of a particular case for political or partisan advantage. To my knowledge, nothing of the sort occurred here. Instead, based on everything I have seen and heard, I believe that each replaced U.S. Attorney was selected

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for legitimate reasons falling well within the President's broad discretion and relating to his or her performance in office, at least as performance is properly understood in the context of Senate-confirmed political appointees.

Nonetheless, when Members of Congress began to raise questions about these removals, I believe the Department's response was badly mishandled. It was mishandled through an unfortunate combination of poor judgments, poor word choices, and poor communication and preparation for the Department's testimony before Congress.

For my part in allowing what should have been a routine process of assuring the Congress that nothing untoward occurred to become an ugly, undignified spectacle, I want to apologize to my former DOJ colleagues, especially the U.S. Attorneys who were asked to resign. What started as a good faith attempt to carry out the Department's management responsibilities and exercise the President's appointment authority has unfortunately resulted in confusion, misunderstanding, and embarrassment. This should not have happened. The U.S. Attorneys who were replaced are good people; each served our country honorably; and I was privileged to serve at the Justice Department with them.

As the Attorney General's Chief of Staff, I could have and should have helped to prevent this. In failing to do so, I let the Attorney General and the Department down. For that reason, I offered the Attorney General my resignation. I was not asked to resign. I simply felt honor-bound to accept my share of blame for this problem and to hold myself accountable.

Contrary to some suggestions I have seen in the press, I was not motivated to resign by any belief on my part that I withheld information from Department witnesses or intentionally misled either those witnesses or the Congress. The mistakes I made here were made honestly and in good faith. I failed to organize a more effective response to questions about the replacement process, but I never sought to conceal or withhold any material fact about this matter from anyone. I always carried out my responsibilities with respect to U.S. Attorneys in an open and collaborative manner. Others in the Department knew what I knew about the origins and timing of this enterprise. None of us spoke up on those subjects during the process of preparing Mr. McNulty and Mr. Moschella to testify, not because there was some effort to hide this history, but because the focus of our preparation sessions was on other subjects – principally *why* each of the U.S. Attorneys had been replaced, whether there had been improper case-related motivations for those replacements, and whether the Administration planned to use the Attorney General's interim appointment authority to evade the Senate confirmation process.

Thus, the truth of this affair as I see it is this: the decisions to seek the resignations of a handful of U.S. Attorneys were properly made but poorly explained. This is a benign rather than sinister story, and I know that some may be indisposed to accept it. But it is the truth as I observed and experienced it.

Thank you once again for the opportunity to testify before you today. I would be pleased to answer your questions.

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35800.047

Sampson, Kyle

From:	Sampson, Kyle
Sent:	Monday, January 09, 2006 10:09 AM
To:	Harriet Miers (Harriet_Miers@who.eop.gov)
Cc:	Bill Kelley (william_k._kelley@who.eop.gov)
Subject:	U.S. Attorney Appointments -- PLEASE TREAT THIS AS CONFIDENTIAL

PLEASE TREAT THIS AS CONFIDENTIAL

Harriet, you have asked whether President Bush should remove and replace U.S. Attorneys whose four-year terms have expired. I recommend that the Department of Justice and the Office of the Counsel to the President work together to seek the replacement of a limited number of U.S. Attorneys.

The U.S. Code provides that each United States Attorney "shall be appointed for a term of four years . . . [and] shall continue to perform the duties of his office until his successor is appointed and qualifies." 28 U.S.C. § 541(b). Accordingly, once confirmed by the Senate and appointed, U.S. Attorneys serve for four years and then holdover indefinately (at the pleasure of the President, of course). In recent memory, during the Reagan and Clinton Administrations, Presidents Reagan and Clinton did not seek to remove and replace U.S. Attorneys they had appointed whose four-year terms had expired, but instead permitted such U.S. Attorneys to serve indefinitely under the holdover provision.

There likely are several explanations for this: In some instances, Presidents Reagan and Clinton may have been pleased with the work of the U.S. Attorneys who, after all, they had appointed. In other instances, Presidents Reagan and Clinton may simply have been unwilling to commit the resources necessary to remove the U.S. Attorneys, find suitable replacements (i.e., receive the "advice" of the home-state Senators), complete background investigations, and secure Senate confirmations.

There are practical obstacles to removing and replacing U.S. Attorneys. First, wholesale removal of U.S. Attorneys would cause significant disruption to the work of the Department of Justice. Second, individual U.S. Attorneys often were originally recommended for appointment by a home-state Senator who may be opposed to the President's determination to remove the U.S. Attorney. Third, a suitable replacement must be found in consultation with the home-state Senator, the difficulty of which would vary from state to state. Fourth, a background investigation must be completed on the replacement -- a task often complicated if the outgoing U.S. Attorney remains in office. Fifth, after nomination, the Senate must confirm the replacement.

None of the above obstacles are insuperable. First, a limited number of U.S. Attorneys could be targeted for removal and replacement, mitigating the shock to the system that would result from an across-the-board firing. Second, the Department of Justice's Executive Office of U.S. Attorneys (EOUSA) could work quietly with targeted U.S. Attorneys to encourage them to leave government service voluntarily; this would allow targeted U.S. Attorneys to make arrangements for work in the private sector and "save face" regarding the reason for leaving office, both in the Department of Justice community and in their local legal communities. Third, after targeted U.S. Attorneys have left office or indicated publicly their intention to leave office, then the Office of the Counsel to the President can work with home-state Senators and/or other political leaders in the state to secure recommendations for a replacement U.S. Attorney. Finally, after background investigations are complete and the replacement candidate is nominated, the Attorney General can appoint the nominee to serve as interim U.S. Attorney pending confirmation, thereby reducing the time during which the leadership of the office is uncertain.

If a decision is made to remove and replace a limited number of U.S. Attorneys, then the following might be considered for removal and replacement:

1.

2.

3. **Margaret M Chiara**, U.S. Attorney for the Western District of Michigan
   Term expired 11/2/2005

5. **Harry E. "Bud" Cummins III**, U.S. Attorney for the Eastern District of Arkansas
   Term expires 1/9/2006 (today!)
   Replacement candidates: Tim Griffin?
   Home-state Senators/political leaders: Pryor (D) and Lincoln (D); Gov. Huckabee(?)
6. **Kevin V. Ryan**, U.S. Attorney for the Northern District of California
   Term expires 8/2/2006
   Replacement candidates:
   Home-state Senators/political leaders: Feinstein (D) and Boxer (D); Parsky Commission
7. **Carol C. Lam**, U.S. Attorney for the Southern District of California
   Term expires 11/18/2006
   Replacement candidates:
   Home-state Senators/political leaders: Feinstein (D) and Boxer (D); Parsky Commission

I list these folks based on my review of the evaluations of their offices conducted by EOUSA and my interviews with officials in the Office of the Attorney General, Office of the Deputy Attorney General, and the Criminal Division. If a determination is made to seek the removal of these folks, then we should similarly seek to remove and replace

Please let me know how you would like to proceed. The first steps, I think, would be (1) to agree on the target list of U.S. Attorneys and (2) ask EOUSA to begin quietly calling them to ascertain their intentions for continued service/indicating to them that they might want to consider looking for other employment.

Tracking:

Recipient	Read
Harriet Miers (Harriet_Miers@who.eop.gov)	
Bill Kelley (william_k._kelley@who.eop.gov)	
Sampson, Kyle	Read: 1/9/2006 10:09 AM

Sampson, Kyle

From: Sampson, Kyle
Sent: Thursday, May 11, 2006 11:36 AM
To: 'William_K._Kelley@who.eop.gov'
Subject: FW: Removal and Replacement of U.S. Attorneys Whose 4-year Terms Have Expired

Sensitivity: Confidential

Per your inquiry yesterday after JSC, this is the e-mail I sent to Dabney last month at Harriet's request. Please call me at your convenience to discuss the following:

-
- Tim Griffin for E.D. Ark.; and
- The real problem we have right now with Carol Lam that leads me to conclude that we should have someone ready to be nominated on 11/18, the day her 4-year term expires.

From: Sampson, Kyle
Sent: Friday, April 14, 2006 9:31 AM
To: 'Dabney_Friedrich@who.eop.gov'
Subject: RE: Removal and Replacement of U.S. Attorneys Whose 4-year Terms Have Expired
Sensitivity: Confidential

Also, I would note that two others on my original list already have left office. They are:

and

From: Sampson, Kyle
Sent: Friday, April 14, 2006 9:30 AM
To: 'Dabney_Friedrich@who.eop.gov'
Subject: Removal and Replacement of U.S. Attorneys Whose 4-year Terms Have Expired
Sensitivity: Confidential

Dabney, DOJ recommends that the White House consider removing and replacing the following U.S. Attorneys upon the expiration of their 4-year terms:

Margaret M. Chiara, W.D. Mich., term expired 11/2/2005;

Harry E. "Bud" Cummins III, E.D. Ark., term expired 1/9/2006; and
Carol C. Lam, S.D. Cal., term expires 11/18/2006.

We also should similarly seek to remove and replace:

Call me if you have any questions. If you pushed me, I'd have 3-5 additional names that the White House might want to consider.

A20 THURSDAY, MARCH 22, 2007

The Washington Post

AN INDEPENDENT NEWSPAPER

Political Spectacle

President Bush and Congress should step back from a confrontation that makes them both look bad.

THE WHITE HOUSE and congressional Democrats have drawn deep lines in the sand over who will testify, and how, as Congress investigates the dismissal of eight U.S. attorneys. The stubbornness and overheated rhetoric on both sides threaten an unnecessary constitutional crisis that would only bog down the inquiry in a distracting fight over process.

It's worth stepping back and putting the supposed scandal in perspective. President Bush is entitled to replace his U.S. attorneys; he'd be entitled to do so if he thought they weren't pursuing his prosecutorial priorities with sufficient vigor, or even if he just wanted to give other lawyers a shot at the jobs. The many e-mails that the administration has released for the most part suggest nothing nefarious in the dismissal process.

It would not be acceptable for Mr. Bush to fire the attorneys to short-circuit prosecutions of political corruption among Republicans. So far there's no evidence that he did, and in fact the most questionable conduct we know of originated in Congress, with New Mexico Republicans Sen. Pete Domenici and Rep. Heather Wilson. But in at least two of the eight cases, there are reasonable questions to be asked. And given the administration's incorrect and inadequate answers to the Senate thus far, Congress is right to pursue those questions.

But how? Defiant in tone and words, President Bush made what he ill-advisedly presented as a final offer of his view of that question Tuesday. Embattled Attorney General Alberto R. Gonzales would set the record straight in new hearings on Capitol Hill. Senior presidential adviser Karl Rove, former White House counsel Harriet E. Miers and two other West Wing officials would be made available. But they would speak in private, not under oath, and no transcript would be made.

Democratic leaders deemed the conditions unacceptable. Yesterday, the House Judiciary Committee authorized the issuance of subpoenas to compel the White House aides to testify under oath and in public. The Senate Judiciary Committee is set to do the same today.

Lawmakers would do well to demonstrate more understanding of the legitimate institutional concerns at stake here — is the president not entitled to confidential advice on personnel matters? — and to remember that the tables could easily be turned, as they were not so many years ago, with a Republican Congress eager to rifle through the files of a Democratic administration. At the same time, history does not support unlimited presidential privilege. Among other incidents, President Bill Clinton's chief of staff, White House counsel and deputy counsel testified about his granting of a pardon to fugitive financier Marc Rich — a pardon being a core and exclusive presidential power.

As we suggested last week, a two-step process could pull both sides back from the brink. First, Mr. Gonzales and other Justice Department officials should testify about their decisions to remove the ousted eight. If questions remain, Mr. Rove and Ms. Miers should be interviewed. They don't have to testify under oath, since lying to Congress is a crime. But their testimony must be as open as possible and should without question be transcribed. If Mr. Bush is serious about wanting the truth to come out, he will relent on this issue.

PRESERVING PROSECUTORIAL INDEPENDENCE: IS THE DEPARTMENT OF JUSTICE POLITICIZING THE HIRING AND FIRING OF U.S. ATTORNEYS?—PART IV

TUESDAY, MAY 15, 2007

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:07 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Charles E. Schumer, presiding.

Present: Senators Leahy, Kohl, Feinstein, Feingold, Schumer, Cardin, Whitehouse, and Specter.

OPENING STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. This hearing will come to order. I have a brief opening statement, and I am sure Senator Specter does, and then we will get right into the questions.

First, I want to thank and commend Chairman Leahy for his continued leadership on the critically important issue of the politicization of the Justice Department. This is our Committee's fifth hearing in 4 months focusing on the mass firing of almost 10 percent of our country's top Federal prosecutors. At our last hearing, on April 19th, Attorney General Gonzales attempted to justify the dismissals, explain his role, and put the matter behind him. He failed miserably in that attempt.

Indeed, 4 weeks later, the dismissals remain unexplained. The Attorney General's role is murkier than ever, and with each new revelation, retraction, and resignation, the issue remains planted on the front pages, hobbling the Department's ability to get its important work done.

Let me briefly review some of the developments since the Attorney General's ill-fated appearance before this Committee on April 19th.

Since April 19th, the former Deputy Attorney General, who is here today, has contradicted other DOJ officials by testifying that most of the fired U.S. Attorneys performed well. We will be hearing more about that today.

Since April 19th, former Missouri U.S. Attorney Todd Graves has come forward to say that he was also asked to resign in 2006. That brings the number of dismissals to at least nine, and counting, not the eight that Mr. Gonzales testified to. We will be hearing more

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about that situation when the Committee considers authorizing Chairman Leahy to subpoena Mr. Graves and his replacement, Bradley Schlozman.

Since April 19th, we have learned that a political corruption case involving Republicans in Arizona may have been slow-walked until after the 2006 election, as the Wall Street Journal has reported. U.S. Attorney Paul Charlton's unhappiness with the pace of approvals from Washington may have led to his ouster. We will be hearing more about that if and when the Department responds to our requests for information and documents.

And since April 19th, we have learned that one of the Attorney General's top advisers, Monica Goodling, may have been doing the unthinkable: imposing a political and ideological litmus test in the hiring of career-level prosecutors and Department lawyers. We will be hearing more about that when Ms. Goodling soon testifies under a grant of immunity.

And, of course, just yesterday we learned of the latest and most high-ranking casualty of the current imbroglio. Mr. Comey's successor to the No. 2 position at the Department, Paul McNulty, announced his resignation.

The Attorney General could almost wallpaper his office with the resignation letters of those whom he was supposed to be supervising. The majority of people in his top circle are now no longer at the Justice Department. Kyle Sampson, who was responsible for putting together the final firing list, has resigned. Monica Goodling, who helped with the list and served as the Department's liaison to the White House, has resigned. Mike Battle, who was ordered to fire seven U.S. Attorneys last December 7th, has resigned. And, of course, now the Deputy Attorney General himself has decided to resign.

I heard today that Attorney General Gonzales was trying to assign blame to Paul McNulty for the firings of the U.S. Attorneys, saying that he relied on McNulty's advice. That is ironic, because Paul McNulty came clean with this Committee and gave us some valuable information, while the Attorney General stonewalled.

The Attorney General is trying to make Mr. McNulty into the next Scooter Libby, but we all know the buck stops with the Attorney General. Mr. Gonzales said in this hearing room that he accepts responsibility for the firings. Well, he should live up to his words and not keep pointing the finger today at Mr. McNulty.

There has long been reason to be concerned about Attorney General Gonzales. Given his close connection with the White House and his apparent misconception of his current role, he seems to many in this country to embody a disrespect for the rule of law and intolerance of independence at the Justice Department. He has presided over a Department where being a "loyal Bushie" seems to be more important than being a seasoned professional, where what the White House wants is more important than what the law requires or what prudence dictates.

The current scandal merely crystallizes this problem, namely, that loyalty to the White House trumps allegiance to the law, the truth, and common sense. For example, Attorney General Gonzales's former chief of staff has testified that one of the principal reasons the AG was upset after listening to Mr. McNulty's

testimony on February 6th was that Mr. McNulty had talked too much about the White House's role in appointing Karl Rove's deputy as U.S. Attorney in Arkansas. Specifically, Mr. Sampson said Gonzales was upset that McNulty had "put so much emphasis on the White House's role in Griffin being promoted in favor of Cummins." Gonzales was upset because Mr. McNulty "had really brought the White House's role in Griffin into the public sphere."

So it appears that the Attorney General was apparently not upset that Mr. McNulty had overstated the White House's role or misstated that role. He was only upset that he had exposed it. And now it appears that Mr. McNulty is gone because of it.

We have only begun to understand the White House's role in the firings and the Attorney General's role in accomplishing the White House's bidding. So far, however, we know this at least: It was the White House that initially raised the prospect of firing all 93 U.S. Attorneys. It was the White House that promoted the idea of removing Bud Cummins in favor of a former aid to Karl Rove. It was the White House that was upset at the Department's belated rejection of a plan to bypass home-State Senators in Arkansas to keep Tim Griffin installed indefinitely as U.S. Attorney. It was the White House that had the best opportunity to correct the record of its own involvement in the firing in a March 5th meeting attended by Karl Rove before Mr. Moschella gave incomplete testimony to Congress. It was the White House that entertained complaints from Republican Party officials about David Iglesias which apparently led to his ouster. It was the White House that had brought overblown complaints about voter fraud prosecutions to the attention of the Justice Department.

There will be time for us to hear from those White House witnesses who can shed light on what transpired here, and I hope the day comes soon.

Senator Specter.

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Well, thank you, Mr. Chairman.

I join in the welcome of you, Mr. Comey. It is ironic in a sense that the former Deputy Attorney General should be with the Judiciary Committee today on the same day that we learn of the resignation of the present Deputy Attorney General.

Earlier today, I wrote to Deputy Attorney General Paul McNulty congratulating him on his service to the Department of Justice and wishing him well in his new career. I did not say in the note to him what I am about to say, that I think he found it difficult, really impossible, to continue to serve in the Department of Justice as a professional, which Paul McNulty is, because it is embarrassing for a professional to work for the Department of Justice today.

We had the Attorney General before at a hearing. The testimony he gave was hard to understand, incredible in a sense, to say that he was not involved in discussions and not involved in deliberations when his three top Deputies said he was and the documentary evidence supported that. It is the decision of Mr. Gonzales as to whether he stays or goes, but it is hard to see how the Department of Justice can function and perform its important duties with

Mr. Gonzales remaining where he is. And beyond Mr. Gonzales' decision, it is a matter for the President as to whether the President will retain the Attorney General or not.

I think that the operation of the executive branch is the decision of the President, and I do not want him telling me how to vote in the Senate on separation of powers, and I am not going to tell him or make a recommendation to him as to what he ought to do with Mr. Gonzales. But I think the resignation of Mr. McNulty is another significant step and evidence that the Department really cannot function with the continued leadership or lack of leadership of Attorney General Gonzales.

As I view the situation, we really do not know yet what has happened, whether it is politicization, whether it is an ideological bent, or what. There is no doubt that the President has the authority to fire all the Attorneys General—pardon me—authority to fire the Attorney General. The Freudian slips are sometimes more revealing than the planned statements. The President does have the authority to replace all of the 93 U.S. Attorneys, as President Clinton did when he took office. And prosecutions for voter fraud are very, very important. When I was district attorney of Philadelphia, I prosecuted both Republicans and Democrats for voter fraud. They have a lot of it in Philadelphia.

In 1972, the Democrats and Republicans made a deal in South Philadelphia, a spot where many deals are made, to give the Republicans the top of the ticket, President Nixon running for re-election, and the Democrats the rest of the ticket. A common pleas judge signed in at City Hall at 6 a.m. that morning, as evidenced by the registry roll, issuing injunctions barring all of the McGovern poll watchers from the polling places. He was prosecuted, as were many other top city officials.

So voter fraud prosecutions are very, very important, but you cannot bring a prosecution unless you have a case. And now we have to determine if there was chicanery, whether there were efforts that vote fraud prosecutions or investigations were brought when there was no basis for doing so.

It may well be that when we get to the end of the rainbow, we will find the explanation may be as simple as outright incompetence. Outright incompetence. To consider firing Peter Fitzgerald, which is what Kyle Sampson testified to, is patently ridiculous.

It is my hope that we will finish these investigations soon because the continuing investigations are a harm to the—we have to do our job. The sooner we finish, the sooner the Department of Justice can return to its work. If we had a new Attorney General and concluded this investigation and made our findings public, it would be very important because those U.S. Attorneys perform enormously important functions of fighting drugs and crime and terrorism and the administration of both civil and criminal justice in this country.

I am glad to see you here today, Mr. Comey, because I know you can shed some additional light on this important subject.

Thank you, Mr. Chairman.

Senator SCHUMER. Thank you, Senator Specter.

It is now my privilege to introduce our witness today, James B. Comey. He is almost a man who needs no introduction. He is well known to this Committee, which has twice favorably considered his nomination for important offices—first for the U.S. Attorney in the Southern District of New York in 2002, then as Deputy Attorney General of the United States in 2003. Mr. Comey was educated at the College of William and Mary and the University of Chicago Law School. After law school, he served as a law clerk for then U.S. District Judge John M. Walker, Jr., in Manhattan. After that, he spent most of the next 20 years as a dedicated public servant in the Justice Department.

Besides serving ably as U.S. Attorney and Deputy Attorney General, Mr. Comey earned a reputation as a hard-nosed prosecutor in a number of high-profile and important cases, including the Khobar Towers terrorist bombing case arising out of the June 1996 attack on a U.S. military facility in Saudi Arabia in which 19 airmen were killed. Mr. Comey is currently the Senior Vice President and General Counsel of the Lockheed Martin Corporation.

Now, I know it is not easy for you, Mr. Comey, to be here and talk about some of the recent travails of the Department which you hold so dear. I especially appreciate Mr. Comey's coming to testify here without the formality of a subpoena. In order to secure Mr. Comey's presence, I would have moved for consideration of a subpoena by the Committee, but I am glad that was not necessary because of your cooperation.

As far as I am concerned, when the Justice Department lost Jim Comey, it lost a towering figure, and I do not say that because he stands 6 feet, 8 inches tall. When Jim left the Department, we lost a public servant of the first order, a man of unimpeachable integrity, honesty, character, and independence.

Now I would like to administer the oath of office. Would you please rise? Oh, sorry. I wish we were administering the oath of office.

[Laughter.]

Senator SCHUMER. The oath. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. COMEY. I do.

Senator SCHUMER. Thank you. OK. We are going to get right into the questioning because Mr. Comey does not have an opening statement.

As I said in my opening remarks, many have been concerned that Alberto Gonzales has made the Justice Department a mere extension of the White House, where independence takes a back seat to service to the White House, where the rule of law takes a back seat to the political needs of the President's party.

Before we get to the other issues, I want to go back to an incident from the time that Mr. Gonzales served as White House Counsel. There have been media reports describing a dramatic visit by Alberto Gonzales and Chief of Staff Andrew Card to the hospital bed of John Ashcroft in March 2004, after you, as Acting Attorney General, decided not to authorize a classified program.

First, can you confirm that a nighttime hospital visit took place?

Mr. COMEY. Yes, I can.

Senator SCHUMER. OK. Can you remember the date and the day?

Mr. COMEY. Yes, sir; very well. It was Wednesday, March the 10th, 2004.

Senator SCHUMER. And how do you remember that date so well?

Mr. COMEY. This was a very memorable period in my life, probably the most difficult time in my entire professional life, and that night was probably the most difficult night of my professional life. So it is not something I forget.

Senator SCHUMER. OK. Were you present when Alberto Gonzales visited Attorney General Ashcroft's bedside?

Mr. COMEY. Yes.

Senator SCHUMER. And am I correct that the conduct of Mr. Gonzales and Mr. Card on that evening troubled you greatly?

Mr. COMEY. Yes.

Senator SCHUMER. OK. Let me go back and take it from the top. You rushed to the hospital that evening. Why?

Mr. COMEY. I am only hesitating because I need to explain why.

Senator SCHUMER. Please. I will give you all the time you need, sir.

Mr. COMEY. I have actually thought quite a bit over the last 3 years about how I would answer that question if it was ever asked, because I assumed that at some point I would have to testify about it.

The one thing I am not going to do and be very, very careful about is because this involved a classified program, I am not going to get anywhere near classified information. I also am very leery of and will not reveal the content of advice I gave as a lawyer or deliberations I engaged in. I think it is very important for the Department of Justice that someone who held my position not to do that.

Senator SCHUMER. In terms of privilege.

Mr. COMEY. Yes.

Senator SCHUMER. Understood.

Mr. COMEY. Subject to that, I—and I am uncomfortable talking about this, but I—

Senator SCHUMER. I understand.

Mr. COMEY.—will answer the question. To understand what happened that night, I kind of have got to back up about a week.

Senator SCHUMER. Please.

Mr. COMEY. In the early part of 2004, the Department of Justice was engaged—the Office of Legal Counsel under my supervision—in a re-evaluation, both factually and legally, of a particular classified program. And it was a program that was renewed on a regular basis and required a signature by the Attorney General certifying to its legality. And I remember the precise date. The program had to be renewed by March the 11th, which was a Thursday, of 2004. And we were engaged in a very intensive re-evaluation of the matter, and a week before that March 11th deadline, I had a private meeting with the Attorney General for an hour, just the two of us, and I laid out for him what we had learned and what our analysis was of this particular matter. And at the end of that hour-long private session, he and I agreed on a course of action, and within hours he was stricken and taken very, very ill.

Senator SCHUMER. You thought something was wrong with how it was being operated or administered or overseen.

Mr. COMEY. Yes, we had concerns as to our ability to certify its legality, and which was our obligation for the program to be renewed. The Attorney General was taken that very afternoon to George Washington Hospital where he went into intensive care and remained there for over a week, and I became the Acting Attorney General. And over the next week, particularly the following week, on Tuesday we communicated to the relevant parties, at the White House and elsewhere, our decision that as Acting Attorney General I would not certify the program as to its legality and explained our reasoning in detail, which I will not go into here, nor am I confirming it's any particular program.

That was Tuesday that we communicated that. The next day was Wednesday, March the 10th, the night of the hospital incident, and I was headed home at about 8 o'clock that evening. My security detail was driving me, and I remember exactly where I was, on Constitution Avenue, and got a call from Attorney General Ashcroft's chief of staff telling me that he had gotten a call—

Senator SCHUMER. What is his name?

Mr. COMEY. David Ayres. That he had gotten a call from Mrs. Ashcroft from the hospital. She had banned all visitors and all phone calls, so I had not seen him or talked to him because he was very ill. And Mrs. Ashcroft reported that a call had come through, and that as a result of that call, Mr. Card and Mr. Gonzales were on their way to the hospital to see Mr. Ashcroft.

Senator SCHUMER. Do you have any idea who that call was from?

Mr. COMEY. I have some recollection that the call was from the President himself, but I don't know that for sure. It came from the White House, and it came through, and the call was taken in the hospital. So I hung up the phone, immediately called my chief of staff, told him to get as many of my people as possible to the hospital immediately. I hung up, called Director Mueller, with whom I had been discussing this particular matter and who had been a great help to me over that week and told him what was happening. He said, "I will meet you at the hospital right now." Told my security detail that I needed to get to George Washington Hospital immediately. They turned on the emergency equipment and drove very quickly to the hospital.

I got out of the car and ran up—literally ran up the stairs with my security detail—

Senator SCHUMER. What was your concern? You were in obviously, a huge hurry.

Mr. COMEY. I was concerned that, given how ill I knew the Attorney General, there might be an effort to ask him to overrule me when he was in no condition to do that.

Senator SCHUMER. Right. OK.

Mr. COMEY. I was worried about him, frankly. So I raced to the hospital room, entered, and Mrs. Ashcroft was standing by the hospital bed. Mr. Ashcroft was lying down in the bed. The room was darkened. And I immediately began speaking to him, trying to orient him as to time and place, and tried to see if he could focus on what was happening. And it wasn't clear to me that he could. He seemed pretty bad off.

Senator SCHUMER. At that point it was you, Mrs. Ashcroft, and the Attorney General, and maybe medical personnel in the room, no other Justice Department government officials.

Mr. COMEY. Just the three of us at that point. I tried to see if I could help him get oriented. As I said, it was not clear that I had succeeded. I went out in the hallway, spoke to Director Mueller by phone. He was on his way. I handed the phone to the head of the security detail, and Director Mueller instructed the FBI agents present not to allow me to be removed from the room under any circumstances. And I went back in the room. I was shortly joined by the head of the Office of Legal Counsel, Assistant Attorney General Jack Goldsmith, and a senior staffer of mine who had worked on this matter, and the Associate Deputy Attorney General. So the three of us Justice Department people went in the room. I sat down—

Senator SCHUMER. Can you just give us the names of the two other people?

Mr. COMEY. Jack Goldsmith, who was the Assistant Attorney General, and Patrick Philbin, who was Associate Deputy Attorney General. I sat down in an armchair by the head of the Attorney General's bed. The two other Justice Department people stood behind me. Mrs. Ashcroft stood by the bed holding her husband's arm, and we waited. And it was only a matter of minutes that the door opened and in walked Mr. Gonzales, carrying an envelope, and Mr. Card. They came over and stood by the bed, greeted the Attorney General very briefly, and then Mr. Gonzales began to discuss why they were there, to seek his approval for a matter, and explained what the matter was, which I will not do.

And Attorney General Ashcroft then stunned me. He lifted his head off the pillow and, in very strong terms, expressed his view of the matter, rich in both substance and fact, which stunned me, drawn from the hour-long meeting we had had a week earlier, and in very strong terms expressed himself, and then laid his head back down on the pillow, seemed spent, and said to them, "But that doesn't matter"—and then—

Senator SCHUMER. But he expressed his reluctance or that he would not sign the statement that they give the authorization that they had asked. Is that right?

Mr. COMEY. Yes. And as he laid back down, he said, "But that doesn't matter because I'm not the Attorney General. There's the Attorney General." And he pointed to me. I was just to his left.

The two men did not acknowledge me. They turned and walked from the room. And within just a few moments after that, Director Mueller arrived. I told him quickly what had happened. He had a brief—memorable, brief exchange with the Attorney General, and then we went outside in the hallway.

Senator SCHUMER. OK. Now, just a few more points on that meeting. First, am I correct that it was Mr. Gonzales who did just about all of the talking, Mr. Card said very little?

Mr. COMEY. Yes, sir.

Senator SCHUMER. OK. And they made it clear that there was in this envelope an authorization that they hoped Mr. Ashcroft, Attorney General Ashcroft, would sign?

Mr. COMEY. In substance. I don't know exactly the words, but it was clear that's what the envelope was.

Senator SCHUMER. And the Attorney General was—what was his condition? I mean, he had—as I understand it, he had pancreatitis; he was very, very ill, in critical condition, in fact?

Mr. COMEY. He was very ill. I don't know how the doctors graded his condition. This was—this would have been his sixth day in intensive care. And as I said, I was shocked when I walked in the room, and very concerned, as I tried to get him to focus.

Senator SCHUMER. Right. OK. Let's continue. What happened after Mr. Gonzales and Mr. Card left? Did you have any contact with them in the next little while?

Mr. COMEY. While I was talking to Director Mueller, an agent came up to us and said that I had an urgent call in the command center, which was right next door. They had Attorney General Ashcroft in the hallway by himself, and it was an empty room next door that was the command center. They said it was Mr. Card wanting to speak to me.

I took the call. Mr. Card was very upset and demanded that I come to the White House immediately. I responded that after the conduct I had just witnessed, I would not meet with him without a witness present. He replied, "What conduct? We were just there to wish him well." I said again, "After what I just witnessed, I will not meet with you without a witness, and I intend that witness to be the Solicitor General of the United States."

Senator SCHUMER. That would be Mr. Olson.

Mr. COMEY. Yes, sir. Ted Olson. And, "Until I can connect with Mr. Olson, I am not going to meet with you." He asked whether I was refusing to come to the White House. I said, "No, sir, I'm not. I'll be there. I need to go back to the Department of Justice first." And then I reached out through the command center for Mr. Olson, who was at a dinner party. And Mr. Olson and the other leadership of the Department of Justice immediately went to the Department, where we sat down together in a conference room.

Senator SCHUMER. Keep going.

Mr. COMEY. And talked about what we were going to do, and at about 11 o'clock that night—this evening had started at about 8 o'clock when I was on my way home. At 11 o'clock that night, Mr. Olson and I went to the White House together.

Senator SCHUMER. Just before you get there, you told Mr. Card that you were very troubled by the conduct from the White House and that is why you wanted Mr. Olson to accompany you. Without giving any of the details, which we totally respect in terms of substance, just tell me why. What did you tell him that so upset you? Or if you did not tell him, just tell us.

Mr. COMEY. I was very upset. I was angry. I thought I had just witnessed an effort to take advantage of a very sick man who did not have the powers of the Attorney General because they had been transferred to me. I thought he had conducted himself, and I said to the Attorney General, in a way that demonstrated a strength I had never seen before, but still I thought it was improper. And it was for that reason I thought there ought to be somebody with me if I am going to meet with Mr. Card.

Senator SCHUMER. All right. Can you tell us a little bit about the discussion at the Justice Department when all of you convened? I guess it was that night.

Mr. COMEY. Yes, I don't think it's appropriate for me to go into the substance of it. We discussed what to do. I recall the Associate Attorney General being there, the Solicitor General, the Assistant Attorney General in charge of the Office of Legal Counsel, senior staff of the Attorney General, senior staff of mine, and we just—I don't want to reveal the substance of those discussions.

Senator SCHUMER. We don't want you to reveal the substance. They all thought what you were doing was the right thing, I presume.

Mr. COMEY. I presume. I didn't ask people, but I felt like we were a team. We all understood what was going on, and we were trying to do what was best for the country and the Department of Justice. But it was a very hard night.

Senator SCHUMER. OK. And then did you meet with Mr. Card?

Mr. COMEY. I did. I went with Mr. Olson, driving—my security detail drove us to the White House. We went into the West Wing. Mr. Card would not allow Mr. Olson to enter his office. He asked Mr. Olson to please sit outside in his sitting area. I relented and went in to meet with Mr. Card alone. We met, had a discussion, which was much more—much calmer than the discussion on the telephone. After I don't remember how long, 10 or 15 minutes, Mr. Gonzales arrived and brought Mr. Olson into the room, and the four of us had a discussion.

Senator SCHUMER. OK. And were you and Mr. Card still in a state of anger at one another at that meeting, or was it a little calmer, and why?

Mr. COMEY. Not that we showed. It was much more civil than our phone conversation. Much calmer.

Senator SCHUMER. Why do you think?

Mr. COMEY. I don't know. I mean, I had calmed down a little bit. I'd had a chance to talk to the people I respected. Ted Olson I respect enormously.

Senator SCHUMER. Right. OK. Was there any discussion of resignations with Mr. Card?

Mr. COMEY. Mr. Card was concerned that he had heard reports that there were to be a large number of resignations at the Department of Justice.

Senator SCHUMER. OK. And the conversations, the issue, whatever it was, was not resolved.

Mr. COMEY. Correct. We communicated about it. I communicated against the Department of Justice's view on the matter. And that was it.

Senator SCHUMER. Right. And you stated that the next day, Thursday, was the deadline for reauthorization of the program. Is that right?

Mr. COMEY. Yes, sir.

Senator SCHUMER. OK. Can you tell us what happened the next day?

Mr. COMEY. The program was reauthorized without us, without a signature from the Department of Justice attesting as to its legal-

ity. And I prepared a letter of resignation intending to resign the next day, Friday, March the 12th.

Senator SCHUMER. And that was the day, as I understand it, of the Madrid train bombings.

Mr. COMEY. Thursday, March 11th, was the morning of the Madrid train bombings.

Senator SCHUMER. And so obviously people were very concerned with all of that.

Mr. COMEY. Yes. It was a very busy day in the counterterrorism aspect.

Senator SCHUMER. And yet, even in light of that, you still felt so strongly that you drafted a letter of resignation.

Mr. COMEY. Yes.

Senator SCHUMER. OK. And why did you decide to resign?

Mr. COMEY. I just believed—

Senator SCHUMER. Or to offer your resignation, is a better way to put it.

Mr. COMEY. I believed that I couldn't—I couldn't stay if the administration was going to engage in conduct that the Department of Justice had said had no legal basis. I just simply couldn't stay.

Senator SCHUMER. All right. OK. Now, let me just ask you this, and this obviously is all troubling. As I understand it, you believed that others were also prepared to resign, not just you. Is that correct?

Mr. COMEY. Yes.

Senator SCHUMER. OK. Was one of those Director Mueller?

Mr. COMEY. I believe so. You'd have to ask him, but I believe so.

Senator SCHUMER. You had conversations with him about it?

Mr. COMEY. Yes.

Senator SCHUMER. OK. How about the Associate Attorney General, Robert McCallum?

Mr. COMEY. I don't know. We didn't discuss it.

Senator SCHUMER. How about your chief of staff?

Mr. COMEY. Yes. He was certainly going to go when I went.

Senator SCHUMER. Right. How about Mr. Ashcroft's chief of staff?

Mr. COMEY. My understanding was that he would go as well. I should say, to make sure I'm accurate—

Senator SCHUMER. This is your surmise, not—

Mr. COMEY. Yes. I ended up agreeing—Mr. Ashcroft's chief of staff asked me something that meant a great deal to him, and that is that I not resign until Mr. Ashcroft was well enough to resign with me. He was very concerned that Mr. Ashcroft was not well enough to understand fully what was going on, and he begged me to wait until—this was Thursday that I was making this decision—to wait until Monday to give him the weekend to get oriented enough so that I wouldn't leave him behind, was his concern.

Senator SCHUMER. And it was his view that Mr. Ashcroft was likely to resign as well?

Mr. COMEY. Yes.

Senator SCHUMER. So what did you do when you heard that?

Mr. COMEY. I agreed to wait. I said that what I would do is that Friday would be my last day and Monday morning I would resign.

Senator SCHUMER. OK. Anything else of significance relevant to this line of questioning occur on Thursday, the 11th, that you can recall?

Mr. COMEY. No, not that I recall.

Senator SCHUMER. Thank you. Now, let's go to the next day, which was March 12th. Can you tell us what happened then?

Mr. COMEY. I went to the Oval Office, as I did every morning as Acting Attorney General, with Director Mueller to brief the President and the Vice President on what was going on, on Justice Department's counterterrorism work. We had the briefing, and as I was leaving, the President asked to speak to me, took me in his study, and we had a one-on-one meeting for about 15 minutes, again, which I will not go into the substance of. There was a very full exchange, and at the end of that meeting, at my urging, he met with Director Mueller, who was waiting for me downstairs. He met with Director Mueller again privately, just the two of them. And then after those two sessions, we had his direction to do the right thing, to do what we—

Senator SCHUMER. You had the President's direction to do the right thing.

Mr. COMEY. Right. We had the President's direction to do what we believed, what the Justice Department believed was necessary to put this matter on a footing where we could certify to its legality. And so we then set out to do that, and we did that.

Senator SCHUMER. OK. So let me just—a few of these—this is an amazing story, an amazing pattern of fact that you recall.

Senator SPECTER. Mr. Chairman, could you give us some idea when your first round will conclude?

Senator SCHUMER. As soon as I ask a few questions here. Fairly soon. Yes, and, Senator Specter, you will get the same amount of time. I thought with Mr. Comey's telling what happened, although I think I might just—

Senator SPECTER. Just may the record show that you are now 16 minutes and 35 seconds over the 5 minutes, and—

Senator SCHUMER. I think the record will show it.

Senator SPECTER. Well, it does now.

Senator SCHUMER. OK. Thank you. And I think most people would think that those 16:35 minutes were worth hearing.

Senator SPECTER. Well, Mr. Chairman, we do have such a thing as a second round, and there are a lot of Senators waiting.

Senator SCHUMER. Yes, OK.

Let me ask you these few questions—

Senator SPECTER. Including a Republican.

Senator SCHUMER. I am glad you are here, Senator Specter. I know you are concerned with this issue.

Senator SPECTER. Alone, but here.

[Laughter.]

Senator SCHUMER. Let me ask you this: So, in sum, it was your belief that Mr. Gonzales and Mr. Card were trying to take advantage of an ill and maybe disoriented man to try and get him to do something that many at least in the Justice Department thought was against the law. Is that a correct summation?

Mr. COMEY. I was concerned that this was an effort to do an end run around the Acting Attorney General and to get a very sick man

to approve something that the Department of Justice had already concluded, the Department as a whole, was unable to be certified as to its legality. And that was my concern.

Senator SCHUMER. OK. And you also believe—and you had later conversations with Attorney General Ashcroft when he recuperated, and he backed your view.

Mr. COMEY. Yes, sir.

Senator SCHUMER. Did you ever ask him explicitly if he would have resigned had it not come—had it come to that?

Mr. COMEY. No.

Senator SCHUMER. OK. But he backed your view that what was being done or what was attempting to being done, going around what you had recommended, was wrong, against the law?

Mr. COMEY. Yes, and I already knew his view from the hour we had spent together going over it in great detail a week before the hospital incident.

Senator SCHUMER. And the FBI Director Mueller backed your view over that of Mr. Gonzales as well. Is that right? In terms of the—in terms of whether the program could continue to be implemented the way Counsel Gonzales wanted it to be.

Mr. COMEY. The only reason I hesitate is it was never Director Mueller's job or position to be drawing a legal conclusion about the program.

Senator SCHUMER. Right.

Mr. COMEY. That he was very supportive to me personally. He is one of the finest people I have ever met and was a great help to me when I felt a tremendous amount of pressure and felt a bit alone at the Department of Justice. But it was not his role to opine on the legality.

Senator SCHUMER. How about Jack Goldsmith, the head of the Office of Legal Counsel? Did he opine on the legality?

Mr. COMEY. Yes. He had done a substantial amount of work on that issue, and it was largely OLC, the Office of Legal Counsel's work that I was relying upon in drawing my—in making my decision.

Senator SCHUMER. OK. Just two other questions. Have you ever had the opportunity to recall these events on the record in any other forum?

Mr. COMEY. No.

Senator SCHUMER. OK. And after—

Mr. COMEY. I should—

Senator SCHUMER. Go ahead.

Mr. COMEY. I was interviewed by the FBI and discussed these events in connection with a leak investigation the FBI was conducting.

Senator SCHUMER. And you gave them these details then?

Mr. COMEY. Yes.

Senator SCHUMER. Thank you.

Mr. COMEY. But not by forum, I've never testified about it.

Senator SCHUMER. And after you stood your ground in March of 2004, did you suffer any recriminations or other problems at the Department?

Mr. COMEY. I didn't. I—yeah, I mean, not that I'm aware of.

Senator SCHUMER. OK. Well, let me just say this, and then I will call on Senator Specter, who can have as much time as he thinks is appropriate. The story is a shocking one, makes you almost gulp, and I just want to say, speaking for myself, I appreciate your integrity and fidelity to the rule of law. And I also appreciate Attorney General Ashcroft's fidelity to the rule of law as well, as well as the men and women who worked with you and stuck by you in this.

When we have a situation where the laws of this country, the rules of law of this country are not respected because somebody thinks there is a higher goal, we run askew of the very purpose of what democracy and rule of law are about. And, again, the story makes me gulp.

Senator Specter.

Senator SPECTER. May the record now show that we are 21 minutes and 22 seconds beyond the 5-minute allocation, and I raise it not to in any way suggest that the questioning has not been very important, but only to suggest that we have a practice for having a 5-minute round, and it is exceeded on some occasions. I have only been here 27 years. I cannot remember it being exceeded by 23 minutes. And we do have second rounds, and we do have seven Democrats here. It is now 10:48, and at the start of this hearing, I asked my colleagues among the Republicans to join me here. I repeat that request now since it is televised internally, at least, and my colleagues should know that there are seven Democrats here who will all have turns asking questions, and it would be appropriate to have a little balance here if some Republicans would show up to participate in this hearing. It would be helpful if we had some balance if some other Republicans would show up to participate in this hearing.

Mr. Comey, I join Senator Schumer in commending you for what you did here. The Terrorist Surveillance Program has been the subject of quite a number of hearings in this Committee, strenuous efforts to bring the issue before the Foreign Intelligence Surveillance Court, efforts at changing legislation. Some of it is now pending, cosponsored by Senator Feinstein and myself. The matter is wending its way through the Federal courts and is in the Sixth Circuit now. So this is a very important substantive matter. And as the Acting Attorney General, you were doing exactly what you should do in standing up for your authority and to stand by your guns and to do what you thought was right.

It has some characteristics of the Saturday Night Massacre when other officials stood up and they had to be fired in order to find someone who would—the Deputy Attorney General and others would not fire the Special Prosecutor. So that was commendable.

When you finally got to the place where the buck does not stop, when you got to the President, as I understand your testimony, the President told you to do what you thought was right. Is that correct?

Mr. COMEY. Yes, sir.

Senator SPECTER. So the President backed you up and it was necessary to make changes in the Terrorist Surveillance Program to get the requisite certification by the Acting Attorney General, that is, you?

Mr. COMEY. I may be being overly cautious, but I am not comfortable confirming what program it was that this related to, and it should be clear. The direction—as I said, I met with the President first, then Director Mueller did, and it was Director Mueller who carried to me the President's direction to do what the Department of Justice thinks is right to get this where the Department believes it ought to be, and we acted on that direction—

Senator SPECTER. Director Mueller told you the President said to do what you thought was right?

Mr. COMEY. Correct.

Senator SPECTER. How about what the President himself told you?

Mr. COMEY. I don't want to get into what—the reason I hesitate, Senator Specter, is the right thing was done here, in part—in large part because the President let somebody like me and Bob Mueller meet with him alone. And if I talk about that meeting, I worry that the next President who encounters this is not going to let the next me get close to them to talk about something this important. So I want to be very careful that I don't talk about what the President and I talked about.

I met with the President. We had a full and frank discussion, very informed. He was very focused. Then Director Mueller met with the President alone. I wasn't there. Director Mueller carried to me the President's direction that we do what the Department of Justice wanted done to put this on a sound legal footing.

Senator SPECTER. So you met first with the President alone for 15 minutes?

Mr. COMEY. Yes, sir.

Senator SPECTER. And then Director Mueller met separately with the President for 15 minutes?

Mr. COMEY. I don't remember exactly how long it was. It was about the same length as my meeting. I went down and waited for him as he—

Senator SPECTER. And then Director Mueller, as you have testified, said to you the President told Director Mueller to tell you to do what the Department of Justice thought was right.

Mr. COMEY. Correct.

Senator SPECTER. Well, but you won't say whether the President told you to do what the Department of Justice said was right?

Mr. COMEY. Yeah, I—

Senator SPECTER. You are not slicing hair. There is no hair there.

Mr. COMEY. You are a good examiner, and that—

Senator SPECTER. Well, thank you.

Mr. COMEY. Yeah, I—the—the President and I—I don't think the conversation was finished. We discussed the matter in some detail, and then I urged him to talk to Bob Mueller about it. And I don't know the content of Director Mueller's communications with him except that Director Mueller—the President didn't give me that—I can answer that question. The President didn't give me that direction at the end of our 15 minutes.

Senator SPECTER. He did not?

Mr. COMEY. He did not. Instead he said, "I'll talk to Director Mueller," as I had suggested. Director Mueller came and met with

him. Then Director Mueller came to me and said that, "The President told me that the Department of Justice should get this where it wants to be to do what the Department thinks is right." And I took that mandate and set about to do that and accomplish that.

Senator SPECTER. I thought you testified in response to Senator Schumer's questions that after meeting with the President for 15 minutes, he told you to do what you thought was right.

Mr. COMEY. If I did, I misspoke, because that direction came from the President to Director Mueller to me.

Senator SPECTER. Well, when you had the discussions with Chief of Staff Card, what did he say to you by way of trying to pressure you—if, in fact, he did try to pressure you—to give the requisite certification?

Mr. COMEY. Again, I'm reluctant to talk about the substance of those kinds of deliberative discussions. We discussed—

Senator SPECTER. I am not asking about the substance, carefully not. I am going to, but not yet. What did he say which constituted what you thought was pressure?

Mr. COMEY. I don't know that he tried to pressure me other than to engage me on the merits and to make clear his strong disagreement with my conclusion.

Senator SPECTER. So then Mr. Card ultimately left it up to you to decide whether to give the certification or not?

Mr. COMEY. I don't know that he left it up to me. I had already made a decision and communicated it on that Tuesday that I was not going to, and that didn't change in the course of my discussions with Mr. Card.

Senator SPECTER. Did not change.

Mr. COMEY. Did not change.

Senator SPECTER. Well, he did not threaten to fire you, did he? I am going to have to lead the witness now, Mr. Comey. I have not led yet until now. Now I am going to have to lead you. He did not threaten to fire you.

Mr. COMEY. No, he didn't. And Mr. Card, as I said, was very civil to me in our face-to-face meeting. The only point—

Senator SPECTER. Well, you can suggest being fired and be civil about it.

Mr. COMEY. Right. Either civilly or uncivilly, he never suggested that to me.

Senator SPECTER. Attorney General Gonzales could be fired in a civil way. No incivility in suggesting you are going to be replaced as Acting Attorney General.

Well, all right. Then that substance—I do not want to question you as long as Senator Schumer did, notwithstanding my rights here. But the long and short of it was he did not threaten you.

Mr. COMEY. No, sir. I didn't feel threatened, nor did he say anything that I thought could reasonably be read—

Senator SPECTER. And when you talked to White House Counsel Gonzales, did he try to pressure you to reverse your judgment?

Mr. COMEY. No. He disagreed, again, on the merits of the decision, and we had engaged on that, had full discussions about that. But he never tried to pressure me other than to convince me that I was wrong.

Senator SPECTER. Well, Mr. Comey, did you have discussions with anybody else in the administration who disagreed with your conclusions?

Mr. COMEY. Yes, sir.

Senator SPECTER. Who else?

Mr. COMEY. The Vice President.

Senator SPECTER. Anybody else?

Mr. COMEY. Members of his staff.

Senator SPECTER. Who on his staff?

Mr. COMEY. Mr. Addington disagreed with the conclusion, and I'm sure there are others who disagreed. But—

Senator SPECTER. Well, I don't want to know who disagreed. I want to know who told you they disagreed. Addington?

Mr. COMEY. Mr. Addington. The Vice President told me that he disagreed. I don't remember any other White House officials telling me they disagreed.

Senator SPECTER. OK. So you have got Card, Gonzales, Vice President Cheney, and Addington who told you they disagreed with you.

Mr. COMEY. Yes, sir.

Senator SPECTER. Did the Vice President threaten you?

Mr. COMEY. No, sir.

Senator SPECTER. Did Addington threaten you?

Mr. COMEY. No, sir.

Senator SPECTER. So all these people told you they disagreed with you. Well, why in this context, when they say they disagreed with you, and you are standing by your judgment, would you consider resigning? You were Acting Attorney General. They could fire you if they wanted to. The President could replace you. But why consider resigning? You had faced up to Card and Gonzales and Vice President Cheney and Addington. It was a difference of opinion. You were the Acting Attorney General, and that was that. Why consider resigning?

Mr. COMEY. Not because of the way I was treated, but because I didn't believe that as the chief law enforcement officer in the country I could stay when they had gone ahead and done something that I had said I could find no legal basis for.

Senator SPECTER. When they said you could find no legal basis for?

Mr. COMEY. I had reached a conclusion that I could not certify—

Senator SPECTER. Well, all right. So you could not certify it, so you did not certify it. But why resign? You are standing up to those men. You are not going to certify it. You are the Acting Attorney General. That is that.

Mr. COMEY. Well, a key fact is that they went ahead and did it without—the program was reauthorized without my signature and without the Department of Justice, and so I believed that I couldn't stay—

Senator SPECTER. Was the program reauthorized without the requisite certification by the Attorney General or Acting Attorney General?

Mr. COMEY. Yes.

Senator SPECTER. So it went forward illegally?

Mr. COMEY. Well, that is a complicated question. It went forward without certification from the Department of Justice as to its legality.

Senator SPECTER. But the certification by the Department of Justice as to legality was indispensable as a matter of law for the program to go forward. Correct?

Mr. COMEY. I believed so.

Senator SPECTER. Then it was going forward illegally.

Mr. COMEY. Well, the only reason I hesitate is—and I'm no Presidential scholar, but if the determination was made by the head of the executive branch that some conduct was appropriate, that determination—and lawful, that determination was binding upon me, even though I was the Acting Attorney General, as I understand the law. And so I either had to go along with that or leave. And I believed that I couldn't stay, and I think others felt this way as well, that given that something was going forward that we had said we could not certify as to its legality.

Senator SPECTER. Well, I can understand why you would feel compelled to resign in that context, once there had been made a decision by the executive branch, presumably by the President, or by the President because he was personally involved in the conversations, that you would resign, because something was going forward which was illegal. The point that I am trying to determine here is that it was going forward even though it was illegal.

Mr. COMEY. And I know I sound like I'm splitting hairs, but—

Senator SPECTER. No, I don't think there is a hair there.

Mr. COMEY. Well, something was going forward without the Department of Justice's certification as to its legality. It's a very complicated matter, and I am not going to go into what the program was or what the dimensions of the program—

Senator SPECTER. Well, you don't have to. If the certification by the Department of Justice as to the legality is required as a matter of law, and that is not done and the program goes forward, it is illegal. How could you contest that, Mr. Comey?

Mr. COMEY. The reason I hesitate is I don't know that the Department of Justice's certification was required by statute—in fact, it was not, as far as I know—or by regulation, but that it was the practice in this particular program when it was renewed that the Attorney General sign off as to its legality. There was a signature line for that, and that was the signature line on which it was adapted for me as the Acting Attorney General and that I would not sign.

So it wasn't going forward in violation of any, so far as I know, statutory requirement that I sign off, but it was going forward even though I had communicated I cannot approve this as to its legality. And given that, I just couldn't in good conscience stay.

Senator SPECTER. Well, Mr. Comey, on a matter of this importance, didn't you feel it necessary to find out if there was a statute which required your certification or a regulation which required your certification of something more than just a custom?

Mr. COMEY. Yes, Senator, and I—

Senator SPECTER. Did you make that determination?

Mr. COMEY. Yes, and I may have understated my knowledge. I'm quite certain that there wasn't a statute or regulation that required

it, but that it was the way in which this matter had operated since the beginning. I don't—I think the administration had sought the Department of Justice, the Attorney General's certification as to form and legality, but that I didn't know and still don't know of a source for that required in statute or regulation.

Senator SPECTER. OK. Then it wasn't illegal.

Mr. COMEY. That's why I hesitated when you used the word "illegal." I—

Senator SPECTER. Well, OK. Now I want your legal judgment. You are not testifying that it was illegal. Now, as you have explained that there is no statute or regulation but only a matter of custom, the conclusion is that even though it violated custom, it is not illegal. It is not illegal to violate custom, is it?

Mr. COMEY. Not so far as I'm aware.

Senator SPECTER. OK. So what the administration, executive branch, the President did was not illegal.

Mr. COMEY. I'm not saying—again, that's why I kept avoiding using that term. I have not reached a conclusion that it was. The only conclusion I reached is that I could not, after a whole lot of hard work, find an adequate legal basis for the program.

Senator SPECTER. OK. Well, now I understand why you didn't say it was illegal. What I don't understand is why you now won't say it was legal.

Mr. COMEY. Well, I suppose as an argument—as I said, I'm not a Presidential scholar—that because the head of the executive branch determined that it was appropriate to do, that that meant for purposes of those in the executive branch it was legal. I disagreed with that conclusion. Our legal analysis was that we couldn't find an adequate legal basis for aspects of this matter, and for that reason I couldn't certify it to its legality.

Senator SPECTER. Well, OK. I will not ask you—I have a rule never to ask the same question more than four times, so I will not ask you again whether necessarily from your testimony the conclusion is that what the President did was legal, not illegal.

Let me move on. I only have 35 minutes left.

[Laughter.]

Senator SPECTER. How long did you continue to serve as Deputy Attorney General after this incident?

Mr. COMEY. Until August of 2005, so almost a year and a half, 16 months.

Senator SPECTER. And during the course of that continued service, you got along OK with the President and the Vice President and Card and Addington and all the rest of those fellows in the White House?

Mr. COMEY. I think so. I mean, we didn't have much contact with them other than professional matters, but I think so.

Senator SPECTER. But they weren't out to get you because you stood up to them.

Mr. COMEY. I hope not. I don't have any reason to—

Senator SPECTER. Well, never mind hoping. They didn't do anything to be out to get you or to make your life uncomfortable or make it difficult for you to perform your duties as Deputy Attorney General.

Mr. COMEY. No.

Senator SPECTER. There was some speculation that—well, I will eliminate the word "speculation." Did you have any sense that you were not considered to be permanent Attorney General on Mr. Ashcroft's departure because of your having stood up to the White House on this issue?

Mr. COMEY. No, I don't have any reason to believe I was ever considered, but I certainly have no reason to believe that there was any connection between consideration of who would be the next Attorney General and this matter.

Senator SPECTER. Well, on this issue, Mr. Comey, I commend you again. You did exactly the right thing. And I think the President did the right thing. In effect, he overruled Card and he overruled Vice President Cheney and he overruled Addington and he overruled Gonzales, and when it came to him, when it came to the President's desk where the buck stops, he said to Mueller to tell you follow your conscience, do the right thing, and that was done.

Mr. Comey, it is my hope that we will have a closed session with you to pursue the substance of this matter further, because your standing up to them is very important, but it is also very important what you found on the legal issue on this unnamed subject, which I infer was the Terrorist Surveillance Program, and you are not going to comment about it. I think you could. I think you could even tell us what the legalisms were. It does not involve a matter of your advice or what the President told you, et cetera. But I am going to discuss with Senator Leahy later and see about pursuing that question to try to find out about it.

Now, Mr. Comey, on to the subject of the hearing. You have been reported as commenting on a number of U.S. Attorneys who were asked to resign that you thought they were doing a good job. One was U.S. Attorney Daniel Bogden of Nevada. What judgment do you have as to his capabilities as U.S. Attorney?

Mr. COMEY. Dan Bogden was an excellent U.S. Attorney. He was a career guy who had become U.S. Attorney, and I thought very highly of him.

Senator SPECTER. Do you have any insights as to why he was asked to resign?

Mr. COMEY. I don't. I have read things in the paper, but I certainly have no personal knowledge of why he was asked to resign. When I left in August of 2005, I couldn't have thought of a reason why he should be asked to resign.

Senator SPECTER. And as to John McKay, do you have a judgment as to the quality, the competency of his performance?

Mr. COMEY. Yes. I thought, again, it was excellent in my experience. I had worked with him, as with the others, as a peer when I was U.S. Attorney in Manhattan and then as the Deputy Attorney General. So I had a very positive sense of John McKay.

Senator SPECTER. And as to Paul Charlton, Arizona U.S. Attorney, what is your view as to his competency?

Mr. COMEY. The same. I don't want to make it sound like I love everybody, but I did like him a great deal. He was very strong.

Senator SPECTER. Well, since you don't want to sound like you love everybody, anybody you didn't love who you thought should have been replaced?

[Laughter.]

Chairman LEAHY. Outside of members of the Committee.

Mr. COMEY. There was one U.S. Attorney—

Senator SPECTER. I would like to ask you about that now that Senator Leahy has opened the door. Which members of the Committee don't you love?

[Laughter.]

Mr. COMEY. You are asking Senator Leahy, I hope.

Senator SPECTER. Start with the Chairman.

Chairman LEAHY. Careful. We may be running the clock back again.

Senator SPECTER. What did you think of Charlton?

Mr. COMEY. Very strong. Very strong U.S. Attorney.

Senator SPECTER. And David Iglesias, U.S. Attorney for New Mexico?

Mr. COMEY. Same thing. I had dealt with him quite a bit, both as a peer and as his supervisor and had a high opinion of him. I thought he did a very good job.

Senator SPECTER. What did you make of Kyle Sampson's testimony that he had recommended calling for the resignation of Peter Fitzgerald.

Mr. COMEY. Patrick Fitzgerald.

Senator SPECTER. Patrick Fitzgerald. Peter Fitzgerald was the Senator.

Chairman LEAHY. No relation.

Senator SPECTER. No relation.

Mr. COMEY. I only know about that what I read in the newspaper. I was surprised by it, would be a fair description.

Senator SPECTER. What did you think of the competency of Kyle Sampson?

Mr. COMEY. I thought Kyle was very smart. My dealings with him had always been pleasant, seemed to work very, very hard.

Senator SPECTER. What did you think of the competency or smarts of Kyle Sampson after you heard he wanted to ask for the resignation of Patrick Fitzgerald?

Mr. COMEY. Well, I don't think that was an exercise of good judgment if it's something he really meant. It—

Senator SPECTER. Can you give us an illustration of an exercise of good judgment by Kyle Sampson?

I withdraw that question. Could you give us an example of an exercise of good judgment by Alberto Gonzales?

Let the record show a very long pause.

Mr. COMEY. It's hard—I mean, I'm sure there are examples. I'll think of some. I mean, it's hard when you look back. We worked together for 8 months.

Senator SPECTER. That is the famous statement of President Eisenhower about Vice President Nixon. Say something good. Give me 2 weeks.

Mr. COMEY. In my experience with Attorney General Gonzales, he was smart and engaged, and I had no reason to question his judgment during our time together at the Department of Justice. We had a good working relationship. He seemed to get issues. I would make a recommendation to him. He would discuss it with me and make a decision.

As I sit here today, I will probably 5 minutes from now think of an example, but I did not have reason to question his judgment as Attorney General.

Senator SPECTER. Are you sufficiently familiar with what happened in the issue of the U.S. Attorneys' resignations to give an evaluation of Attorney General Gonzales' statement that he was not involved in discussions or deliberations in the context of being contradicted by three of his top Deputies and the documentary evidence on the e-mails?

Mr. COMEY. I am probably more versed in this than the average person because I've read what's in the newspaper and looked at some of the documents online. But I gather he's corrected that statement that he originally made about not being involved in deliberations or discussions. But I'm not—I don't know the facts as well as members of this Committee and haven't studied it. So I don't think I have a—

Senator SPECTER. No, I do not think he has corrected that. I think he continues to say that he was involved in—his words are "limited." "Limited." That is what he has said. I think that—and I have said this to Mr. Gonzales privately and publicly—that if he would tell us what the reasons were for asking these U.S. Attorneys to resign, that it would shed considerable light on what is going on here and how the program got started and what the aims of the program were and what his involvement was. That can all be—this proceeding is still in midstream. He can recant all of what he said and come forward.

Well, Mr. Chairman, I am going to yield back the balance of my 8 minutes. Thank you.

Senator SCHUMER. Thank you, Mr. Chairman, and you went about I think a minute more than I did. But it was well spent.

Senator SPECTER. Oh, no, I did not. I am at 21:35.

Chairman LEAHY. So we can get on to others—

Senator SCHUMER. OK. I just—

Chairman LEAHY. I am also—as a member of this Committee, let me just go back to the time. I am not going to use a great deal of time so that colleagues—

Senator SPECTER. Senator Schumer and I did not either, Senator Leahy.

Chairman LEAHY. So that—God love you—so that others here can.

Just one question comes to mind. Senator Specter spoke to you about legal or illegal. Did it comply with the FISA law?

Mr. COMEY. I have tried, Senator, not to confirm that I am talking about any particular program. I just don't feel comfortable in open forum—

Chairman LEAHY. OK. Then on that, with that answer, I think I agree with—if I could have Senator Specter's attention just for a moment. With that answer—and I can understand. I am well aware of the program, well aware of what happened, and I can understand your reluctance, very appropriately, your reluctance to answer that specifically. We will have a closed-door hearing on this. Senator Specter and I are about to have a briefing on aspects of this. I am very, very troubled by what the Department of Justice is doing today—not on your watch, Mr. Comey, but what they are

doing today. We have several members of the Intelligence Committee on this Committee on both sides, and they will also be looking at it.

Mr. Comey, I have a lot of respect for you, but I have less and less respect for the way the Department of Justice is being handled today. This is a dysfunctional Department of Justice. It is being run like a political arm of the White House. That is highly inappropriate.

I have been here for 32 years. I have seen good Attorneys General and poor Attorneys General. But I have always thought that there would at least be the understanding that the professionals in the Department of Justice have to be allowed to do a professional job. And I see them being overridden time and time again.

Now, I realize there are some things you cannot go into in this session, but you know and I know that the overriding of the professional judgment of good men and women in that Department to do things that are not proper. And I think this is wrong.

One of my first experiences in the Department of Justice was as a young law clerk working while a student at Georgetown here, meeting with the then-Attorney General. The then-Attorney General was as close to the President as anyone could be. It was his brother. It was Attorney General Robert Kennedy. But I remember what he said to several of the students who were there, because he was hoping we were a cadre, because we had grades and whatnot, he wanted to recruit for the Department of Justice, and he emphasized over and over again on significant matters—civil rights, criminal areas, and whatnot—that neither the White House nor his brother would be allowed to influence the professional judgment. That always stuck in my mind, and I have seen that happen over and over again. We saw it with Elliot Richardson, with Archibald Cox, we saw it with you. And I am very, very frustrated.

I will not go into further questions because the questions I do want to ask you will be in closed session. But I hope somebody will wake up in the White House. It is a terrible, terrible precedent they are starting. It has started. And I hope whoever the next President is will make a solemn vow never—never, never—to allow this politicization of the Department of Justice because it hurts every one of us. It is not the Secretary of Justice. It is not a member of the President's staff that should be running that. It is the Attorney General of the United States, and this Attorney General is doing an abysmal job.

Senator SCHUMER. Thank you, Mr. Chairman.

Senator Kohl—Senator Feinstein was next. I apologize.

Senator FEINSTEIN. Thank you very much, Mr. Chairman, and thank you very much, Mr. Comey. I read the transcript of your testimony before the House, and it is clear that you are a very straight shooter and very well respected. And I for one really appreciate your point of view.

If I can, I would like to go back to the event in the hospital room for just a minute. You felt and you were presented with something that you had to sign to certify a certain program. That program was initially done outside of the existing law, which is the Foreign Intelligence Surveillance Act, which says it is the exclusive authority for all electronic surveillance.

The President used his Article II powers, he said. He used the Authorization to Use Military Force as the definitive basis for his action to essentially move outside the law.

The President said when this all came to light that he asked that the program be authorized every 45 days or certified by the Attorney General.

What did you actually have to sign to certify it? What were you confronted with?

Mr. COMEY. Senator, I want to be careful in this forum, again, that I am not confirming the existence of any particular program or that this—

Senator FEINSTEIN. I am not asking you to. I am asking you what piece of paper did you have to sign.

Mr. COMEY. It was a signature line on a Presidential order.

Senator FEINSTEIN. All right. And you said that the program was later changed so that it could be signed, but it went ahead at that time without your certification on it.

Mr. COMEY. Yes.

Senator FEINSTEIN. And what was the elapsed period of time from that meeting, the denial of DOJ to certify the program, and the time when it was essentially certified?

Mr. COMEY. It was reauthorized on Thursday, March the 11th, without the Department's—without my signature, without the Department's approval, and it was the next day, so less than 24 hours later that we received the direction from the President to make it right. And then we set about—I don't know how exactly how long it was, over the next few weeks—making changes so that it accorded with our judgment about what could be certified as to legality. And so it was really only that period from Thursday when it was reauthorized until I got the direction from the President the next day that it operated outside of the Department of Justice's approval.

Senator FEINSTEIN. So approximately 2 weeks?

Mr. COMEY. I don't remember exactly. It was 2 or 3 weeks, I think, that it took us to get the analysis done and make the changes that needed to be made.

Senator FEINSTEIN. And then who signed for DOJ?

Mr. COMEY. It was either Attorney General Ashcroft or myself who signed. I may have signed that first one after the hospital incident.

Senator FEINSTEIN. OK. And you then became satisfied that the program conformed with what, essentially?

Mr. COMEY. That it was operated consistently with the Office of Legal Counsel's judgment about what was lawful, and so we were in a position, given OLC's opinion—the Attorney General and I were in the position to certify the program as to its legality.

Senator FEINSTEIN. Mr. Chairman, it would be very interesting if we could obtain those legal opinions, because the program we are talking about was originally done outside of law. The Executive order of the President was really the prevailing authority, but even so, I am a little puzzled because the program was changed. And I would be very interested in what the legal advice on that program was, if that would be possible for us to request.

Senator SCHUMER. Well, I am sure if the Senator makes the request, we can make it part of the record.

Senator FEINSTEIN. Fine. I would make that request.

Senator SCHUMER. I think to the Office of Legal Counsel, which had already stated its opinion on this particular issue.

Senator FEINSTEIN. Thank you.

If I can, I would like to move on to the United States Attorneys. To the best of your knowledge, has there been any time in the history of our country when as many U.S. Attorneys have been fired at one time?

Mr. COMEY. The only other incident I know of was during the change of administrations from Bush I to President Clinton's administration.

Senator FEINSTEIN. Which is fairly typical—

Mr. COMEY. Right. It was a change-out in—

Senator FEINSTEIN.—with the change, but I am talking during the term of a President. Has there been any time when a number of U.S. Attorneys have been selected and summarily fired without cause?

Mr. COMEY. I'm not aware of a similar size removal of U.S. Attorneys.

Senator FEINSTEIN. Thank you very much.

As you know, we have had the EARS reports. Are you familiar with those reports?

Mr. COMEY. Yes.

Senator FEINSTEIN. And they have described the performance of U.S. Attorneys, and I gather there is a panel of people that go in and put these reports together. They have subsequently been—we have been told that they are very perfunctory. Are they, in fact, a document that is utilized within DOJ?

Mr. COMEY. Oh, yes. They are not perfunctory. They come, a big team of people—when I was U.S. Attorney in New York, I think 30 or more people came from all over the country, experienced people, civil lawyers and prosecutors, and they basically live with you and your office for a couple of weeks and go stem to stern, inspect the whole place. There is an out-briefing. It is very much like an audit by a big accounting firm except they audit not just your numbers but your conduct of cases and your priorities. So it is from top to bottom, and then they issue a detailed report.

Senator FEINSTEIN. Well, let me ask you this question: How then could they be fired for performance reasons if at least seven—excuse me, six out of the seven terminated on December 7th had excellent EARS reports?

Mr. COMEY. I don't know how—I was not aware at the time I left in August of 2005 of performance-related issues with most of these U.S. Attorneys.

Senator FEINSTEIN. And you have said that. You said that today. You said that in your testimony before the House, and I appreciate it.

Can you ever remember any discussion where an individual U.S. Attorney's loyalty or political instincts were questioned?

Mr. COMEY. I don't remember ever discussing or having it discussed in my presence the loyalty or political instincts of a U.S. Attorney, no.

Senator FEINSTEIN. Now, there was apparently a list put together, and Mr. Sampson had indicated that he was the aggregator of the list. He put the list together. But everyone that we have asked in the higher levels of the Department has said they did not put the names on the list. Mr. Battle, Mr. Elston, Mr. Sampson—virtually everyone we have asked has denied placing a name on that list.

If that is, in fact, the case, where would you surmise the list would come from?

Mr. COMEY. I wouldn't know. I mean, it came from someplace, but I don't know from where.

Senator FEINSTEIN. I would like to just clear the air with one thing. You had two meetings with Carol Lam, I believe—one about the Project Neighborhood program, the other about gun cases. Were you satisfied with her responses to your questions?

Mr. COMEY. Yes. I think I had one meeting that was about Project Safe Neighborhoods, which was the name given to our gun program, and I think it was on the telephone. I spoke, I think by telephone, to each of the ten U.S. Attorneys whose districts on a per capita basis were at the bottom end of our gun prosecutions. And I thought she understood. Again, I wasn't telling her do cases for the sake of doing cases. I was saying this is important, I think this saves lives, if there is a difference you can make that the local prosecutors are not making in your jurisdiction, look for an opportunity to make it. And she said she got it, and that was the end of it.

Senator FEINSTEIN. Were any of the other ten people with whom you communicated fired?

Mr. COMEY. No. Not to my knowledge.

Senator FEINSTEIN. So if someone had an excellent performance report, it is very difficult for me to figure out a reason, other than dissatisfaction with a case they were either going to file or not file, that the severance is not performance related. Would that be a fair assumption on my part?

Mr. COMEY. I suppose so. If there's no reasons that are apparent, performance-related reasons, it's hard to understand why.

Senator FEINSTEIN. Thank you very much, Mr. Comey. I appreciate it.

Senator SCHUMER. Senator Kohl.

Senator KOHL. Thank you, Mr. Chairman.

Mr. Comey, you are a person, of course, who has been very close to law enforcement in our country for many years, and obviously you are here today as a person who was the second ranking person in the Department from 2003 to 2005, and no question about your concern for the fair administration of justice in our country, and with the kind of experience you have, your opinions matter more than the opinions of most others. And I am sure you have thought about this. Would you give us your opinion? Would our country be well served if we could start fresh tomorrow with an Attorney General who is not in any way as tainted as this present Attorney General? Would we be better off as a country? You must have an opinion. Would you care to share that opinion with us?

Mr. COMEY. I would very much like not to.

[Laughter.]

Senator KOHL. But would you, please?

Mr. COMEY. I would hope—there are a lot of things I miss about Government. There are a lot of things I love about being a private citizen. I would hope you wouldn't care what my opinion is. I appreciate what you said, Senator. I am not here to dump on Attorney General Gonzales. I—

Senator KOHL. It isn't a question of dumping on. We are talking about our country and its future and the importance of law, the importance of the Department of Justice. And you have been closer than most, and you are here to serve your country. That is why you are here today. And that is a very important question, obviously, and your opinion matters much more than most because of who you are and your experience. And I am sure—or I presume you do have an opinion. Would you share that opinion with us today?

Mr. COMEY. I do have an opinion, and I would prefer not to share it. I just am not sure that—it makes me very uncomfortable to express my opinion about something, especially now that I'm outside of Government. And I have not followed this as closely as many people have. I have formulated an opinion, but I would ask the Senator's indulgence not to make me give it. I just—I just don't think that's my place.

Senator KOHL. Well, I am concluding—and correct me if I am incorrect. I am concluding that your unwillingness to express an opinion that you do—you say that you have is indication that you believe we would be better served. I think that is a clear inference from what you are saying.

Mr. COMEY. I appreciate that, Senator. If I could, I would like not to offer that.

Senator KOHL. To me, you have expressed an opinion—I mean, without having expressed it, you have expressed it.

Mr. Comey, when you testified in the House a few weeks ago, you were asked about the U.S. Attorney for the Eastern District of Wisconsin, Steve Biskupic. At that time you said that Mr. Biskupic was "an absolutely straight guy." When you were asked whether you knew that Mr. Biskupic was on a list of weak performers and potentially slated for dismissal, you said, and I quote, "No, and I think very highly of him." Having had time to reflect on your testimony, do you have anything to add to what you said at that time? Do you know why he was put on a list of weak performers and why he came off the list? Did it have anything to do with the prosecution of voter fraud cases that he was taken off the list or the prosecution of Georgia Thompson, an employee of the Democratic Governor's administration at that time?

Mr. COMEY. I don't know—I don't know from firsthand knowledge that he was on a list. I can't imagine why he would be put on a list to be removed. I think very highly of him, as you quoted. I think he is what you want in a U.S. Attorney. And I'm not saying that because he is tall and skinny, but he is a very solid person who is as honest as the day is long, cares passionately about the independence of the Department of Justice. I know this from talking to him.

So I can't imagine—I know he's gotten beat on because a case he prosecuted was reversed in the Seventh Circuit Court of Appeals. I tried to explain to somebody who asked me about that, not in a

hearing but a private citizen. I said, "It happens." And it's not an indictment of the good faith of the prosecutor, of the district judge who denied a motion for a directed verdict, or the jury that convicted. Sometimes appeals courts disagree about the inferences to be drawn from the evidence and reverse a conviction. That doesn't tell you that the prosecutor is a bad guy. In fact, I know this one, and this is a good guy.

Senator KOHL. Mr. Comey, yesterday's Washington Post reported that White House and Republican Party concerns regarding voter fraud prosecutions were the cause of many of the U.S. Attorney dismissals. Can you confirm this? During the time you served as Deputy Attorney General, were you aware of concerns from the White House that U.S. Attorneys were not active enough in prosecuting voter fraud cases? Did the White House exert any effort to encourage the Justice Department to remove U.S. Attorneys whom it believed were not prosecuting voter fraud cases vigorously enough?

Mr. COMEY. I'm not aware of any issue that came to my attention regarding voter fraud when I was Deputy Attorney General, complaints or otherwise.

Senator KOHL. While you served at the Justice Department, were you aware of any pressure from the White House to bring voter fraud cases?

Mr. COMEY. No, sir.

Senator KOHL. Thank you so much.

Mr. COMEY. Thank you, Senator.

Senator KOHL. Mr. Chairman, thank you.

Senator SCHUMER. Senator Feingold?

Senator FEINGOLD. Mr. Chairman, first I want to praise you for your questioning. It was very long. I hope you do not make it a habit. But I will tell you something: I think it was some of the most important and valuable questioning that I have heard from a Senator in the years that I have been here, and I just want to thank you for your leadership on this.

Mr. Comey, I want to commend you for your service, for your courage, for your testimony, some of the most dramatic testimony that I have heard in 25 years that I have been a legislator. Your courage at the time, and today, in defense of the rule of law is truly admirable. Let me add, your account of Attorney General Ashcroft is the same. This has been my experience with Mr. Ashcroft despite our fundamental differences. And I have had many great disagreements with this administration. But there is a difference in this administration between people like you and Attorney General Ashcroft who do fundamentally respect the rule of law, and many others who have shown some of the most blatant disrespect for the rule of law, I think, in American history.

I think it is only fair that we make these distinctions. I know that is not your purpose in being here, but I simply want it noted in the record that here is somebody who literally stood tall for the rule of law, and I praise you for it.

I want to highlight one point you alluded to in answer to a question from Senator Specter. This reauthorization process and the need for a certification from the Attorney General was only an internal control, not a statutory requirement. I think that that testimony makes it all the more clear that this Committee must pursue

this issue and must be supplied with the relevant documents. So, Mr. Comey, are you aware of any documents produced by the White House Counsel's Office with regard to this program?

Mr. COMEY. Not specifically. Not specifically. I don't remember—

Senator FEINGOLD. You don't recall reviewing any—

Mr. COMEY. I don't remember reviewing any from the White House Counsel's Office that related to this. It is possible, but I don't remember it.

Senator FEINGOLD. What about documents from the Office of the Vice President? Do you know if any such documents exist regarding this program?

Mr. COMEY. I don't know.

Senator FEINGOLD. Did Mr. Gonzales or Mr. Card ever indicate that they were acting on the direction or the knowledge of the President when they came to see the Attorney General in the hospital?

Mr. COMEY. Not that I recall. I don't think so.

Senator FEINGOLD. They never stated that, to your recollection?

Mr. COMEY. I don't think so.

Senator FEINGOLD. Did something in particular occur that led to this issue coming to a head in March of 2004? Why not at an earlier point in connection with one of the earlier reauthorizations?

Mr. COMEY. It was simply the pace at which the work went on in the Office of Legal Counsel. We had a new Assistant Attorney General as of, I think, October—I think October of 2003, and there were a number of issues that he was looking at, and this re-evaluation of this particular program was among those issues. And the work got done in the beginning part of 2004, and that's what brought it to a head with this particular—

Senator FEINGOLD. So it was at this point that the office was able to get around to these concerns, these legal concerns and these internal concerns?

Mr. COMEY. I think that's right. Concerns had reached the ears of the new Assistant Attorney General, and he undertook an examination, with my approval and Attorney General Ashcroft's approval, of this matter.

Senator FEINGOLD. You made quite a moving farewell address to your colleagues in the Department in August of 2005. In it you thanked some of your colleagues for being "people committed to getting it right and to doing the right thing, whatever the price," and stated that some of those people "did pay a price for their commitment to right." What were you referring to?

Mr. COMEY. I had in mind one particular senior staffer of mine who had been in the hospital room with me and had been blocked from promotion, I believed as a result of this particular matter.

Senator FEINGOLD. So you were, in fact, referring to this incident in the hospital and somebody who was there and consequences that accrued to this person as a result of that?

Mr. COMEY. Yes.

Senator FEINGOLD. Is that Mr. Goldsmith?

Mr. COMEY. No. It's Mr. Philbin.

Senator FEINGOLD. Thank you, Mr. Chairman.

Senator SCHUMER. Senator Specter wants to make a concluding statement.

Senator SPECTER. Well, I just wanted to confirm with you, Mr. Chairman, that we are not going to have a second round.

Senator SCHUMER. We are not going to have—I have one question, which I showed you, and that is it.

Senator SPECTER. There is a vote scheduled in 5 minutes, so I am going to go to the floor at this point. And I conclude by thanking you for your service, Mr. Comey, and I thank you for standing up. That is in the finest tradition of the Department of Justice, and I hope we can reinstate it.

Thank you.

Mr. COMEY. Thank you, Senator.

Senator SCHUMER. Well said.

Senator Whitehouse?

Senator WHITEHOUSE. Thank you, Chairman.

Mr. Comey, good morning. It is still morning.

Mr. COMEY. Good morning, Senator.

Senator WHITEHOUSE. I would like to ask you—you are obviously a person who cares very deeply about the Department of Justice and its institutions, and I worry about some of the institutional legacy of what we have been through. In particular, I would like to ask you for your thoughts on where the standard should be of what is proper versus what is improper in the context of bringing political influence or partisan influence into the Department of Justice and why—that is sort of the framing part of the question.

More specifically, I have been very concerned at some of the statements that have come out of the Department of Justice that have been the Department's effort to define that level of impropriety, and I will tell you it began first with Kyle Sampson, who told this Committee that the limited category of improper reasons for these dismissals would include an effort to interfere with or influence the investigation or prosecution of a particular case for political or partisan advantage. And then not too much later, Attorney General Gonzales came before us, and in nearly verbatim words, he said that it would be improper to ask for a resignation of any individual in order to interfere with or influence a particular prosecution for partisan political gain. And in the wake of the Attorney General's testimony in the House, the Justice Department issued a statement saying that it is clear that the Attorney General, again, defining the standard of what is improper, did not ask for the resignation of any individual in order to interfere with or influence a particular prosecution for partisan political gain.

Now, when I read those things, I harken back to the elements of obstruction of justice, which I recall as being three: one is the awareness of a particular case, two is the effort to influence or interfere with it, and three is that that be done for a corrupt or improper motive, such as partisan political gain.

Let me ask it to you two ways. The first way would be: If it became clear to you that somebody in the Department had tried to interfere with or influence a particular prosecution for partisan political gain, would you consider that to be the basis for opening, at least opening an obstruction of justice investigation? And if the facts were proven, would that not even be the basis for a conviction for criminal obstruction of justice?

Mr. COMEY. I think it potentially could be, yes. Certainly for looking at the matter.

Senator WHITEHOUSE. In that context, do you think that is where the bar should be set for what is improper versus not improper in terms of political influence coming into the Department of Justice? Is that the right standard?

Mr. COMEY. No. If the standard is whether we are running afoul of the obstruction of justice statute, I think it is set way too low. Senator, as you know—

Senator WHITEHOUSE. What should it be? You have had the chance to think about this. You care about this Department deeply. You have shown, through what is probably a difficult experience for you, that you are willing to think about these things without bias and really try to get to the right answer. How would you phrase where the standard for what is improper should be in terms of where and when the Department should allow political influence to enter into its deliberations or its conduct?

Mr. COMEY. I think that you have to talk about it in two pieces. One is Main Justice, and the other is the U.S. Attorneys. And although both of those parts of the institution are led by political appointees, I think they have to be different in terms of what "political" means. I think it is the job of the Department of Justice to be responsive to the policy priorities of the President, who is elected and who has appointed the folks to run the Department. But I think it is Main Justice's job to see to it that U.S. Attorneys can operate in an environment where there is little or no politics, big P or little P, at all entering into their considerations.

I think once they walk through the door and become the U.S. Attorney, although they are politically appointed, they have got to call, as someone said, balls and strikes without regard to whether the person in the dock in a Democrat or Republican or a Green or who cares. They have to make the judgment on the facts.

I think the job of the Department is, to the extent there are complaints or there are political issues, to receive those and to figure out what to do about them without polluting the work of the U.S. Attorneys. That is why I think they are different. I think it is a hard thing to define in the abstract. It is certainly not obstruction of justice as the standard.

I think the Department needs to make its decisions about what to do with political interests or information by looking at what is the mission of the Department of Justice. And—

Senator WHITEHOUSE. Do you agree with me that the standard that they have been articulating about efforts to interfere with or influence a particular prosecution for partisan political gain effectively restate the standard for criminal obstruction of justice?

Mr. COMEY. It sounds like it does, and that is certainly something that should be avoided at all costs. But I think it sets the bar a little too low in terms of what the Department's mission is in protecting the historical autonomy of the entire Department, especially the U.S. Attorneys.

Senator WHITEHOUSE. Mr. Chairman, my time has expired. Thank you, Mr. Comey.

Senator SCHUMER. Thank you, Senator Whitehouse.

Mr. Comey, I just want to followup on one final question. I showed it to Senator Specter ahead of time because he had to leave. But he was asking you about legality, illegality, within law, not. The key point here is: Isn't it the Office of Legal Counsel that makes a determination about whether something is within the law or not, within the Justice Department?

Mr. COMEY. Yes, and its opinions are binding throughout the executive branch.

Senator SCHUMER. And didn't that office make a decision and advise you that what was attempting to be done was not within the law?

Mr. COMEY. The conclusion was that they could not find an adequate legal basis for—

Senator SCHUMER. OK. Let's put it that way.

Mr. COMEY. Yes.

Senator SCHUMER. So they could not find an adequate legal basis for doing it that way.

Mr. COMEY. Correct.

Senator SCHUMER. And you felt that if they couldn't, you couldn't preside over the Department of Justice if you were going to be overruled by the White House to do it anyway.

Mr. COMEY. Yes.

Senator SCHUMER. I think that is OK.

Let me conclude, then, by just thanking you. You are a Profile in Courage. You are what our Government is all about. In this case, it has nothing to do with Democrat, Republican, liberal, conservative. It has to do with doing a job well and caring about the rule of law. And I would say what happened in that hospital room crystallized Mr. Gonzales' view about the rule of law, that he holds it in minimum low regard. And it is hard for me to understand—I am going to say something that you will not say. It is hard to understand, after hearing this story, how Attorney General Gonzales could remain as Attorney General, how any President—Democrat, Republican, liberal, conservative—could allow him to continue.

But I want to thank you for being here. I know it was not easy. I know that if we did not have the power of subpoena, you would not be here. I know you have a conscience that obviously you have wrestled with in all this, and it is very difficult to be here. But a Profile in Courage by definition is difficult, and I think I speak on behalf of almost every American. We thank you for being here and having the courage to speak the truth.

The hearing record will remain open for 1 week, and the Committee is now adjourned.

[Whereupon, at 11:50 a.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Questions for the Record for James Comey (Senator Feingold)

1. In testimony before the House and Senate Judiciary Committees in 2006, Attorney General Gonzales stated that that there were not any serious disagreements between you and others within the Administration relating to the NSA wiretapping program confirmed by the President. After your testimony last week, Senators Schumer, Kennedy, Durbin and I sent a letter to the Attorney General asking if he wished to revise that testimony. The Attorney General responded that his testimony was accurate. (See attached letter and response.)

a. Based on your knowledge of what transpired within the Administration when you were Deputy Attorney General, do you agree with the Attorney General that his testimony in 2006 "was and remains accurate"?

I do not believe I can answer that question in an unclassified environment.

b. Was his testimony misleading?

I do not believe I can answer that question in an unclassified environment.

2. The Attorney General has stated repeatedly that although he did not personally look into the rationales behind why each attorney should be fired,h e approved the list of U.S. Attorneys to be fired because he believed the list reflected a consensus judgment of the "senior leadership of the department." For example, on Thursday, April 19,20 07, he testified:

> "What I understood was that the recommendations reflected the consensus judgment of the senior leadership of the department and that, therefore, the senior leadership had lost confidence in these individuals and thus the department had lost confidence. . . I understood that the senior leadership, that the recommendation made to me reflected the consensus view of the senior leadership of the department, of individuals who would know better than I about the qualifications of these individuals."

This testimony suggests that there was a serious and deliberative process that yielded these judgments, yet virtually every senior DOJ official who has testified in our investigation has disavowed any significant or active involvement in selecting which individuals should be fired. For example, Mr. Sampson, the Attorney General's former chief of staff, suggested that you played a role in selecting the attorneys for firing, but you testified to the House on May 3, 2007, that you were "not aware that there was any kind of process going on or that my

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very brief conversation with Mr. Sampson was part of some process to figure out a group of U.S. attorneys to fire."

Deputy Attorney General Paul McNulty, Principal Associate Deputy Attorney General William Moschella, Associate Deputy Attorney General David Margolis, Acting Associate Attorney General William Mercer, Former Director of the Executive Office of U.S. Attorneys Michael Battle, the Chief of Staff to Mr. McNulty, Michael Elston, and Counselor to the Attorney General Matt Friedrich have all reported little to no involvement in personally recommending individual attorneys for this list. Mr. Sampson has characterized his function as merely aggregating the recommendations of others and then passing those recommendations on to the Attorney General and has denied that any of the individuals were on the list because he personally wanted them there.

a. If this had actually been a legitimate and serious process, who would have been consulted for their opinions on this matter? Which positions at DOJ are held by people who you think can speak with authority on the performance of specific U.S. Attorneys?

An evaluation of the performance of U.S. Attorneys should involve, at a minimum, the Deputy Attorney General and members of his staff who interacted with the U.S. Attorneys and officials at the Executive Office for U.S. Attorneys who deal regularly with, and inspect, the U.S. Attorneys.

b. If this had actually been a legitimate and serious process, what records would you expect would have been created for the Attorney General and the Deputy Attorney General to document it?

I have never been involved in such a review process so I do not know what types of documents would be created. In my opinion, the EARS evaluations should be a critical part of any review process, either for an individual U.S. Attorney or for a broader group review.

c. Other than the officials mentioned above, can you think of any other "senior Department officials" who the Committee should ask if they were involved in determining which U.S. Attorneys should be fired?

No.

d. If, in fact, the senior leadership of the department was not involved in generating the names of individuals to be fired, who should the Committee

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look to in order to understand why the specific fired U.S. Attorneys—other than Mr. Ryan from San Francisco—were singled out?

I do not know.

3. You testified in the House that Kyle Sampson met with you for about 15 minutes on February 28, 2005, and asked you who the weakest U.S. Attorneys were. You gave him several names. You testified that of those names, only Kevin Ryan ended up on the list to be fired. You did not mention any of the other fired U.S. Attorneys and in fact, you testified that you had and have quite favorable opinions of many of them. Just two days after your meeting with him, on March 2, Mr. Sampson sent a preliminary chart reflecting his assessment of all 93 U.S. Attorneys to Harriet Miers in the White House. That list shows Kevin Ryan as a strong U.S. Attorney and lists Margaret Chiara, Bud Cummins, and Carol Lam as U.S. Attorneys to consider removing.

a. If this were a legitimate and serious process, where senior officials of the Department were being consulted, and Mr. Sampson had received information suggesting that Chiara, Cummins, and Lam should be removed for legitimate reasons, would you have expected him to have specifically asked your opinion about these U.S. Attorneys when he met with you two days before?

Yes.

b. If the information Mr. Sampson obtained about Kevin Ryan was so different than your assessment, shouldn't he have discussed that with you as well?

Yes.

4. In an unfortunately prescient section of your farewell address to Department of Justice employees on August 2005, you discussed the fact that the good work that DOJ accomplishes is made possible by "a reservoir of trust and credibility" that the public has for the Department. You also noted that "the problem with reservoirs is that it takes tremendous time and effort to fill them, but one hole in a dam can drain them. The protection of that reservoir requires vigilance, an unerring commitment to truth, and a recognition that the actions of one may affect the priceless gift that benefits all."

a. Is the matter of the fired U.S. Attorneys an example of such a hole in that dam, one that affects the trust and credibility of the Department and has

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implications far beyond the lives and reputations of the individual U.S. Attorneys?

Yes. The entire affair has harmed the Department and its reputation.

b. What should be done, in your view, to repair the credibility of the Department and the American people's trust in it? In particular, what steps should be taken internally by the Department of Justice or by the Administration as a whole?

Time and distance, and the everyday good work of the Department's thousands of trustworthy and honest people all over the country, will help to repair the harm. We should remember that this is a Department that survived – and even thrived – following the Watergate era. As painful as this time is, the great and positive institutional inertia of the organization – composed of people who love doing good for a living – will be its salvation.

c. Are there things that we in Congress should do either to help restore DOJ's reputation or to prevent this sort of thing from happening in the future?

It would be a good thing if Congress shone a light on the good work being done by the men and women of the Department all over the country. There is much good out there that gets too little attention.

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Written Questions to
Former Deputy Attorney General James B. Comey
Submitted by Senator Patrick Leahy
May 22, 2007

1. You testified that the Department of Justice ("DoJ") completed a factual and legal evaluation of "a particular classified program" in 2004, and this review was conducted by, among others, the Office of Legal Counsel ("OLC").

a. When was this review started?

I believe some time in late fall 2003.

b. Why was the review started? Was the review started at the request of any individual or entity? If so, who or what entity?

I believe it was started at the initiative of Jack Goldsmith and Patrick Philbin.

c. Who participated in the review? Other than OLC, did any other division, section, or unit at DoJ participate in the review?

Goldsmith and Philbin were the principal participants, as I recall. I believe they were assisted from time to time by James Baker from the Office of Intelligence Policy and Review and my chief of staff, Chuck Rosenberg. There may have been other DOJ lawyers who assisted them.

d. Did any individual or entity from outside DoJ participate in the review? Were there any individuals from the White House, the Department of Defense ("DoD"), or other federal agency who participated in the review? If so please identify those individuals and/or entities?

I believe Goldsmith and Philbin coordinated their effort with lawyers in the intelligence community.

e. Did the review assess the full duration of the classified program and, if not, what time frame was reviewed?

The review focused on current operations during late 2003 and early 2004, and the legal basis for the program.

f. As a result of the review, did any individual or entity at DoJ, or any other agency, prepare a legal opinion or memorandum related to the classified program, and, if so, who or what entity prepared the legal opinion or memorandum?

OLC prepared legal memoranda concerning the matter, some of which would have been drafts. I also prepared at least one memorandum.

g. Were the results of this review shared with the Federal Bureau of Investigation ("FBI"), and, if so, who at the FBI and when?

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It is my understanding that Goldsmith and Philbin discussed their work with officials from the General Counsel's office at the FBI, including the General Counsel, Valerie Caproni. I discussed the matter privately with FBI Director Mueller and FBI Deputy Director John Pistole.

h. Other than the White House or individuals at the White House, were the results of this review shared with any individual, entity, or federal agency outside DoJ, and, if so, who or what entity and when?

The matter was discussed with lawyers and non-lawyers in the intelligence community. I am uncomfortable going into more detail in an unclassified setting.

2. In your testimony, you stated that the views of DoJ related to the classified program were communicated to the White House prior to the evening of March 10, 2004.

a. How were these views communicated to the White House? Please identify whether the communications were made orally, in writing, by electronic communication, or other means; and to whom and when the communications were made. Please identify if any of the documents responsive to Question 1 above were included in this communication.

The views were communicated orally prior to March 10, 2004, including at a March 9 meeting I attended at the White House. I also believe that Goldsmith and Philbin had a variety of contacts with officials at the White House in the preceding weeks or months as the review was conducted. Those contacts may have involved their sharing written materials, but I am not sure. I recall sending one memorandum to the White House, after March 10, which I believe attached a memorandum written by Goldsmith.

b. Without disclosing the substance of the classified program or any legal advice, did these views include the understanding that the Attorney General, or you as Acting Attorney General, would not certify the classified program?

Yes.

c. Did you or others at DoJ receive any response to these views from the White House? If so, please identify whether the responses were made orally, in writing, by electronic communication, or other means; and to whom and when was the response was made.

I directly received oral responses during discussions at the White House on March 9, 2004. I know there were a variety of discussions in early 2004 in which I did not participate but that involved Jack Goldsmith and Patrick Philbin.

d. Did the response include any legal opinion or memorandum from the White House, or any other federal agency related to the classified program? If so, please identify what individual(s) or entities prepared and reviewed the legal opinion or memorandum.

I am not aware of any other such memorandum or legal opinion prior to March 10, 2004. Some time shortly after March 10, I received a memorandum from White House Counsel Gonzales.

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3. You testified that after you arrived at the George Washington Hospital in Washington, D.C., on the evening of March 10, 2004, White House Counsel Alberto Gonzales and White House Chief of Staff Andrew Card came to Attorney General John Ashcroft's hospital room and spoke to him relating to the authorization of a classified program.

a. Did any individual(s) come with Mr. Gonzales or Mr. Card to the hospital, and if so, who? Were those individuals present for the conversation between Mr. Ashcroft and Mr. Gonzales?

I do not know with whom Mr. Gonzales and Mr. Card arrived; only the two of them entered the room.

b. Upon arriving in the hospital room, did Mr. Gonzales say anything to you, either before or after his conversation with Mr. Ashcroft, and if so, what did he say?

He did not speak to me at any time.

c. Did Mr. Card speak to Mr. Ashcroft or you in the hospital room and if so, what did he say?

Mr. Card did not speak to me. I believe he said, "Be well," to Attorney General Ashcroft as he turned to depart.

d. To your knowledge, did Mr. Gonzales or Mr. Card consult with Mr. Ashcroft's physician or any medical staff prior to entering the hospital room?

Not to my knowledge.

e. In your presence, did Mr. Gonzales or Mr. Card ask Mr. Ashcroft questions to elicit his state of mind and/or medical condition prior to discussing their request for authorization of the classified program?

I believe Mr. Gonzales began the conversation by asking, "How are you General?" to which the Attorney General replied, "Not well."

f. To your knowledge, did Mr. Gonzales or Mr. Card take any steps to ensure that facts related to the classified program were not disclosed to individuals without proper clearances or an actual need to know who were present in the hospital room?

Not to my knowledge.

4. In your testimony, you stated that FBI Director Robert Mueller also arrived at the George Washington Hospital that night.

a. To your knowledge, did Mr. Mueller have any conversation with Mr. Gonzales or Mr. Card at the hospital that night? If so, what was that conversation?

Not to my knowledge.

b. In your testimony, you indicated that Mr. Mueller had a "memorable" exchange with Mr. Ashcroft after Mr. Gonzales and Mr. Card left. Please describe that exchange.

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It was a private conversation in which Mr. Mueller expressed his admiration for the Attorney General's conduct that evening.

5. You testified that the President met with you privately, and then, at your urging, he also met with Mr. Mueller privately, on the morning of March 12, 2004 following your daily counter-terrorism briefing. After these discussions, you stated that the President indicated to Mr. Mueller that you were now authorized to make changes to the classified program in response to the Department of Justice's views.

a. Following your meetings, did the President direct you or Mr. Mueller to discontinue or suspend any portion of classified program immediately until the appropriate changes were made to bring it into legal compliance?

No.

b. How long did the classified program continue without legal certification from DoJ?

I don't recall exactly, but believe it was approximately several weeks.

6. You testified that you discussed DoJ's views on the classified program with Vice President Dick Chaney and members of his staff, including his Chief of Staff David Addington.

a. Where and when did those discussions take place?

March 9, 2004 at the White House.

b. Who else was present for those discussions?

Jack Goldsmith, Patrick Philbin, Vice President Cheney, Mr. Addington, Mr. Card, Mr. Gonzales, and members of the intelligence community.

c. If those discussions were on or before March 10, 2004, was the Vice President and/or his staff aware of DoJ's decision not to certify the classified program? If so, how were they aware?

Yes. The Vice President was aware of DOJ's decision to not certify the program, because I had communicated this orally during a March 9 meeting. That meeting was a culmination of ongoing dialogue between DOJ and the White House.

d. If those discussions were on or before March 10, 2004, was the Vice President and/or his staff aware of your intention to resign if the classified program was authorized without DoJ certification? If so, how were they aware?

No. I had not made a decision to resign yet.

e. To your knowledge, did the Vice President or his staff have any role in the decision to have Mr. Card and Mr. Gonzales visit Mr. Ashcroft in the hospital? If so, what role did they have and what is the source for your information?

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I have no knowledge about that.

7. You testified that Mr. Philbin, who was with you in the hospital, was "blocked from promotion," as a result of the position taken by DoJ related to this classified program.

a. Did any individual or individuals from the White House have any input into his potential promotion at DoJ? If so who, and in relation to what promotion?

Mr. Philbin was considered for principal Deputy Solicitor General after Paul Clement became Solicitor General. It was my understanding that the Vice President's office blocked that appointment.

b. Who was involved in blocking Mr. Philbin's promotion, and what did they do?

I understood that someone at the White House communicated to Attorney General Gonzales that the Vice President would oppose the appointment if the Attorney General pursued the matter. The Attorney General chose not to pursue it.

8. When did the Administration first conclude that the Authorization for Use of Military Force ("AUMF") authorized warrantless electronic surveillance of the type involved in what the Administration has called the "terrorism surveillance program" or TSP? If you do not recall a specific date, please provide as close an approximation as is possible.

I don't think it is appropriate for me to discuss legal advice by the Department of Justice or any particular classified program.

9. What legal standard for intercepting communications was the National Security Agency ("NSA") applying in its warrentless electronic surveillance program before March 2004? Was it a "probably cause" standard? What standard was the NSA applying when the program was first authorized? What standard was applied after March 2004?

I don't think it is appropriate for me to discuss legal advice by the Department of Justice or any particular classified program.

10. Has the warrantless electronic surveillance program always required before authorizing interception of a communication that at least one party to the communication be located outside of the United States? If not, approximately when did this become a requirement?

I don't think it is appropriate for me to discuss legal advice by the Department of Justice or any particular classified program.

11. Has the warrantless electronic surveillance program always required before authorizing interception of a communication that at least one party to the communication be a member or agent of Al Queda or an affiliate terrorist organization? If not, approximately when did this become a requirement?

I don't think it is appropriate for me to discuss legal advice by the Department of Justice or any particular classified program.

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Written Questions from Senator Charles E. Schumer to James B. Comey
May 15, 2007 Hearing

1. When the Attorney General testified before the Senate Judiciary Committee on February 6, 2006, he stated that there was little or no dissent within the Administration with respect to the program that "the President has confirmed."

   - **Was the classified program over which you and others almost resigned in March 2004 the program that the President confirmed in early 2006? Was it a variant of the program the President confirmed in early 2006?**

I do not believe I can answer these questions in an unclassified environment.

2. You testified that in March of 2004, while Attorney General Ashcroft was hospitalized with pancreatitis, the powers of the Attorney General were transferred to you.

   - **Please describe the mechanism by which that power was transferred to you, what documentation was created, what public statements were made about the transfer, and what communications were had with White House personnel about the transfer.**

David Ayres, the Attorney General's Chief of Staff, handled the documentation and notifications to the White House. He would have worked with my Chief of Staff, Chuck Rosenberg. I do not recall what specific documents were created. There was media coverage about the fact that I was acting Attorney General and I believe DOJ Public Affairs made public statements to that effect.

3. Please identify all the officials at the Department of Justice or elsewhere whom you have a basis to believe were prepared to resign in March 2004 over the classified program you alluded to in your testimony.

I believe the following individuals were prepared to resign: Jack Goldsmith, Patrick Philbin, Chuck Rosenberg, Daniel Levin, James Baker, David Ayres, David Israelite, Robert Mueller. Although not involved with the matter, I believe a large portion of my staff would have resigned were I to depart.

4. You testified that you believed that your former aide, Patrick Philbin, had been blocked from promotion as a result of his participation in the dispute over the classified program you alluded to. Specifically, it has been reported in the press that Mr. Philbin was blocked from taking the position of Principal

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Deputy Solicitor General because of the objections of Vice President Cheney and his aide, David Addington.

- **Can you confirm the accuracy of these media accounts? If they are inaccurate, please identify the particular promotion that was denied to Mr. Philbin, the individuals who objected, and the circumstances surrounding Mr. Philbin's being rejected for the promotion.**

I believe they are accurate.

5. You testified that during the visit to Attorney General Ashcroft's hospital room on the evening of March 10, 2004, Mrs. Ashcroft was present when you first arrived and also later when Messrs. Gonzales and Card arrived.

- **Did you reveal classified information in Mrs. Ashcroft's presence?**

No.

- **Did either Mr. Gonzales or Mr. Card reveal classified information in Mrs. Ashcroft's presence?**

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

6. You testified that in or about March 2004, the Justice Department's Office of Legal Counsel determined that it could not certify the legality of the classified program you alluded to in your testimony.

- **Did the Office of Legal Counsel or any other office prepare a written opinion providing the basis for concerns about the legality of the classified program you alluded to in your testimony? If so, please identify the approximate date(s) of any such opinion, the author(s), and the recipients of any such opinion, inside and outside the Justice Department.**

Yes. OLC prepared legal memoranda concerning the matter during early 2004, some of which would have been drafts. I also prepared at least one memorandum that I recall. The Department of Justice would be in the best position to supply dates and information about recipients.

7. As you may know, Todd Graves has recently said that he was asked to resign in January of 2006, making him at least the 9th United States Attorney who was dismissed last year.

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- **Did you form an opinion of the quality of Mr. Graves's work when you were the Deputy Attorney General? If so, what was it?**

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

- **What was John Ashcroft's opinion of Mr. Graves, if you know?**

I believe Attorney General Ashcroft shared my opinion of Mr. Graves, although I do not recall a specific conversation with Mr. Ashcroft concerning Todd's performance.

8. I know that you are familiar with the highest-ranking career official at the Justice Department, David Margolis. He has testified that in November of 2006, Kyle Sampson read him a list of several names of U.S. Attorneys who would be asked to resign. In response, Mr. Margolis made clear that so long as people were being dismissed, there were two U.S. Attorneys who were very poor performers who deserved to be fired. One, he said, was Kevin Ryan, who by many accounts had management and other issues in the Northern District of California. The other U.S. Attorney, whom Mr. Margolis did not identify, was not dismissed and continues to serve as a U.S. Attorney today.

   - **What do you make of the fact that the same people who decided to fire Dan Bogden of Nevada for no apparent reason also refused to heed Mr. Margolis's advice with respect to this other U.S. Attorney?**

   I don't know what to make of it. Mr. Margolis is a wise person with significant experience in personnel matters, whose advice is always worthy of serious consideration.

9. You are the Department official who decided – after I called for it – to appoint a Special Prosecutor in the Valerie Plame affair. After John Ashcroft recused himself from the issue, you appointed your former colleague, Patrick Fitzgerald. And you performed the delegation of duties to Mr. Fitzgerald with respect to the Plame investigation.

   - **If Mr. Fitzgerald were fired as U.S. Attorney, would he have been able to continue as Special Prosecutor under your delegation of authority?**

I don't believe so because he was appointed in his capacity as United States Attorney.

10. You testified before the House a few weeks ago that you had a 15-minute conversation with Mr. Sampson on February 28, 2005 – shortly after Alberto

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Gonzales took over as Attorney General. You testified that you discussed two things. One was a conversation about who you thought were the weakest U.S. Attorneys. You were never asked about the second topic.

- **What was the second subject? Please provide details of that portion of your conversation with Mr. Sampson.**

This conversation occurred shortly after Attorney General Gonzales's confirmation. Mr. Sampson explained to me a vision for the operation of the Attorney General's office and the Office of the Deputy Attorney General that would involve operating those respective staffs as essentially one staff. My understanding was that this vision would entail the Deputy Attorney General and staff acting in much closer coordination with the Attorney General and his staff. I responded that I believed it was very valuable to the Attorney General and the Department for the Deputy Attorney General to act as a separate office and that I did not support this vision.

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

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SUBMISSIONS FOR THE RECORD

United States Senate

WASHINGTON, DC 20510

May 16, 2007

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

Dear Mr. Attorney General:

In very dramatic testimony to the Senate Judiciary Committee yesterday, former Deputy Attorney General James Comey testified that in March 2004, when you served as White House Counsel, you were involved in "an effort to take advantage of a very sick man," referring to then-Attorney General John Ashcroft.

Specifically, Mr. Comey testified that you and former White House Chief of Staff Andrew Card went to Mr. Ashcroft's bedside at George Washington Hospital, where he was in intensive care, in an effort to get him to agree to certify the legality of a classified program that he and Mr. Comey, who was serving as acting Attorney General at the time, had concluded should not be so certified. Mr. Comey stated that when the Administration decided to go forward with reauthorizing this classified program without that certification, he and several other Justice Department officials, including possibly Attorney General Ashcroft himself, were ready to tender their resignations.

You testified last year before both the Senate Judiciary Committee and the House Judiciary Committee about this incident. On February 6, 2006, at a Senate Judiciary Committee hearing, you were asked whether Mr. Comey and others at the Justice Department had raised concerns about the NSA wiretapping program. You stated in response that the disagreement that occurred was not related to the wiretapping program confirmed by the President in December 2005, which was the topic of the hearing. The following is a transcript excerpt from that hearing:

> Senator Schumer. Let me ask you about some specific reports. It has been reported by multiple news outlets that the former number two man in the Justice Department, the premier terrorism prosecutor, Jim Comey, expressed grave reservations about the NSA program and at least once refused to give it his blessing. Is that true?
>
> Attorney General Gonzales. Senator, here is a response that I feel that I can give with respect to recent speculation or stories about disagreements. There has not been any serious disagreement, including – and I think this is accurate – there has not been any serious disagreement about the program

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that the President has confirmed. There have been disagreements about other matters regarding operations, which I cannot get into. I will also say

Senator Schumer. But there was some – I am sorry to cut you off, but there was some dissent within the administration, and Jim Comey did express at some point – that is all I asked you – some reservations.

Attorney General Gonzales. The point I want to make is that, to my knowledge, none of the reservations dealt with the program that we are talking about today. They dealt with operational capabilities that we are not talking about today.

Senator Schumer. I want to ask you again about them, just we have limited time.

Attorney General Gonzales. Yes, sir.

Senator Schumer. It has also been reported that the head of the Office of Legal Counsel, Jack Goldsmith, respected lawyer and professor at Harvard Law School, expressed reservations about the program. Is that true?

Attorney General Gonzales. Senator, rather than going individual by individual—

Senator Schumer. No, I think we are – this is—

Attorney General Gonzales. By individual, let me just say that I think the differing views that have been the subject of some of these stories does not – did not deal with the program that I am here testifying about today.

Senator Schumer. But you are telling us that none of these people expressed any reservations about the ultimate program. Is that right?

Attorney General Gonzales. Senator, I want to be very careful here. Because of course I am here only testifying about what the President has confirmed. And with respect to what the President has confirmed, I believe – I do not believe that these DOJ officials that you are identifying had concerns about this program.

In addition, on April 6, 2006, in answer to a question from then House Judiciary Committee Chairman James Sensenbrenner about the hospital visit, which had been reported in the press, you responded: "Mr. Chairman, what I can say – and I'm sure this

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will not be acceptable, but let me say it anyway – is that I have testified before that the disagreement that existed does not relate to the program the President confirmed in December to the American people."

We ask for your prompt response to the following question: In light of Mr. Comey's testimony yesterday, do you stand by your 2006 Senate and House testimony, or do you wish to revise it?

Sincerely,

RUSSELL D. FEINGOLD
United States Senator

CHARLES E. SCHUMER
United States Senator

EDWARD M. KENNEDY
United States Senator

RICHARD J. DURBIN
United States Senator

35800.067

Office of the Attorney General
Washington, D.C.

May 17, 2007

The Honorable Russell D. Feingold
United States Senate
Washington, DC 20510

Dear Senator Feingold:

I write in response to your letter yesterday regarding my testimony before the Senate and House Judiciary Committees in February and April 2006, respectively.

In response to questions about press accounts of internal dissent within the Justice Department over intelligence programs, I stated, in the testimony referenced above, that there had not been serious disagreement about the lawfulness of the National Security Agency's surveillance operation that was publicly confirmed by the President in December 2005—that is, the NSA's operation of targeting for collection international communications into or out of the United States when there is probable cause to believe that one of the communicants is a member or agent of al Qaeda or an associated terrorist organization. It is that particular operation, which had been publicly described by the President, that we have referred to as the "Terrorist Surveillance Program" and that I was addressing in my testimony. At the same time, I acknowledged that there had been disagreements about other intelligence activities, as one would expect. My testimony on these points was and remains accurate.

While I provided this testimony in an unclassified setting, it bears emphasis that the fact and nature of such disagreements have been briefed by the Justice Department to the Intelligence Committees.

Sincerely,

Alberto R. Gonzales
Attorney General

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Statement of Senator Patrick Leahy
Chairman, Senate Judiciary Committee
Hearing On Politicization Of The Hiring, Firing, And Decision-Making Of U.S. Attorneys -- Part IV
May 15, 2007

Today, the Committee welcomes former Deputy Attorney General James Comey to testify as part of its investigation into the mass firings and replacements of U.S. Attorneys. Mr. Comey comes to us at a time when the Department of Justice -- a Department where he served as the second, highest-ranking official-- is experiencing a crisis of leadership. The scandal swirling around the dismissal and replacement of several well-performing prosecutors continues to grow. Just yesterday, we learned from press accounts that Mr. Comey's successor as Deputy Attorney General, Paul McNulty, has tendered his resignation. Mr. McNulty is at least the fourth senior Justice Department official to resign so far.

The American people deserve a strong and independent Department of Justice with leaders who enforce the law without fear or favor. Regrettably, that is not the Justice Department we have today. Instead, we see a Department rife with scandal and another agency this Administration seeks to manipulate as a political arm of the White House. Our justice system should not be a political arm for this White House or any White House, whether occupied by a Republican or a Democrat.

Since the beginning of this investigation, we have heard shifting explanations from the Administration. First, we were told by Mr. McNulty and others that these U.S. Attorneys were fired for performance reasons and we were told that the White House was not involved or had minimal involvement. Then, when we learned they were fired for political reasons and that political operatives from the White House were involved from day one, we were told that the White House had nonetheless concluded that it had done nothing improper.

The Administration has sought to place artificial limitations on our congressional investigation to control the facts and the damaging revelations. We have been told that we are not allowed to ask Department witnesses about other U.S. Attorneys considered for firing or kept on as "loyal Bushies" in order to learn the real reasons for the firings. We have been prevented from seeing key documents and e-mails. The White House has refused to produce a single document or official to be interviewed on the record.

Yet, more facts continue to emerge. We have learned in recent weeks about unprecedented efforts to screen potential hires for political allegiances throughout the Department, including apparently for career Assistant U.S. Attorney positions, a development Mr. Comey has said "strikes at the core of what the department is." And we continue to learn of more U.S. Attorney replacements than were initially revealed.

I continue to hope that the Department will cooperate with the Committee's investigation, but the Department's highly selective and incomplete productions of documents have

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presented a hurdle since the investigation began. Indeed, it seems that the closer we get to learning the truth about these firings, the less cooperation we get from the Department.

The Department chose not to make one of its officials, Bradley Schlozman, available to the Committee for our hearing this morning. We wanted to hear directly from Mr. Schlozman about his knowledge and recollection relating to his activities as a former interim U.S. Attorney in Missouri and his time in the Department's Civil Rights Division. The Committee could benefit from Mr. Schlozman's testimony, particularly as new information is revealed about concerns by Karl Rove and others in the Administration regarding purported voter fraud, and how those concerns played into the determinations to retain or remove certain U.S. Attorneys. Senators should also have the benefit of Mr. Schlozman's testimony about the unprecedented and damaging politicization of hiring for career positions at the Department. Despite a bipartisan letter to Mr. Scholzman requesting his cooperation and an invitation voluntarily to appear this morning, he has apparently chosen not to come. The reasons for his failure to appear have, like the explanations for the U.S. Attorneys' firings, shifted over time and were provided not directly by him. Given his failure to appear, I will seek Committee authorization to subpoena him in the near future.

I find it troubling that only through the press did we learn of the confidential order revealed two weeks ago by which the Attorney General delegated to two young aides, former Chief of Staff D. Kyle Sampson and former White House Liaison Monica Goodling, authority over the hiring and firing of many high-level employees of the Justice Department. We also learned only from the press, and not from Administration documents or witnesses at hearings or interviews, that another former U.S. Attorney whose name appeared on the lists, Todd Graves from the Western District of Missouri, was, in fact, also told to resign. Mr. Schlozman's testimony might have shed some light on this additional firing the Department sought to hide. Instead, he is conveniently unavailable today.

It appears from the evidence gathered by the Committee in five hearings, eight interviews with current and former officials from the Department of Justice, and our review of the limited documents produced by the Department that White House officials played a significant role in developing and implementing the plan for the dismissals. Indeed, the plan seems to have originated in the White House and was formulated by and with coordination of the White House political operation. Yet, to date the White House has not produced a single document or allowed even one White House official involved in these matters to be interviews.

We will see this afternoon whether the Attorney General will comply with the Committee's subpoena requiring him to produce to the Committee all of Mr. Rove's e-mails in the Department's possession related to the Committee's investigation or whether our efforts to learn the truth will be met with more stonewalling. When the Attorney General was before us last month, I asked him whether he would provide Mr. Rove's e-mails in the Department's possession to the Committee without a subpoena. I did not hear back from him after the hearing or in response to a follow up letter I sent April 25th

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asking for a response. I hope that the Attorney General of the United States will comply with a duly issued subpoena of this standing Committee of the Senate acting in its oversight capacity.

I thank Mr. Comey for appearing before the Committee today. His appearance on the heels of his successor's resignation is a reminder that we need to restore the Department of Justice to a place deserving of its name. The way we do that is get to the truth.

The Committee has requested cooperation from the Administration and I hope the information and cooperation requested will finally be forthcoming. If the White House has done nothing improper, then they have nothing to hide. The Administration should come clean so that we can begin the process of reconstituting the leadership of the Justice Department. Then all Americans can renew their faith in its role as our leading law enforcement agency. The obligations of the Justice Department are to the Constitution, the rule of law and to the American people, not to the political considerations of the White House.

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PRESERVING PROSECUTORIAL INDEPENDENCE: IS THE DEPARTMENT OF JUSTICE POLITICIZING THE HIRING AND FIRING OF U.S. ATTORNEYS?—PART V

TUESDAY, JUNE 5, 2007

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, Pursuant to notice, at 2:34 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Feinstein, Feingold, Schumer, and Whitehouse.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Good afternoon. The Committee today will continue its investigation into political influences affecting the Justice Department. We have seen a lot of stonewalling by this administration, a lot of conflicts in testimony and failures of memory—failures of memory. Over and over again failures of memory by the Attorney General and others have greatly hampered our efforts to get to the bottom of these matters.

Now, when the President complained in a press conference—and I will use his words—that these matters are being "drug out," he need look no farther than his own White House and the Justice Department leadership he appointed for the reasons this continues to fester.

Trying to get them to answer questions, there seems to be a delay for the sake of delay, perhaps thinking that we might forget about this matter. We will not. The administration should come clean. They should quit hiding the truth. They should own up to their misdeeds.

The functions of the Department of Justice should be above politics. Law enforcement, civil rights enforcement, and voting rights are all too important to be enmeshed in partisan political operations.

Despite the testimony of officials from this administration, we are learning through press accounts that many more than seven U.S. Attorneys were replaced and that perhaps a dozen or two dozen or even three dozen were considered for firing.

And it was only through press accounts—through press accounts, and I compliment the press on this, because not from the testimony

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of Department employees or the few selective documents the Department has so far produced—that the public learned that one of our witnesses today, Todd Graves, the former U.S. Attorney for the Western District of Missouri, was on those lists and asked to resign. He is from an earlier wave of replacements in 2006.

We have also learned in recent weeks about apparently extensive efforts by operatives of this administration to screen the political allegiances of applicants for career law enforcement positions.

Former Deputy Attorney General Jim Comey has said such efforts to apply a partisan litmus test strike "at the core of what the Department of Justice is." And we know from her guarded admissions before the House Judiciary Committee that Monica Goodling, who was given immunity for everything except perjury, had to admit that she "crossed the line" in engaging in this conduct.

So who else at the Department was involved? Who knew this was going on? Who acquiesced or approved it? Who directed it? What did they know and when did they know it? These are all questions that the Department of Justice has refused to answer or explain.

We have been notified that the Inspector General has expanded his investigation to include some of these matters. And so I will be writing him and asking him whether he is also expanding his investigation to include the meeting in which Attorney General Gonzales made Ms. Goodling, by her words "uncomfortable" by inappropriately communicating with her about matters under investigation in what appears to be an effort to influence her testimony.

Our first witness today is Bradley Schlozman, the first interim U.S. Attorney appointed by Attorney General Gonzales pursuant to the authority granted in the PATRIOT Act reauthorization, an authority that was so misused that Republicans and Democrats joined in overwhelmingly to vote to repeal that authority, and it has been repealed by this Congress.

We hope to learn the unvarnished facts from him about these unprecedented U.S. Attorney replacements and the use of partisan considerations in career hiring. We also have questions about his role as the interim U.S. Attorney and while at the Civil Rights Divisions in pressing certain cases in connection with recent elections.

I am deeply troubled by what appears to be an effort by the White House to manipulate the Department into its own political arm. You know, actually, the White House cannot have it both ways. It cannot withhold documents and witnesses and thus stonewall the investigation and at the same time claim that the facts about White House influence over Federal law enforcement have not been revealed in detail.

They cannot have it both ways. Because the White House has continued its refusal to provide information to the Senate Judiciary Committee on a voluntary basis, I will have no choice but to issue subpoenas, and I will.

Today I hope we can begin to better understand the role that efforts to influence elections in the name of pursuing "voter fraud" may have played a role in the dismissal of Federal prosecutors. Every week seems to bring new revelations about the erosion of independence at the Justice Department.

This administration was willing, in the U.S. Attorney firings and in the vetting of career hires for political allegiance, to sacrifice the independence of law enforcement and the rule of law for loyalty to the White House.

The obligations of the Justice Department are to the Constitution, the rule of law, and to the American people, not to the political considerations of this White House. It is, after all, the Department of Justice of the United States.

Mr. Schlozman, please stand and raise your right hand.

[Whereupon, the witness was duly sworn.]

Chairman LEAHY. In April, you were the Associate Counsel to the Director at the Executive Office for U.S. Attorneys. Until April, you were the interim U.S. Attorney for the Western District of Missouri.

You were the first interim U.S. Attorney appointed by Attorney General Gonzales pursuant to the authority which the Congress has now repealed in the PATRIOT Act reauthorization.

You received your Bachelor of Arts magna cum laude from the University of Pennsylvania in 1993, J.D. from George Washington School of Law in 1996. You clerked for Judge Thomas VanBebber, U.S. District Court for the District of Kansas, Judge Mary Beck Briscoe in the Tenth Circuit, 2 years in private practice before moving to the Justice Department in 2001, 2 years as counsel to the Deputy Attorney General, and so on.

Please go ahead. We have your testimony. The full testimony will be placed in the record.

STATEMENT OF BRADLEY J. SCHLOZMAN, ASSOCIATE COUNSEL TO THE DIRECTOR, EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS, FORMER INTERIM U.S. ATTORNEY FOR THE WESTERN DISTRICT OF MISSOURI, FORMER PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL AND ACTING ASSISTANT ATTORNEY GENERAL FOR THE CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Mr. SCHLOZMAN. Thank you very much, Chairman Leahy.

Chairman Leahy, distinguished members of the Committee, thank you for the opportunity to testify today.

My service in the United States Attorney's Office for the Western District of Missouri was the highlight of my professional career. Although my 13 months in office was relatively brief, I believe that the outstanding Assistant U.S. Attorneys and staff in that district accomplished an extraordinary amount in that time.

During my time there, for example, the district was ranked first in the country in the Justice Department's Project Safe Neighborhood Program, charging more felon defendants with unlawfully possessing a firearm than any other district in the entire country.

The district also maintained its position as one of the top offices in the country in prosecuting child exploitation cases. Indeed, many components of our Project Safe Childhood Initiative that we launched in the district have served as models for other districts throughout the entire country.

In a related vein, I introduced the Human Trafficking Task Force shortly after my arrival, which in less than a year led to the indictments of numerous individuals and multiple prosecutions.

All of these successes were due to the incredible team of prosecutors and staff in the Western District of Missouri, and I continue to be grateful for the honor of having served with them.

I am also very proud of my approximately 3 years in the Civil Rights Division, where I was privileged to work with many brilliant and dedicated attorneys who cared passionately about ensuring equal justice.

I served as a Deputy Assistant Attorney General from May of 2003 until June of 2005, and then as the Principal Deputy from June of 2005 until March of 2006, and during a 5-month period during that I was also the Acting Assistant AG.

During this slightly less than 3-year period, the Division was able to achieve unprecedented results. The accomplishments of the Voting Section, for example, were legion. In the slightly less than 3 years I spent supervising that section, for example, the Division filed 10 objections on behalf of African American voters; 13 minority language cases under Section 203, which was nearly half of all cases that had been filed in the history of that provision of the Voting Rights Act; a voter assistance case under Section 208; the first case ever to protect Filipino voters; the first case ever to protect Vietnamese voters; the first case under the intimidation provision of the Voting Rights Act since 1992; four cases under the Uniformed and Overseas Citizen Absentee Voting Act; three cases under the National Voter Registration Act; and four cases under the Help America Vote Act.

In fact, during just my 5 months as Acting Assistant Attorney General, we filed six Voting Rights Act cases, which is an average of more than one per month. And to put that number in perspective, consider that the Division's 31-year average is just six Voting Rights Act cases per year. We did that in just 5 months.

The work of the Division's Special Litigation Section, which I also supervised, was similarly impressive. From 2001 through 2005, the Special Litigation Section increased the number of investigations pursuant to the Civil Rights for Institutionalized Persons Act by more than 28 percent.

By the time I left, we had CRIPA matters involving over 175 facilities in 34 States and Territories, and those investigations ensure that all too vulnerable residents of State mental health facilities, geriatric centers, juvenile facilities, and correctional institutions are afforded the Federal, constitutional, and statutory rights to which they are due.

Meanwhile, in the Employment Litigation Section, I either authorized, reviewed, or oversaw the initiation of investigations, the filing of complaints, or the course of litigation in some of the Division's most important employment discrimination cases in a decade.

Among the more prominent examples is a pattern-of-practice suit that was—the investigation that I authorized was recently filed against the New York Fire Department following a lengthy investigation.

Finally, the Division's efforts to combat trafficking in persons, which was really one of my prides and joys, has been one of the Department's great success stories. Addressing an evil that really is nothing less than modern-day slavery, the Civil Rights Division

launched a major initiative to educate law enforcement, victim advocates, and the overall community about human trafficking and how best to eradicate it. Task forces were formed around the country, and the results have been spectacular. In fiscal years 2001 through 2006, the Civil Rights Division and U.S. Attorneys' Offices prosecuted 360 defendants, a more than 300-percent increase from the prior 6-year period. In addition, the number of convictions and guilty pleas during that time period increased by 250 percent when compared to the prior 6-year period.

And nearly 1,200 trafficking victims from 75 countries were assisted by the Division and other law enforcement personnel for refugee type benefits under the Trafficking Victims Protection Act. Few accomplishments have brought greater pride to my heart.

Ultimately, none of these incredible successes of the Division over the last 5 years would have been possible without the tireless efforts of so many fine attorneys and staff in the Division. I congratulate them and reiterate what a genuine pleasure it was to work with them.

Thank you very much, Senator.

[The prepared statement of Mr. Schlozman appears as a submission for the record.]

Chairman LEAHY. Well, thank you, and I am glad to hear how spectacular you were and the people you worked with. It makes you sometimes wonder why we ever have to worry about with the Department of Justice when you have such a spectacular record. But let me ask you a couple of questions.

When you were the Attorney General's interim appointment as U.S. Attorney for the Western District of Missouri and as a high-ranking official in the Department's Civil Rights Division, you did pursue voter fraud, as you said. You are aware of the Justice Department's guidebook on Federal prosecution of election offenses, the so-called Red Book, aren't you?

Mr. SCHLOZMAN. I am somewhat familiar with it. In fact, the Department today announced that they are issuing a new book that will—

Chairman LEAHY. Did they have—never mind what they are doing today. Did they have this book at the time you were the interim U.S. Attorney?

Mr. SCHLOZMAN. Yes, they did, Senator.

Chairman LEAHY. And you are somewhat familiar with it?

Mr. SCHLOZMAN. Well, I was—in the Civil Rights Division, we focused—

Chairman LEAHY. When you were U.S. Attorney, were you somewhat familiar with it or were you familiar? Because my understanding is that all U.S. Attorneys are supposed to be familiar with it?

Mr. SCHLOZMAN. I was—

Chairman LEAHY. Were you or weren't you?

Mr. SCHLOZMAN. I was familiar with it, Senator, yes.

Chairman LEAHY. That is a little bit better. Thank you.

On the eve of last year's closely contested midterm election in Missouri, you brought four indictments against individuals who filed some false voter registration applications. Now, I read this book—and I was not a U.S. Attorney, but I read this book, and

they talk about the long tradition—they actually use those words—against criminal investigations on the eve of elections. The general policy against criminal pursuit of individuals accused of election misconduct in favor of going after larger conspiracies.

Wouldn't the timing of your action on the eve of it, filing criminal charges not against a large conspiracy but against a few individuals, wouldn't that be contrary to the policies that are right here in the book?

Mr. SCHLOZMAN. No, Senator, they would not be. The—

Chairman LEAHY. Is there another book besides this that I should be aware of?

Mr. SCHLOZMAN. I am not aware of any other books on that issue.

Chairman LEAHY. I am not either, and I have looked carefully. But it says, "Since the Federal prosecutor's function in the area of election crimes is not primarily preventative, any criminal investigation by the Department must be conducted in a way that eliminates or at least minimizes the possibility that the investigation itself becomes a factor in the election. With very few exceptions, no overt investigation should occur until after the election."

ACORN had been investigated, had itself referred the incidents to the county prosecutor's office, so there is no threat that prosecution was needed. At the time you filed the indictments, the people involved had already been terminated. Registration activities for the election had ceased. Is that not true?

Mr. SCHLOZMAN. Yes, it is true, Senator, that they had ceased.

Chairman LEAHY. Well, then, did you go to anybody in the Justice Department to approve what you were doing insofar as it apparently goes against what is the prosecutor's handbook?

Mr. SCHLOZMAN. Yes, Senator. At my direction, the prosecutor, the Assistant U.S. Attorney assigned to this case, who is a 27-year veteran of the Department, contacted the head of the Election Crimes Branch, which is a unit within the Public Integrity Section—

Chairman LEAHY. Who did you contact?

Mr. SCHLOZMAN. The head of the Election Crimes Branch.

Chairman LEAHY. Who?

Mr. SCHLOZMAN. Craig Donsanto.

Chairman LEAHY. Is he still there?

Mr. SCHLOZMAN. Yes, he is.

Chairman LEAHY. And you contacted him or the Assistant—

Mr. SCHLOZMAN. My Assistant U.S. Attorney contacted him.

Chairman LEAHY. At your direction?

Mr. SCHLOZMAN. At my direction, yes.

Chairman LEAHY. And what was the response?

Mr. SCHLOZMAN. The response was when we explained the nature of the investigation and the indictments, we specifically asked whether we should be able to go forward or he wanted us to delay. And his response was, "Go ahead. If you have got the investigation ready to go, go ahead and indict. There is no need to wait until after the election."

Chairman LEAHY. Even though the manual says—and they actually underline it in the manual—"Thus, most, if not all, investiga-

tions related to election crime must await the end of the election to which the allegation relates."

Mr. SCHLOZMAN. His explanation was—

Chairman LEAHY. And these people were no longer involved in the election at the time you brought the charges. It seems so extraordinary and so different from what is normally done. Did they ask you is there a reason why they should not follow their normal policy?

Mr. SCHLOZMAN. The Director's explanation was that this case did not implicate any of the DOJ informal policies because, as he said, there was no need to actually interview any voters in this case. And because of that, there was no—the purpose of that policy is designed to ensure that no investigation ensues where a voter might actually have to be interviewed prior to the election, which could chill potential electoral activity. And because that was not necessary here, he said, "Feel free to go forward. No policy is implicated."

Chairman LEAHY. In your testimony you said there was nothing unusual, irregular, or improper about the substance or timing of these indictments. Is that your position today?

Mr. SCHLOZMAN. It is, and that is based on the express direction and guidance that I received from the Elections Crimes Branch of the Public Integrity Section.

Chairman LEAHY. But why did you even seek—why didn't you just wait a couple weeks more? I mean, wasn't this obvious to you that just simply bringing the charges, especially when there is nothing that you had to bring to stop somebody before the election, just that bringing of the charges could have an effect on the election? Did that thought ever occur to you?

Mr. SCHLOZMAN. Well, a couple points there. No. 1, I didn't—the reason I contacted the Public Integrity Section is that that is explicitly required under the U.S. Attorney's manual. In terms of—I mean, I didn't think that this was going to have any impact on any election. I mean, these were individuals who were filling out false voter registration cards. So there was no—

Chairman LEAHY. And it had been stopped because they had been self-referred to the county prosecutor, but you did not think that when the U.S. Justice Department stepped in that it would have any effect whatsoever that close to an election?

Mr. SCHLOZMAN. Well, there was no individual who was possibly going to be disenfranchised or who was—

Chairman LEAHY. That is not my question at all, Mr. Schlozman, and you know it. Did you really think that having the Department of Justice bring a charge like that, that close to the election, would have no effect on the election? I am not talking about an individual being stopped from voting. It would have no effect on the election?

Mr. SCHLOZMAN. I did not think it was going to have any effect on the election in this case. No, Senator.

Chairman LEAHY. You are amazing. Do you read the papers at all?

Mr. SCHLOZMAN. I do.

Chairman LEAHY. Do you watch the news at all?

Mr. SCHLOZMAN. Occasionally, yes.

Chairman LEAHY. Did you ever watch it before an election?

Mr. SCHLOZMAN. Senator, I have watched the news on occasion.

Chairman LEAHY. OK. Have you ever made a remark suggesting to anybody that helping a particular candidate or political party played a role in your decision about filing this lawsuit as interim U.S. Attorney?

Mr. SCHLOZMAN. I can't imagine having made any comments like that.

Chairman LEAHY. So your answer is no?

Mr. SCHLOZMAN. My answer is no.

Chairman LEAHY. If anyone said otherwise, they would be mistaken?

Mr. SCHLOZMAN. I do not have any recollection. It would be completely inconsistent with my—with my—

Chairman LEAHY. What about any role in the timing of the filing or prosecution of any lawsuit? Did you ever talk to anybody that this may affect an election one way or the other?

Mr. SCHLOZMAN. I don't recall making any comment, and, again, I got—I did what I did at the direction of the Public Integrity Section.

Chairman LEAHY. Well, at your instigation. You could have also just followed the manual and waited a couple weeks, could you not have?

Mr. SCHLOZMAN. Well, I—

Chairman LEAHY. Would it have affected the prosecution? Would it have affected your ability to bring the prosecution if you just waited a few weeks until the election was over?

Mr. SCHLOZMAN. The Department of Justice does not time prosecutions to elections.

Chairman LEAHY. Well, yes, they do. That is what the manual says. And you, rather reluctantly, I felt, admitted you actually did read it when you became the interim U.S. Attorney. The fact is, would it have changed the outcome of your prosecution had you waited a few weeks to bring it?

Mr. SCHLOZMAN. I don't know—I doubt there would have been any impact on the actual prosecution. Again, I asked the Department's Public Integrity—

Chairman LEAHY. That is my conclusion, too. My time is up. I think, Senator Schumer, you—who is next?

Senator FEINSTEIN. Are you using early bird? Early bird, he was next.

Chairman LEAHY. Go ahead.

Senator SCHUMER. It looks like I caught the worm. Thank you, Mr. Chairman, and I thank my colleague from California.

Mr. Schlozman, is the policy against considering political and ideological affiliations in the hiring of career Department employees formal or informal?

Mr. SCHLOZMAN. I think it is pursuant to a civil service statute for career employees.

Senator SCHUMER. So it is formal?

Mr. SCHLOZMAN. The Hatch Act, yes.

Senator SCHUMER. Did you ever violate it?

Mr. SCHLOZMAN. I did not.

Senator SCHUMER. Did you ever "cross the line," as Ms. Goodling has admitted doing?

Mr. SCHLOZMAN. I did not.

Senator SCHUMER. Did you know whether anyone else ever violated those rules? Had you heard anyone ask the kinds of questions that Ms. Goodling—did you hear Ms. Goodling ever ask those questions about anybody to your or anyone else?

Mr. SCHLOZMAN. I did not personally hear her ask any of those kinds of questions.

Senator SCHUMER. Did you ever hear anyone else ask those questions—"Is this person a Republican?" "Is this person a conservative?"

Mr. SCHLOZMAN. I did not hear that, no.

Senator SCHUMER. OK. As interim U.S. Attorney, did you have to get clearance from Main Justice to hire line-level AUSAs?

Mr. SCHLOZMAN. I did, yes.

Senator SCHUMER. From whom did you have to get such clearance?

Mr. SCHLOZMAN. From the Executive Office for U.S. Attorneys.

Senator SCHUMER. OK. Who? Who did you contact?

Mr. SCHLOZMAN. Oh, the names? I mean, usually it would be the Director and the Principal Deputy Director, and I understand that they actually did have to get approval from the Attorney General's office.

Senator SCHUMER. How many AUSAs did you hire during your tenure?

Mr. SCHLOZMAN. Two.

Senator SCHUMER. Were any rejected by the Department?

Mr. SCHLOZMAN. No.

Senator SCHUMER. When was the last hire you made into the U.S. Attorney's Office?

Mr. SCHLOZMAN. Probably sometime in February or March of 2006—or 2007, I am sorry.

Senator SCHUMER. Did you ever consider political affiliation or ideology?

Mr. SCHLOZMAN. I did not.

Senator SCHUMER. OK. And have you ever been interviewed by the Office of Professional Responsibility or the Inspector General's office in connection with their ongoing investigations?

Mr. SCHLOZMAN. I have not.

Senator SCHUMER. If not, do you expect to be?

Mr. SCHLOZMAN. I assume I will be, yes.

Senator SCHUMER. You don't know when?

Mr. SCHLOZMAN. I don't know when.

Senator SCHUMER. OK. Let me just ask you these questions so the record is clear. Are you aware of whether anyone at DOJ, including yourself, asked applicants for careers positions about or considered as factors any of the following, and I am going to be very explicit here: Party affiliation?

Mr. SCHLOZMAN. I am not aware of that.

Senator SCHUMER. Loyalty to or support for the President?

Mr. SCHLOZMAN. For career positions? I am not aware of that.

Senator SCHUMER. How they voted in any election?

Mr. SCHLOZMAN. I am not aware of that.

Senator SCHUMER. Positions on any public policy issues?

Mr. SCHLOZMAN. I don't know—I don't recall any questions about public policy positions, where the individual stood.

Senator SCHUMER. People didn't ask, "Are you pro-choice? Pro-life?"

Mr. SCHLOZMAN. No.

Senator SCHUMER. This or that—OK. Membership in a nonprofit organization?

Mr. SCHLOZMAN. Did people ask whether candidates were?

Senator SCHUMER. Yes.

Mr. SCHLOZMAN. I am not aware of any.

Senator SCHUMER. Like the Federalist Society or something like that?

Mr. SCHLOZMAN. I mean, people might have it on their resume, and it might be discussed at a—you know, during the interview, but I don't remember—I am not aware of any questions where someone asked that kind of question.

Senator SCHUMER. OK. Before Monica Goodling's admissions, did you have any knowledge whatsoever that such questions were ever asked or ever considered for applicants for career type positions?

Mr. SCHLOZMAN. I was not aware—I knew that there was a vetting process up in the Attorney General's office, but I don't—I'd hear rumors, but I was not aware of any—

Senator SCHUMER. Let me ask you this one: Did you ever suggest to anyone, an applicant for a position at the Justice Department, to change his or her resume to hide a conservative or Republican affiliation or connection?

Mr. SCHLOZMAN. What I did do was is I would—I mean, the answer to that—it is not a matter of hiding it, but I did encourage individuals on a couple of occasions to take political background which was irrelevant to the hiring decision for a career position and did not include that in the resume that they submitted for a career position.

Senator SCHUMER. Well, did you say don't put something conservative or Republican so they won't know your views or your affiliation?

Mr. SCHLOZMAN. What I did do is we—on a couple of occasions we had, like, Republican National Lawyers Association and I would—when I would get a resume—what would end up happening, Senator, is that I would get resumes from third parties, usually for people being considered for either a political or a career position in the Division. We had both.

So if it was a career position—if it was a political position, I would send it up to the Attorney General's office for the White House liaison. If it was a career position and there was some kind of—obviously, people in this city have both political and non-political resumes, and if I would see some sort of political background that was irrelevant to the hiring decision, I would encourage them not to include that.

Senator SCHUMER. On how many occasions did you do that?

Mr. SCHLOZMAN. Perhaps a handful. I mean, three to four, I would assume.

Senator SCHUMER. Can you name some of the people and what affiliations you told them to take off their resume?

Mr. SCHLOZMAN. Senator, I don't remember specific names.

Senator SCHUMER. But you did do it?

Mr. SCHLOZMAN. Yes. I mean, I did do that, yes.

Senator SCHUMER. OK.

Chairman LEAHY. You can't remember any of them?

Mr. SCHLOZMAN. Well, one has come out—one has apparently come out and made the allegation, the one individual that has been in the press, but I don't remember any of the names of any specific individuals, no.

Senator SCHUMER. But you did it on several occasions?

Mr. SCHLOZMAN. Probably, yes.

Senator SCHUMER. And it wasn't just Republican or conservative affiliations that they should do?

Mr. SCHLOZMAN. If it was purely political background—the fact that there might have been some organization that is perceived as political, that is not what I was telling them to remove. It would have been something like—

Senator SCHUMER. And you never told people for the purpose of hiding what your views are so you could get in or whatever?

Mr. SCHLOZMAN. It wasn't a matter of—

Senator SCHUMER. Did you ever tell people that, yes or no?

Mr. SCHLOZMAN. As a matter of hiding it? No. I don't recall making any—

Senator SCHUMER. Or something to that effect?

Mr. SCHLOZMAN. I don't recall making any kind of comment like that.

Senator SCHUMER. OK. At any time did you receive recommendations for the hiring of career lawyers from the Republican National Lawyers Association?

Mr. SCHLOZMAN. I don't recall getting any recommendations from the RNLA.

Senator SCHUMER. Did Michael Thielen—he was head of it—refer candidates to you?

Mr. SCHLOZMAN. I don't recall. I don't even know Michael Thielen.

Senator SCHUMER. OK. So you have no recollection of that happening?

Mr. SCHLOZMAN. I have no recollection.

Senator SCHUMER. OK. Did you ever boast to anyone that you had hired a certain number of Republicans or conservatives for any division or section at the Department of Justice?

Mr. SCHLOZMAN. I mean, I don't remember. What I probably—I mean, I have made statements, you know, that we have in one section brought more perhaps individuals who were more professional and—

Senator SCHUMER. No, I did not ask professional. You have got to answer my question.

Mr. SCHLOZMAN. OK. I mean—

Senator SCHUMER. I know you may associate Republican or conservative with professional, but that is not my question.

Mr. SCHLOZMAN. Senator, I mean, I may have made statements—

Senator SCHUMER. This is a—I am asking these questions, you know, for a reason.

Mr. SCHLOZMAN. Yes.

Senator SCHUMER. OK. Did you ever boast to anyone that you hired a certain number of Republicans or conservatives for any division or section at the Justice Department?

Mr. SCHLOZMAN. I mean, I probably have made statements like that and—

Senator SCHUMER. Thank you. OK. Why did you do it if you just said a few minutes ago that it wasn't relevant to have that on their resumes because it wasn't political?

Mr. SCHLOZMAN. These individuals, Senator, were not hired because they were Republican or—

Senator SCHUMER. I didn't ask that. If you said it was irrelevant at one point, now you are boasting to people that, well, we hired Republicans, is there a contradiction there?

Mr. SCHLOZMAN. No, Senator. I mean, I—when I inherited the Voting Section of the Division, I was aware of the significant problems that had been—that had afflicted the Division and the administration having been hit with more than $4.1 million dollars in sanctions, and that's taxpayer dollars, and I wanted to make sure that we weren't going to have those kind of abuses repeat themselves.

Senator SCHUMER. Mr. Schlozman, it sure seems a contradiction to me, and I will pursue this in the second round, if we are going to have one, Mr. Chairman. Thank you.

Chairman LEAHY. Thank you, Senator Schumer.

Normally we would go to Senator Feinstein next, but she has been gracious enough, knowing Senator Whitehouse is supposed to be at a meeting with the Leader, and—

Senator WHITEHOUSE. Thank you, Senator Feinstein. I appreciate it. Thank you, Chairman.

Mr. Schlozman, other than your internship as a law student in the Western District of Missouri, had you ever been to the Western District of Missouri before you came in as the U.S. Attorney?

Mr. SCHLOZMAN. Yes, I mean, I'm from Kansas City. I'm actually from Overland Park, Kansas, but I'm from Kansas City, so I spent my entire childhood in the Kansas City area.

Senator WHITEHOUSE. OK. And you are admitted in Missouri?

Mr. SCHLOZMAN. Yes.

Senator WHITEHOUSE. OK. In testimony before a House Judiciary Subcommittee, Joe Rich, who worked at DOJ Civil Rights Division for, I believe, 37 years, the last 6 of which he served as the Chief of the Voting Section, testified as follows, that he was—and here begins the quote, "ordered to change"—"ordered to change the standard performance evaluations of attorneys under my supervision to include critical comments of those who had made recommendations that were counter to the political will of the front office and to improve evaluations of those who were politically favored. In my 32 years of management in the Division before this administration, I was never asked to alter my performance evaluations."

Was it you who ordered him to make those changes in performance evaluations?

Mr. SCHLOZMAN. On a number of occasions, I believe I did order him to—and it's actually—on evaluations, Senator, there is a rating official and a reviewing official. Usually, the career section chief is

the rating official, and the Deputy Assistant Attorney General was the reviewing official.

So I would get Mr. Rich's evaluations, and then I would be required to review it for whatever I felt. And so if I felt that there were inaccuracies or omissions or need for anything, any kind of changes to the evaluation, it was my responsibility to do it as the reviewing official.

Senator WHITEHOUSE. And so for the past 32 years in that section which it had never been done before, that was just, reviewing officials sort of falling down on their duties?

Mr. SCHLOZMAN. Senator, I can't speak for anybody other than myself, and if I didn't change what I felt to be an inaccurate evaluation, I'd be shirking my own responsibility.

Senator WHITEHOUSE. Why is it that he testified that there was a political difference between those evaluations you sought to improve because they were, and I quote, "politically favored" versus those who you sought to criticize because they were not?

Mr. SCHLOZMAN. Senator, I don't—I can't characterize Mr. Rich's testimony or get into his head.

Senator WHITEHOUSE. Did you also require changes in performance evaluations of attorneys in the Appellate Section?

Mr. SCHLOZMAN. You know, I just don't remember. I don't remember if Appellate Section was—

Senator WHITEHOUSE. Isn't it true that the section chief of the Appellate Section actually refused to clear and sign the evaluations that you had ordered to be changed and that as a result people went without evaluations for a while? Were you aware of that?

Mr. SCHLOZMAN. I don't recall anything like that, no. I mean, I just—remember, Senator, it also has been—I mean, I have been out of the Division for 15 months, and only—actually, I only supervised the Appellate—I didn't supervise the Appellate Section even during my first 2 years of the administration. I may have supervised it during my last—while I was Acting, but I don't recall any incident like that.

Senator WHITEHOUSE. Thank you. No further questions.

Chairman LEAHY. Senator Feinstein?

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

Good afternoon, Mr. Schlozman. I would like to followup on what Senator Whitehouse asked. At that same time Mr. Rich also testified that four section chiefs, two deputy chiefs, and a special counsel—this is the Civil Rights Division—were either removed or marginalized because they were disfavored for political reasons or perceived as disloyal. Did you ever order the removal of a section chief while serving in the Civil Rights Division?

Mr. SCHLOZMAN. Did I order the removal of a section chief?

Senator FEINSTEIN. Order it, suggest it, or carry it out.

Mr. SCHLOZMAN. I believe I did, yes.

Senator FEINSTEIN. And whose dismissal or whose removal did you order?

Mr. SCHLOZMAN. We made some personnel changes in a number of different sections, and I believe in the Voting Section and in the Criminal Section.

Senator FEINSTEIN. Could you give me a number?

Mr. SCHLOZMAN. I think that there were a couple of changes, a few changes. I just—

Senator FEINSTEIN. I am going to ask you if you would refresh your memory and in writing, submit to the Committee—

Mr. SCHLOZMAN. Absolutely. I would be happy to, Senator.

Senator FEINSTEIN.—exactly who it was.

Mr. SCHLOZMAN. Sure.

Senator FEINSTEIN. Did you ever order the transfer of a section chief while serving in the Civil Rights Division?

Mr. SCHLOZMAN. Yes. One time.

Senator FEINSTEIN. And who was that?

Mr. SCHLOZMAN. That was the chief of the Criminal Section.

Senator FEINSTEIN. Did you order the transfer of the deputy section chief of the Voting Rights Section, Bob Berman, out of the section in January 2006?

Mr. SCHLOZMAN. At the time that he was moved, I was no longer the Acting Assistant Attorney General.

Senator FEINSTEIN. So is your answer no?

Mr. SCHLOZMAN. I did not order that, no.

Senator FEINSTEIN. Do you know what the basis for that transfer was?

Mr. SCHLOZMAN. I do.

Senator FEINSTEIN. And what was it?

Mr. SCHLOZMAN. Well, Senator, Mr. Berman had gone on a detail as part of a Senior Executive Service training program, and I believe had just come back in January of 2006, and Mr. Kim, Assistant Attorney General, had just started a professional development office, the new training office, which is considered one of his signature initiatives, and he thought that Mr. Berman would be an ideal fit for that office.

Senator FEINSTEIN. OK. Did you ever order the transfer of a career attorney out of the Appellate Section of the Civil Rights Division?

Mr. SCHLOZMAN. I did, yes.

Senator FEINSTEIN. And who was that?

Mr. SCHLOZMAN. Senator, those individuals are still within the Division, and I would be very reluctant to start naming individuals by name.

Chairman LEAHY. It is a legitimate question.

Mr. SCHLOZMAN. I am sorry?

Chairman LEAHY. It is a legitimate question.

Mr. SCHLOZMAN. It is, and I would be happy to do it in writing so perhaps, Senator, we would not have to publicly identify—

Senator FEINSTEIN. That is acceptable to me. May we get it within 48 hours?

Mr. SCHLOZMAN. I mean, I am—sure.

Senator FEINSTEIN. Thank you.

Was any transfer that you ordered of a career attorney out of the Appellate Section later reversed?

Mr. SCHLOZMAN. I believe that at least one of the attorneys who I had transferred out of the section was allowed to return to that section—two of the attorneys who had—

Senator FEINSTEIN. Alright. I would ask you for those names as well.

Did you ever instruct the section chief of the Appellate Division to remain silent about your role in ordering the transfers of career attorneys out of the Appellate Section?

Mr. SCHLOZMAN. I don't recall saying that I should be—that he should remain silent about my role. I mean, I believe that when we made those personnel moves, I explained to him that he was the section chief and so he should be carrying out personnel moves. But I don't recall that I said remain silent regarding my role. And as far as I know, he didn't, and he made clear that I was involved in those decisions.

Senator FEINSTEIN. In late 2005, you overruled the recommendation of then-U.S. Attorney Todd Graves and authorized a lawsuit to be filed against the Missouri Secretary of State. The Chairman referred to it, and the suit alleged that Missouri was not making a reasonable effort to remove ineligible voters from its voter rolls. In early 2006, Mr. Graves was told to resign, and you became the interim U.S. Attorney. Why was Mr. Graves told to resign?

Mr. SCHLOZMAN. Senator, I have no idea. In fact, I did not know that he had resigned until I read about it in the Kansas City Star.

Senator FEINSTEIN. So you had no involvement in the decision?

Mr. SCHLOZMAN. None whatsoever.

Senator FEINSTEIN. Do you know who made that decision?

Mr. SCHLOZMAN. I do not. I mean, all I know is what I've read in the newspaper, which is that he was apparently advised of the decision by the Director of Executive Office for U.S. Attorneys. But I know no information on it at all.

Senator FEINSTEIN. Did you not talk to anybody about who made the decision?

Mr. SCHLOZMAN. Not only did I not talk to anyone about it, but I didn't know that he—about the resignation. I mean, I didn't know about the latest revelations until I read about it in the Washington Post.

Senator FEINSTEIN. OK. I wanted to ask a few followup questions on the ACORN indictments. Senator Leahy asked you about them. As you know, the four workers voluntarily turned over evidence to investigators, and they were cooperating fully with the investigation. And yet you went ahead, and shortly before that election, you brought these indictments. And on page 61 of this book, it is rather clear that that is effectively a no-no.

Why did you do that?

Mr. SCHLOZMAN. Senator, I acted at the direction of the Director of the Election Crimes Branch in the Public Integrity Section. We asked whether he wanted us to go forward or delay until after the election, and he said go forward in e-mail traffic.

Senator FEINSTEIN. And who was that that ordered you to go forward?

Mr. SCHLOZMAN. Craig Donsanto, the head of the Election Crimes Branch.

Senator FEINSTEIN. This is puzzling. This volume, that you admitted U.S. Attorneys must be familiar with, states very clearly, "Thus, most, if not all, investigation of an alleged election crime must await the end of the election to which the allegation relates."

This involved four people who were cooperating with the local district attorney. The matter was being taken care of locally. And

yet the U.S. Attorney then files a case right before the election. I have a hard time understanding that if it isn't for political reasons.

Mr. SCHLOZMAN. Senator, first of all, the cooperation was not by the four individuals. The cooperation was by the ACORN organization. That is the first point.

Second, although ACORN wrote to the local county prosecutor on—I believe it was October 11th, the next day we got a letter from the bipartisan election commission in Kansas City urging—then that was sent to the U.S. Attorney's Office the FBI, urging us to investigate.

And at that point, again, we completed our investigation very quickly because ACORN was so cooperative in that matter, and when we asked the Public Integrity Section if they wanted us to go forward or wait until after the election, they said go ahead and go forward.

Senator FEINSTEIN. I think my time is up. I will wait. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Before we turn to Senator Feingold, you said there was e-mail traffic on that. Where is that e-mail traffic now?

Mr. SCHLOZMAN. The Department would have that.

Chairman LEAHY. Do you have it?

Mr. SCHLOZMAN. I have some of those e-mails, yes.

Chairman LEAHY. Will you provide those for this Committee?

Mr. SCHLOZMAN. That would be up to the Department whether they would release those kind of e-mails. I am a Department employee, and so I assume that it may be deliberative process, and I can take it back to the Department.

Senator FEINSTEIN. Mr. Chairman, if you would excuse me, that is rather strange. I mean, you raised them. I did not raise—

Chairman LEAHY. No, you did.

Senator FEINSTEIN. You raised them.

Chairman LEAHY. You are raising them. I don't know how you could refuse to provide them.

Mr. SCHLOZMAN. Senator, I will be happy to take that back to the Department and—

Chairman LEAHY. Well, we are asking for them. If not, we will subpoena you and the e-mails, just so there will be no question about it.

Senator Feingold?

Senator FEINGOLD. Thank you, Mr. Chairman.

Let me first followup on Senator Schumer's questions with respect to Schedule A appointments to trial attorney positions in the Civil Rights Division. Sir, did you ever ask anyone to help you find conservative and/or Republican lawyers to interview? Or did you ever receive recommendations of individuals who were identified by the recommending person as Republican or conservatives?

Mr. SCHLOZMAN. I received resumes from all kinds of organizations, conservative organizations and non-conservative organizations, for career attorneys.

Senator FEINGOLD. Did you ask anyone to help you find conservative and/or Republican lawyers?

Mr. SCHLOZMAN. We did outreach with organizations all over. I mean, I was not saying I want conservatives, but I would go do

outreach at organizations across the spectrum. We did outreach at conservative organizations. We did outreach at non-conservative organizations.

Senator FEINGOLD. You never said, "I would like to find some conservative and/or Republican"—

Mr. SCHLOZMAN. I don't recall making a statement like that.

Senator FEINGOLD. Well, I am going to read you a list of names and ask you in each case to state whether the person recommended a candidate for a career position at the Department or forwarded you a resume to consider. Leonard Leo, the Executive Vice President of the Federalist Society.

Mr. SCHLOZMAN. I don't recall getting any resumes from Mr. Leo.

Senator FEINGOLD. Or did he recommend?

Mr. SCHLOZMAN. I am sorry?

Senator FEINGOLD. Or did he recommend a candidate? In each of these cases, I am asking you whether the person either forwarded you a resume or recommended a candidate.

Mr. SCHLOZMAN. I think I may have gotten a recommendation from him for a candidate.

Senator FEINGOLD. It sound like you think you probably did.

Mr. SCHLOZMAN. Yeah, I think I probably did.

Senator FEINGOLD. All right. Michael Thielen, Executive Director of the Republican National Lawyers Association?

Mr. SCHLOZMAN. No. I don't even known Michael Thielen.

Senator FEINGOLD. Scott Bloch, the special counsel at the U.S. Office of Special Counsel, either recommendation or forwarded you a resume?

Mr. SCHLOZMAN. I do believe I got a recommendation for someone for a Special Assistant U.S. Attorney position in Kansas City from Mr. Bloch. We did not hire that individual, but I did get—

Senator FEINGOLD. Is that all you recall with regard to Mr. Bloch?

Mr. SCHLOZMAN. That's all I recall.

Senator FEINGOLD. Jan Williams during her 2001-to-2004 tenure at the White House Office of Presidential Personnel or during her tenure as the DOJ White House liaison in 2005?

Mr. SCHLOZMAN. I don't recall getting any recommendations or resumes from her. I just—I don't recall.

Senator FEINGOLD. Monica Goodling?

Mr. SCHLOZMAN. I don't recall, again, getting any recommendation—

Senator FEINGOLD. Getting either one?

Mr. SCHLOZMAN. I don't recall getting any.

Senator FEINGOLD. Kyle Sampson?

Mr. SCHLOZMAN. Not for an attorney, I didn't get—I don't recall getting any—I do believe I got a recommendation for a non-attorney position, kind of just a staff position, kind of a summer worker, but I don't believe I ever got any attorney recommendations or referrals from Mr. Sampson.

Senator FEINGOLD. Or resumes.

Mr. SCHLOZMAN. Or resumes, right.

Senator FEINGOLD. Alex Acosta?

Mr. SCHLOZMAN. Well, Alex was my boss as the Assistant Attorney General in the Civil Rights Division, so I'm sure I received plenty of recommendations and referrals from him.

Senator FEINGOLD. Hans von Spakovsky?

Mr. SCHLOZMAN. Yes, Hans von Spakovsky was the Voting Counsel in the Civil Rights Division, and I'm sure I received a number of resumes that Hans gave to me.

Senator FEINGOLD. Thank you. Let's go to some of the issues being raised about ACORN again and the four indictments you served up. You did confirm already, in answer to Senator Feinstein, that ACORN itself provided officials with the names of the three or four people you indicted, correct?

Mr. SCHLOZMAN. Yes.

Senator FEINGOLD. And so it is true that these indictments were not the result of an ongoing national investigation but, rather, of ACORN's self-reporting, right?

Mr. SCHLOZMAN. Senator, the national investigation is not something that I am able to talk about it. I can tell you that any statements in that regard were made at the direction of the Public Integrity Section at the Department of Justice, and I can't go into any more detail on that.

Senator FEINGOLD. But you have indicated how this ACORN thing happened, and it was a self-reporting act. It was not a result of a national investigation. Isn't that right?

Mr. SCHLOZMAN. Senator, I mean, in terms of any broader investigation, I simply can't talk about that.

Senator FEINGOLD. I don't think it is necessary. You indicated that in this case it came because ACORN self-reported.

Mr. SCHLOZMAN. On those four cases, that is correct.

Senator FEINGOLD. So how could it be part of a national investigation if they simply self-reported?

Mr. SCHLOZMAN. Senator, I just—I can't talk about any broader part of—again, the statement that I made in the media was made at the direction of the Public Integrity Section.

Senator FEINGOLD. Did you find any evidence of a conspiracy by ACORN to commit voter fraud in Missouri or elsewhere in the country?

Mr. SCHLOZMAN. My office did not, no.

Senator FEINGOLD. Your office apparently named the wrong person in one of the indictments, suggesting that at least one and possibly all of the defendants were not interviewed pre-indictment. Is that true?

Mr. SCHLOZMAN. Senator, I am not sure that I'm able to talk about that kind of information. That may be Rule 6(e) material, grand jury, in terms of the nature of our investigation. I can tell you that the individual who we amended to—you know, one individual was dismissed, and we then ended up charging a fourth individual. And I can tell you that that individual was also charged with identity theft.

Senator FEINGOLD. I know you testified similarly to Senator Feinstein and also when I was not here to Senator Leahy's question on the ACORN indictments, "I didn't think they would have any effect on the election." And Senator Leahy expressed some surprise at the testimony, with pretty good reason.

I just want to read you an excerpt from a Missouri Republican Party press release from November 2, 2006. "'It is very disturbing that members of this left-leaning group have been indicted for engaging in serious voter fraud designed to cause chaos and controversy at the polls in order to help Democrats to try to steal next week's election,' said Paul Sloca, communications director for the Missouri Republican Party. 'This illegal assault on our election system should concern every voter in this State who deserves to know that their legitimate ballots won't be canceled out by fraudulent ones. It also raises serious questions about the Democratic Party and Claire McCaskill's involvement with ACORN.'"

Would you say this statement was intended to affect voters' decisions?

Mr. SCHLOZMAN. Senator, I can't speak for anybody else. I mean, I—

Senator FEINGOLD. Well, you certainly—

Mr. SCHLOZMAN. I don't know why he made that—

Senator FEINGOLD. You know how to read a statement. And you hear something like that, doesn't that sound to you like something that is trying to persuade people to make a decision about an election?

Mr. SCHLOZMAN. Senator, it is probably improper for me to characterize his testimony. I mean, I don't know why he said what he said.

Senator FEINGOLD. Well, I think you do. I think clearly it was intended to affect the outcome of the election. The timing is obvious. But I thank you for your answers.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

You know, I tend to think that perhaps you use this more as a doorstop than as something you actually had to follow. I read from it: "It should also be kept in mind that any investigation undertaken during the final stages of a political contest may cause the investigation itself to become a campaign issue. Many, if not most, allegations during this period come from political partisans who are actively involved in the election." And on and on.

Mr. Schlozman, it is interesting. I have been on this Committee for about 30 years. You are the first person I can remember from the Department of Justice invited at a specific time to come here to testify and we were told no, you were not available. And that was about 3 weeks ago.

And after I put your name on the list for subpoenas, you suddenly found the time. But during that 3 weeks, you had plenty of time to prepare for this hearing, but I think you are trying to break Attorney General Gonzales' record of saying you don't recall or you don't remember. I have lost count of the number of times you have said that to questions you would think during that 3 weeks you would have been prepared for.

Who did you discuss your testimony with today?

Mr. SCHLOZMAN. In preparation for this hearing, I met with representatives of the Office of Legislative Affairs—

Chairman LEAHY. Who?

Mr. SCHLOZMAN. I am not sure that we typically identify specific—

Chairman LEAHY. Who did you meet with?

Mr. SCHLOZMAN. The different individuals in that office who work for the Assistant Attorney General, staff.

Chairman LEAHY. Who?

Mr. SCHLOZMAN. Nancy Scott-Finan from the Office of Legislative Affairs; Richard Hertling from the Office of Legislative Affairs; John Gillis from the Civil Rights Division; Paul Colborn from the Office of Legal Counsel; I think Greg Katsis from the Associate Attorney General was there—from the Associate Attorney General's office. I think that's pretty much the list of individuals who—

Chairman LEAHY. Anyone from the White House?

Mr. SCHLOZMAN. No.

Chairman LEAHY. Did you discuss it with the Attorney General?

Mr. SCHLOZMAN. No.

Chairman LEAHY. So that long list of people, how much time did you spend preparing your testimony?

Mr. SCHLOZMAN. I think we did some looking over past information and documents and—

Chairman LEAHY. How much time?

Mr. SCHLOZMAN. Oh, I don't know. Twenty-five or 30 hours, I guess.

Chairman LEAHY. Did you find as you prepared for the testimony that there was anything you remembered?

Mr. SCHLOZMAN. Yeah, I mean, there were documents that, looking at, allowed me to refresh my recollection, and I mean, I thought that that—I had been—when I got to—when I got the Committee's invitation, I mean, again, it had been 15 months since I had been—almost 15 months since I had been in the Civil Rights Division, so—

Chairman LEAHY. I understand. And I hope that when you go over your testimony from today you will find in some of those areas where you don't recall that perhaps you do.

Now, according to a recent press report, Tom Heffelfinger, who I am told is a widely respected U.S. Attorney, former U.S. Attorney in Minnesota, wanted to investigate possible voting rights discrimination against Native Americans in his district. At that time you were serving in the Civil Rights Division and may have played a role in quashing this voter protection investigation.

But then when you were interim U.S. Attorney—and I am going to give you plenty of time to tell me if you disagree with any of this. When you were interim U.S. Attorney, you filed the ACORN suit against four individuals on the eve of an election. You explained what you did, even though it seems to go contrary to what is in the election offenses guidebook.

But despite the express priority in the guidebook for protecting the voting rights of minorities, you prevented the U.S. Attorney in Minnesota from taking action, and according to the May 31st Los Angeles Times, you effectively quashed the investigation into possible voter discrimination against Native Americans. Joe Rich, who is the career head of the DOJ's Voting Right Section, recommended such an investigation.

What was your motivation in not pursuing that recommendation?

Mr. SCHLOZMAN. Senator, Mr. Rich's report is completely inaccurate. We were getting in the October 2004 time period, I mean,

literally dozens of complaints every day. In fact, we were getting so many that we had assigned—

Senator FEINGOLD. You read that article in the Los Angeles—

Mr. SCHLOZMAN. I have, Senator, yes.

Chairman LEAHY. And you disagree with it?

Mr. SCHLOZMAN. Yes, I do.

Chairman LEAHY. Tell me.

Mr. SCHLOZMAN. We were getting so many complaints that we were literally assigning extra staff and attorneys to handle the complaints, and because we were getting so many complaints, we wanted to be able to properly triage how we were going to handle each of these matters.

Chairman LEAHY. Well, let's go into that. The Los Angeles Times reported that you told Mr. Rich not to do anything on the Minnesota Native American issue without your approval because of the special sensitivity of this matter. Is that correct?

Mr. SCHLOZMAN. That was, I believe, what he was instructed to do on all investigations, so yes.

Chairman LEAHY. OK. What was the special sensitivity about this?

Mr. SCHLOZMAN. Well, anytime we are dealing in a pre-election period and anytime the Civil Rights Division is going to be going in and making inquiries on phone calls, it immediately alerts the—I mean, those things make the newspaper. It gets the attention, and we wanted to make sure that we were not going off half-cocked in any jurisdiction. So—

Chairman LEAHY. Apparently that was not the case in Missouri, however.

Mr. SCHLOZMAN. Well, Senator, I mean, again, that is a completely different case that was 2 years later after the election of—

Chairman LEAHY. Let's go back to Minnesota. Let's go back to Minnesota. Did you restrict the Minnesota officials with whom Rich could speak in conducting his investigation? Did you tell him there were certain Minnesota officials he could not speak with?

Mr. SCHLOZMAN. I instructed my voting counsel to, once I got the allegation in, that this was something that we should be looking into. The Secretary of State is the State's chief election official, and so the allegation, as I understand it, was that she had come up with some kind of interpretation that was going to be potentially discriminatory with regards to Native Americans using tribal ID. And so the natural first person to go to would be the Secretary of State to figure out what the interpretation is. Nobody killed any investigation.

Chairman LEAHY. Well, what Justice Department employees were involved in the decision not to go forward at that point?

Mr. SCHLOZMAN. I don't know who would have been responsible for not going forward, because I certainly did not give any kind of instruction to not pursue the investigation.

The instruction that came from my voting counsel was to go ahead and contact the chief election official, which is the Secretary of State. If there was information there that proved valuable, then any investigation could be followed up.

So I have been perplexed at the suggestion that somehow the direction to contact the Secretary of State killed the investigation. I don't know why that would be. I mean, that was the first step.

Chairman LEAHY. Did you ever discuss anything about former U.S. Attorney Heffelfinger with Monica Goodling?

Mr. SCHLOZMAN. No, Senator.

Chairman LEAHY. Flat no.

Mr. SCHLOZMAN. Flat no.

Chairman LEAHY. Kyle Sampson?

Mr. SCHLOZMAN. No. I can—

Chairman LEAHY. No, you did not?

Mr. SCHLOZMAN. I can cut this off by saying I didn't talk about Mr. Heffelfinger with anyone.

Chairman LEAHY. So nobody at the Justice Department or the White House?

Mr. SCHLOZMAN. That's correct.

Chairman LEAHY. And you didn't discuss with anybody there about his investigation?

Mr. SCHLOZMAN. No.

Chairman LEAHY. Or his role in it?

Mr. SCHLOZMAN. No.

Chairman LEAHY. My time is up. I will yield to Senator Feinstein, and I will have further questions.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

I wanted to ask you about Arizona, if I might. In April of 2005, the Justice Department informed Arizona that the Help America Vote Act allowed the State to require photo IDs when issuing provisional ballots to voters.

Chairman LEAHY. Excuse me, Senator. A vote has started. I am going to go to vote, but finish your questions.

Senator FEINSTEIN. Alright.

Chairman LEAHY. And would you please recess subject to the call of the Chair?

Senator FEINSTEIN. Yes, I will. Thank you.

Chairman LEAHY. I will be right back.

Senator FEINSTEIN. [Presiding.] The Elections Assistance Commission disagreed with DOJ, and in September of 2005, you signed a letter to Arizona stating that the Act does not allow the State to require IDs when voters cast provisional ballots.

Were you involved in the drafting of the initial letter in April of 2005?

Mr. SCHLOZMAN. I don't believe that I was involved in that. I think that that was—I mean, it was signed by my superior, and I don't believe that I was involved in the drafting. I may have looked at it, but I don't—

Senator FEINSTEIN. Do you know who was involved in that letter?

Mr. SCHLOZMAN. It would have been probably—I mean, the voting counsel in the front office.

Senator FEINSTEIN. Was anyone from the White House involved in drafting that initial letter?

Mr. SCHLOZMAN. No.

Senator FEINSTEIN. Did Hans von Spakovsky object to the interpretation that was spelled out in the second letter?

Mr. SCHLOZMAN. I don't recall him objecting. I mean, we were going over the facts of the HAVA statute and clarified what I thought my interpretation was, and I think he concurred in that.

Senator FEINSTEIN. Alright. Let me go, as others have, to Mr. Heffelfinger. What role, if any, did Tom Heffelfinger's efforts to protect the voting rights of Minnesota's Native American communities have to do with placing him on the Department's termination list?

Mr. SCHLOZMAN. Senator, I have no idea.

Senator FEINSTEIN. Did you ever talk to Kyle Sampson or Monica Goodling about him?

Mr. SCHLOZMAN. No.

Senator FEINSTEIN. Did you talk to anyone else in the Attorney General's or Deputy Attorney General's office about his performance?

Mr. SCHLOZMAN. No.

Senator FEINSTEIN. Did you ever talk to anyone in the Attorney General or the office about his request that DOJ look into possible election-related discrimination against Native Americans in Minnesota?

Mr. SCHLOZMAN. Did I speak with anyone in the AG's office or the DAG's office? Is that your question?

Senator FEINSTEIN. Yes.

Mr. SCHLOZMAN. No. The answer is on.

Senator FEINSTEIN. Did you speak with anybody about it?

Mr. SCHLOZMAN. I mean, presumably my voting counsel, but, I mean—and, you know, the chief of the Voting Section.

Senator FEINSTEIN. Well, is it true that Mr. Heffelfinger made a request?

Mr. SCHLOZMAN. These requests were coming usually directly into the Voting Section, and based on that article it sounds like—from the Los Angeles Times, it sounds like that is the same thing that happened in that case.

Senator FEINSTEIN. No, but when you have a U.S. Attorney in an area who says, "Whoa, I think we have a problem here, we should look into it," don't you look at that?

Mr. SCHLOZMAN. Well, and, Senator, it sounds like we did look into it. We directed the Voting Section chief to contact the Secretary of State to launch an investigation, and contacted the Secretary of State.

Senator FEINSTEIN. But DOJ didn't launch an investigation.

Mr. SCHLOZMAN. I don't know what happened—

Senator FEINSTEIN. I just find it a little—you know, you have ACORN in one State where it is being solved by the locals, and yet, boom, you move in and you put forward indictments, one of which was wrong. And here you have Native Americans who are going to be denied their right to vote, quite possibly, because of a certain ID, and you say, "Well, it is up to the Secretary of State."

Mr. SCHLOZMAN. Senator, the investigation to figure out what this alleged interpretation was that was going to potentially disenfranchise Native American voters is what the allegation was, and my voting counsel instructed the chief of the Voting Section to contact the Secretary of State, who apparently was responsible for this interpretation, and figure out what was going on. I mean, I think that was the commencement of an investigation.

Senator FEINSTEIN. Well, I accept that as your answer. I just find it strange.

Now, Monica Goodling testified last month before the House that there were issues with Tom Heffelfinger's performance because, at least in her view, he was spending an excessive amount of time on Native American issues. How would she know that?

Mr. SCHLOZMAN. I have no idea.

Senator FEINSTEIN. You have no idea. And yet this was your Department, and you had Heffelfinger calling you. And you say you never talked to Monica Goodling about it.

Mr. SCHLOZMAN. One, Mr. Heffelfinger did not call me at any point.

Senator FEINSTEIN. Well, who did he call?

Mr. SCHLOZMAN. According to the Los Angeles Times, he apparently—

Senator FEINSTEIN. No, I am asking—

Mr. SCHLOZMAN.—called the Voting Section.

Senator FEINSTEIN. I am asking you according to your knowledge.

Mr. SCHLOZMAN. I mean, I don't know. You know, I did not remember this incident at all, and still actually don't remember all the specifics. I'm basing my statements on the article from the Los Angeles Times.

Senator FEINSTEIN. So you are saying essentially you knew nothing about that?

Mr. SCHLOZMAN. That the—I'm saying that today, I mean, do I recall this conversation that I apparently had with Mr. Rich? No. I mean, I can't tell you that I recall that conversation. I have no reason to doubt it, but, I mean, I can't recall a conversation that occurred almost 3 years ago when, you know, it was one of probably a thousands complaints that we got from the Division—into the Division in October of 2004.

Senator FEINSTEIN. I am very puzzled by this indictment of the four workers, when the State was already into it and taking care of it, and yet in other instances the Department didn't.

Mr. SCHLOZMAN. I am not sure where the suggestion that the State is—

Senator FEINSTEIN. You can understand how some of us might feel that it is politically directed.

Mr. SCHLOZMAN. Senator, I am not aware that the State was ever—I mean, these are violations of a Federal statute, the antifraud provision of the National Voter Registration Act. So I'm not aware that the county prosecutor's office was ever even looking at this.

ACORN certainly did send a letter to the county prosecutor, and then the next day, the Kansas City Board of Election Commissioner sent a letter to the FBI, to the U.S. Attorney's Office, and I think also to the county prosecutor. But I'm not aware that the county was ever even looking at this.

Senator FEINSTEIN. So you are saying then, the only decision you made was the decision to file an indictment prior to the election.

Mr. SCHLOZMAN. At the direction of the Public Integrity Section, yes.

Senator FEINSTEIN. OK. I am glad we cleared that up. Thank you very much.

I am going to recess the hearing now, and please, you take a break, and I am not excusing you because I think members of the panel will be back. So thank you very much.

Mr. SCHLOZMAN. Thank you.

[Whereupon, at 3:41 p.m. the hearing was recessed.]

AFTER RECESS [4:07 p.m.]

Chairman LEAHY. We can be in order.

Incidentally, Mr. Schlozman, during the Missouri case there were all kinds of leaks that came out to the press from the Department of Justice, talking about—or at least the press treated them as being leaks from your office, and others. And as a result, people were calling in and saying, am I going to be prosecuted if I go to vote? Are there going to be mass arrests?

Do you know anything—are you aware of any—any, any scintilla—of information leaked from the U.S. Attorney's Office or the Department of Justice to the press in regards to the Missouri case?

Mr. SCHLOZMAN. I am not aware of any—

Chairman LEAHY. Turn your microphone on, please.

Mr. SCHLOZMAN. I am not aware of any leaks, Senator, at all.

Chairman LEAHY. None whatsoever?

Mr. SCHLOZMAN. None.

Chairman LEAHY. Are you aware the press indicated that some of those leaks were coming either from the U.S. Attorney's Office or the Department of Justice?

Mr. SCHLOZMAN. Candidly, Senator, today is the first time I'm ever hearing about any press reports of leaks.

Chairman LEAHY. OK. Thank you.

Were you aware of press reports suggesting that a number of people were going to be indicted beyond the ones we've discussed?

Mr. SCHLOZMAN. I'm not aware of any of those reports, and certainly my office had no intentions of expanding that investigation.

Chairman LEAHY. Well, you were serving as Acting Attorney General for Civil Rights. You approved the pre-clearance under Section 5 of the Voting Rights Act of a voter photo identification provision from the State of Georgia.

Now, you know that decision became the focus of extensive criticism about the management of the Voting Section. According to a memorandum that was obtained by the press and has now been made public, four of the five career attorneys were tasked with reviewing that law, found it had a negative impact on the voting rights of Georgia's minorities, predominantly African-Americans. Four out of five.

As a consequence, these career—career—attorneys recommended that the Department refuse to approve the change. The only attorney who recommended approving the pre-clearance is someone you hired. Is that correct?

Mr. SCHLOZMAN. No, that is not correct.

Chairman LEAHY. OK. Who did hire the one person who approved it?

Mr. SCHLOZMAN. The person who recommended pre-clearance was the chief of the Section, John Tanner, and I'm the one who

promoted him to chief of the Section. And the chief of the Section recommended pre-clearance in the Georgia ID.

Chairman LEAHY. So he was promoted by you to be chief?

Mr. SCHLOZMAN. He was. Actually, his—he was—his promotion occurred the day before I took over as the Acting, but he was promoted during my tenure as—as—in the Division to Chief of the Voting Section. Correct.

Chairman LEAHY. So promoted by you or not?

Mr. SCHLOZMAN. I guess, as a technical matter, he was not technically promoted by me. I mean, I didn't have the final decision-making authority on hiring decisions.

Chairman LEAHY. Who did?

Mr. SCHLOZMAN. I'm sorry?

Chairman LEAHY. Who did?

Mr. SCHLOZMAN. I guess it would have been Assistant Attorney General Acosta.

Chairman LEAHY. Now, in 1994 the Voting Section considered a voter identification requirement in Louisiana that was less restrictive. They found it violated the Voting Rights Act. Your pre-clearance of the law in Georgia came on August 27th, just a day after the career staff recommended objecting to the law. Is that correct?

Mr. SCHLOZMAN. Again, Senator, the career Section chief recommended that the matter be pre-cleared.

Chairman LEAHY. Now, what about the other four? There's five people: four recommended against it, one recommended for it. You went ahead and OKed it even though a less restrictive one had been turned down in Louisiana a few years before. Is that correct?

Mr. SCHLOZMAN. I pre-cleared—I—well, actually that's not correct. The—under the regulations governing Section 5, the chief of the Voting Section is delegated responsibility to pre-clear things. I—I—he sent it up to me for approval and I approved it, but it was his actual decision under the regulations that govern Section 5 submissions.

Chairman LEAHY. And you're aware of the fact that the reason that four of the five had objected to it is that they felt it suppressed African-American voting in Georgia. Is that correct?

Mr. SCHLOZMAN. I was aware of their recommendations and—

Chairman LEAHY. OK.

Mr. SCHLOZMAN. Yes.

Chairman LEAHY. Now, how much experience did you have in enforcing or litigating under the Voting Rights Act at that point?

Mr. SCHLOZMAN. At that point, probably a little over 2 years.

Chairman LEAHY. Had you litigated at all under it?

Mr. SCHLOZMAN. No. I mean, I'd supervised the Voting Section in my role as a Deputy.

Chairman LEAHY. OK. And the one staffer who agreed with you. How long had he been working in the Section, the Chief of the Section? How long had he been in that Section?

Mr. SCHLOZMAN. Oh, probably, I don't know, 15, 20 years. I mean, I don't know. I think he'd spent time outside of the Voting Section in other sections as well, but I—

Chairman LEAHY. And the four who recommended objecting to it. How many were with the Section when you left in March of 2006?

Mr. SCHLOZMAN. I—I don't know. I mean—

Chairman LEAHY. Let me ask you this.

Mr. SCHLOZMAN. Yeah.

Chairman LEAHY. Did you or anyone from the Civil Rights Division of the Judicial Committee have contact with proponents of the Georgia voter ID law before it was passed?

Mr. SCHLOZMAN. I mean, I didn't. I don't know what other contacts other people might have had.

Chairman LEAHY. Are you aware of anybody else having contacts with them?

Mr. SCHLOZMAN. I was not aware of other people having had contacts, no.

Chairman LEAHY. You sure?

Mr. SCHLOZMAN. Yes.

Chairman LEAHY. Did you or anyone from the Justice Department have contact with proponents of the Missouri voter ID law?

Mr. SCHLOZMAN. I'm not aware of any, no.

Chairman LEAHY. And are you aware that there's been a complaint filed with the Justice Department's Office of Professional Responsibility complaining about the Georgia pre-clearance evaluation process and the pressure placed on career staff during the Georgia pre-clearance process?

Mr. SCHLOZMAN. I am aware that there was a complaint raised by the individuals involved, yes.

Chairman LEAHY. And then following the filing of that complaint, you filed your own complaint. Is that correct?

Mr. SCHLOZMAN. On the Georgia ID?

Chairman LEAHY. Uh-huh. The OPR complaint against one of the career professionals involved in the recommendation to reject the Georgia voter ID.

Mr. SCHLOZMAN. The complaint that I filed had nothing to do with the Georgia ID submission. It was for—

Chairman LEAHY. But it was against one of the career professionals you had objected to the Georgia voter ID. Is that correct?

Mr. SCHLOZMAN. There was an allegation of unprofessional conduct, yes, that I did forward to the Office of Professional Responsibility.

Chairman LEAHY. OK. And you had—based on an e-mail that you had seen of that—of that person's e-mail. Is that correct?

Mr. SCHLOZMAN. Yeah. At the direction of OPR, I was looking at the e-mails.

Chairman LEAHY. OK. How did you obtain the e-mails?

Mr. SCHLOZMAN. Again, at the direction of OPR. They asked—

Chairman LEAHY. Do you normally monitor other career civil servants' e-mails?

Mr. SCHLOZMAN. No. Again, at the direction of OPR we were looking at this after one of the attorneys involved in—a former attorney in the Section had contacted a target that we were suing while he was still employed in the Division, saying, I'm going to be leaving soon, let me go ahead and represent you upon my departure, and he did that while he was still in the Division. And we discovered it, and so then we contacted OPR. They said, go ahead and do an investigation.

Chairman LEAHY. And how did OPR provide that direction? Did they surprise you by doing it or had you asked them to provide it?

Mr. SCHLOZMAN. They did it in a letter.

Chairman LEAHY. No, I don't think that was quite my question. And perhaps, you know, I'm just a lawyer from a small town in Vermont. I may not have asked it adequately. So let me ask it again: how did OPR come to provide you that direction?

Mr. SCHLOZMAN. We had referred the matter to OPR and asked them, and told them, that we had had this e-mail that we had gotten from the target, and OPR said, look, we don't have the capacity to go back. You've got a much better indication of—

Chairman LEAHY. Had you suggested to them that you monitor the employees' e-mails?

Mr. SCHLOZMAN. I don't remember if it was my suggestion. I think it was their suggestion, actually, that it would be much more efficient if we took the first cut at taking a look at it.

Chairman LEAHY. Do you have the letter that they sent you?

Mr. SCHLOZMAN. Not with me, no. I mean, I—I—I think it may be in the file, Senator. And, you know, in terms of turning that over, I mean, I would be happy to take that back to the Department if they'll—

Chairman LEAHY. Turn it over.

Mr. SCHLOZMAN. I'll be happy to.

Chairman LEAHY. Take it back to the Department. Let me tell you right now, all these things we're asking you for, the e-mails, the letters, everything else, I guarantee you, you'll be back up here with a subpoena with the material.

You can either do it—I'm giving you the choice. Just so you know, you have a choice in the matter. The choice is to provide it voluntarily or provide it with a subpoena. Either way, I guarantee you it'll be provided.

Senator Schumer?

Mr. SCHLOZMAN. Thank you.

Senator SCHUMER. Thank you, Mr. Chairman.

OK. Before, you mentioned, Mr. Schlozman, that you did outreach to organizations for hiring.

Mr. SCHLOZMAN. Yes.

Senator SCHUMER. Name all of the conservative ones.

Mr. SCHLOZMAN. I know that—

Senator SCHUMER. Did you reach out to the Federalist Society?

Mr. SCHLOZMAN. I did, yes.

Senator SCHUMER. OK. Name some other ones of that type.

Mr. SCHLOZMAN. I believe I talked to an individual at the Heritage Foundation.

Senator SCHUMER. Heritage. OK. Any others?

Mr. SCHLOZMAN. I'm not aware of any, no.

Senator SCHUMER. Those are just the two?

Mr. SCHLOZMAN. Yes.

Senator SCHUMER. No Republican organization?

Mr. SCHLOZMAN. That's correct.

Senator SCHUMER. OK. How about any liberal ones? Did you reach out to any of them?

Mr. SCHLOZMAN. Yes.

Senator SCHUMER. Who?

Mr. SCHLOZMAN. I know I reached out to the—it's in Arizona, New Mexico, to various Native American groups.

Senator SCHUMER. No, that's not a liberal group. That's a—

Mr. SCHLOZMAN. Well, I mean, I—and my—

Senator SCHUMER. Did you reach out to the equivalent of the Federalist Society or—

Mr. SCHLOZMAN. At my direction, Senator, I had the chief of my Voting Section reach out to a number of liberal organizations.

Senator SCHUMER. No. I'm asking you: you reached out to the Heritage Foundation, you reached out to the Federalist Society. You reach out to Cato Institute, even though they're not a legal organization?

Mr. SCHLOZMAN. No, Senator. No.

Senator SCHUMER. OK. So name some liberal ones.

Mr. SCHLOZMAN. Senator, I—

Senator SCHUMER. Right down the middle. If you're—

Mr. SCHLOZMAN. Most—most outreach at the Department was done by the Office of Attorney Recruitment and Management.

Senator SCHUMER. I'm asking you. I'm not asking other people, I'm asking you. You said before that you didn't consider any of these issues. You have a glaring contradiction, that on the one hand you're telling people, take their political organizations off, but then, of course, was relevant in other ways that you—you bragged about them. So did you reach out? You, Brad Schlozman, reach out to any liberal organizations?

Mr. SCHLOZMAN. I don't—I did not personally do it.

Senator SCHUMER. OK.

Mr. SCHLOZMAN. I had others do it on my behalf.

Senator SCHUMER. Yes. Thank you. OK.

You think that's—you think that was even-handed? You think that was down the middle?

Mr. SCHLOZMAN. Yes, Senator. Because I—

Senator SCHUMER. Why did you reach out to the conservative ones and you had others reach out to the liberal ones? And give me the name of one liberal one that you ordered—asked—give me the name of the person you told to call, and the organization you told him to call.

Mr. SCHLOZMAN. John Tanner—

Senator SCHUMER. Yeah.

Mr. SCHLOZMAN.—the chief of the Voting Section. We had—I had him reach out to—I know, to various organizations we work with.

Senator SCHUMER. Like, give me a name of a liberal organization. You just said that you—you were very definitive—

Mr. SCHLOZMAN. Yes.

Senator SCHUMER.—that you had someone else reach out to "liberal" organizations. John Tanner. Name a liberal organization he reached out to.

Mr. SCHLOZMAN. I believe he reached—I—my understanding is that he reached out to MALDEF, to NAPABA, to—I mean, I don't have the exact list of people who he reached. I mean, I said, reach out to organizations with whom you work.

Senator SCHUMER. Yeah. But MALDEF is not the equivalent of the Heritage Foundation. The Heritage Foundation and the Federalist Society have an ideological view to them. These others are Native American organizations, Hispanic-American organizations. Those are different.

Mr. SCHLOZMAN. Yeah.

Senator SCHUMER. So you want to think about it? Did Mr. Tanner reach out to liberal organizations that would be sort of the mirror image, if you will, of the Heritage Foundation and the Federalist Society?

Mr. SCHLOZMAN. Senator, I guess—and what my response would be, I just don't recall, today, exactly what—I mean, I'm happy to check what organizations he—

Senator SCHUMER. OK. All right.

Mr. SCHLOZMAN.—he reached out to.

Senator SCHUMER. Yeah. Again, I think the record here is speaking for itself.

When Kyle Sampson came before this committee he testified that "in the end, eight," I'm emphasizing eight, "total U.S. Attorneys were selected for replacement: Bud Cummins in mid-2006, and the other seven in a group in early December of 2006." Based on everything you know, was that a true or false statement?

Mr. SCHLOZMAN. My understanding is—is that other U.S. Attorneys—from what I've read in the newspapers, and that's all I'm basing it on, that other U.S. Attorneys were also fired.

Senator SCHUMER. Was Graves the ninth, for instance?

Mr. SCHLOZMAN. Based on the newspaper reports, which is all I have to base that on.

Senator SCHUMER. You had no involvement in the Graves situation?

Mr. SCHLOZMAN. That is absolutely correct.

Senator SCHUMER. OK. Next, did Monica Goodling play any role in your becoming interim U.S. Attorney?

Mr. SCHLOZMAN. I believe she did, yes.

Senator SCHUMER. Can you describe it?

Mr. SCHLOZMAN. Yes. The—when I read about the opening for the U.S. Attorney position, which I read about the day after Mr. Graves resigned, I went to the three individuals who I thought were responsible for the appointment of interim U.S. Attorneys, and that would be Monica Goodling, Kyle Sampson, and David Margolis, and I expressed my interest in the position.

And this would, again, be about 2 weeks before I was selected, because at the time there was no even First Assistant to assume the—the Acting U.S. Attorney role.

Senator SCHUMER. And at the time you went to these three people, how many cases had you tried?

Mr. SCHLOZMAN. Zero.

Senator SCHUMER. Zero. No criminal cases?

Mr. SCHLOZMAN. I had—I had helped supervise the—

Senator SCHUMER. You hadn't tried a case?

Mr. SCHLOZMAN. That is correct, Senator.

Senator SCHUMER. And no civil cases?

Mr. SCHLOZMAN. Right. I mean, I'd been involved in civil litigation but I had not been in trial.

Senator SCHUMER. Uh-huh. OK.

And you think that was—you think you deserve to be—with that—with so little experience, and you were chosen so quickly, do you want to explain that to people?

Mr. SCHLOZMAN. Well, at the initial matter, Senator, in terms of the timing, I mean, they had to have someone on board within 2 weeks—

Senator SCHUMER. Yeah.

Mr. SCHLOZMAN.—because there was not even a First Assistant to assume the Acting U.S. Attorney role.

Senator SCHUMER. Right.

Mr. SCHLOZMAN. So that explains the prompt timing. But in terms of the—my selection and experience, I mean, I think it's not uncommon that the U.S. Attorney doesn't have a lot of litigation experience. I mean, my job—

Senator SCHUMER. How old were you at that time?

Mr. SCHLOZMAN. I'm sorry?

Senator SCHUMER. How old were you at that time?

Mr. SCHLOZMAN. Thirty-five.

Senator SCHUMER. Got you. OK.

Let me ask you, in general, what's your relationship with Ms. Goodling? Is it just—

Mr. SCHLOZMAN. I mean, she's a colleague and—you know.

Senator SCHUMER. Uh-huh.

How often did you speak to her while you were in your position in the Justice Department?

Mr. SCHLOZMAN. I'd see her in the hallway and she and I were both on the fifth floor, so I'd, you know, occasionally even chat, stop in to say hello.

Senator SCHUMER. Uh-huh. OK.

But it was nothing—you didn't deal with her all the time on different issues?

Mr. SCHLOZMAN. No. No.

Senator SCHUMER. OK. Got it. All right.

Now, in written testimony you say something that makes no sense to me. As had already been mentioned, you made the decision to indict a number of individuals within a week of 2006, even though DOJ policy seems to counsel against taking such action: "While the ACORN matter arose in October, Department policy did not require a delay of this investigation and the subsequent indictments because they pertained to voter registration fraud, which examined conduct during voter registration, not fraud during an ongoing or contested election. Consequently, the Department's informal policy was not implicated in this matter."

And this is yours: "In sum, there was nothing unusual, irregular, or improper about the substance or timing of these indictments."

Now, here's what I don't understand. Matt Friedrich, counselor to the Attorney General, has testified during a committee interview that he understood the policy very well. He testified that in 2006, October, Kyle Sampson gave him a document from Karl Rove. It's right here. Karl Rove gave Sampson this document that suggested there was voter registration fraud going on in Wisconsin in October. Here's how he reacted when asked what he did with that document.

This is Mr. Friedrich. He said: "Not a darn thing. I didn't disseminate it, I didn't copy it, I didn't communicate it down the chain of command, in substance or in form. I did not need to review it

for a lengthy period of time to know what I was going to do with it."

When asked to explain why, Mr. Friedrich said it was his clear understanding that, because this was shortly before an election and the red manual—again, I'll read it again just to refresh your recollection, says on page 61, right here: "Thus, most, if not all, investigation of an alleged election crime must await the end of the election to which the allegation relates," and, as Senator Leahy pointed out, that is underlined.

So let me ask you, was Mr. Friedrich, who was very well respected, completely off-base?

Mr. SCHLOZMAN. Senator, again, I—

Senator SCHUMER. He didn't have any doubt. He just went ahead and said, absolutely not, this is against Department policy? It wasn't if, maybe, deterring voters from voting. It was absolutely against policy. Was he off-base?

Mr. SCHLOZMAN. I don't know what the specific facts of the Wisconsin case are. All I can tell you is, is that in Missouri—

Senator SCHUMER. Wait a minute.

Mr. SCHLOZMAN.—our case involved—

Senator SCHUMER. He didn't even read the document. All he had to do was see that this was a few weeks before the election and you don't do it. Those of us—I'm not a U.S. Attorney, but those of us who are around elections and the system of justice know that that—those are the rules.

And no one before, I heard, has come up with the tortured explanation that you did to Senator Leahy, that this isn't going to deter a voter from voting. That's not the point of this. The point of it is, it might influence an election. Isn't that right?

Mr. SCHLOZMAN. Senator, I did not think it was going to influence the election at all. And I contacted—

Senator SCHUMER. But that's not your judgment. You used your own judgment, being 35 years of age, not having a wide range of experience here, and you overruled something that is very explicit in the—in the book, in the manual. Right?

Mr. SCHLOZMAN. I got my—

Senator SCHUMER. Isn't that what you did?

Mr. SCHLOZMAN. I got my direction from the Public Integrity Section at the Department of Justice.

Senator SCHUMER. Yeah, I know. But, you know, you have to make some of your own decisions here, too.

Did you know of this sentence in the—in the book?

Mr. SCHLOZMAN. I mean, I believe I was probably aware of it, yes.

Senator SCHUMER. Yeah. And did you—you believe?

Mr. SCHLOZMAN. Well, I mean, Senator, I—I suppose I was responsible for being aware of the—the Elections Crime Manual. Again, I checked with the Public Integrity Section, which I was required to do under the U.S. Attorney Manual, and sought direction—

Senator SCHUMER. Uh-huh.

Mr. SCHLOZMAN.—on whether I was to wait. And we had a grand jury that was going to be—

Senator SCHUMER. And Mr.—what was his name? DeSantos?

Mr. SCHLOZMAN. Donsanto. Yes.

Senator SCHUMER. He will state, if we ask him, explicitly, with no reservation, he ordered you to do it or told you it was OK to go ahead and do it?

Mr. SCHLOZMAN. That is correct.

Senator SCHUMER. OK.

Let me ask you this. Why do you think Mr. Friedrich recoiled from even reading a document about a voter registration fraud while you rushed to indict just before an election? Is the law and the rules of the Department that vague?

Mr. SCHLOZMAN. Well, I do know that we had a grand jury session that I believe was meeting on October 31st to November 1st, and that's the grand jury to whom we'd been—we were going to be presenting the information. It would have been, I believe, in the return of information, so you can't use different grand juries.

Senator SCHUMER. But you don't think it would have affected the case to wait a week or two?

Mr. SCHLOZMAN. Well, it would have—it would have been basically 8 weeks till that grand jury—

Senator SCHUMER. Would it have affected the case?

Mr. SCHLOZMAN. I don't think it would have affected the case, no.

Senator SCHUMER. No. Of course not.

Let me say this. You say that ACORN indictments were not unusual or irregular. How many cases that are similar can you identify that have been brought within a week of an election over the last 10 years?

Mr. SCHLOZMAN. Senator, I'm not able to give you any specifics like that.

Senator SCHUMER. Well, then how can you say they weren't unusual or irregular?

Mr. SCHLOZMAN. I was referring—attempting to refer to the policy, and perhaps I stated it in—

Senator SCHUMER. Well, wait a minute.

Mr. SCHLOZMAN.—didn't state it very well.

Senator SCHUMER. Wait a minute.

Mr. SCHLOZMAN. Yeah.

Senator SCHUMER. Here you are, you're overruling a pretty clear rule in this manual, and you say that's because they're not unusual or irregular. And yet, when asked, you have no evidence that they were or were not unusual or irregular. Isn't that right?

Don't you think a conscientious lawyer, a conscientious public servant would have gone and checked? Did you check? Did you check and see if there were other cases that were brought in a similar amount of time before an election?

Mr. SCHLOZMAN. Senator, I was told that there was no policy implicated here and that was why I went forward.

Senator SCHUMER. Uh-huh. I'm asking you: did you go check and see if there were any other cases?

Mr. SCHLOZMAN. That had been filed in that time period?

Senator SCHUMER. Yeah. Election cases.

Mr. SCHLOZMAN. No. No. The answer is no.

Senator SCHUMER. You did not check?

Mr. SCHLOZMAN. I did not check.

Senator SCHUMER. OK.

And let me ask you this: then how can you say they're unusual or irregular? You said you prepared for 25 to 30 hours. All right. Do you always choose your words so carelessly?

Mr. SCHLOZMAN. Senator, in this case perhaps I did choose carelessly.

Senator SCHUMER. OK.

Now, you dismissively refer to the Department's policy as "informal". Policy was written, right?

Mr. SCHLOZMAN. It has been described to me, on the timing issue, as an informal policy. And that's the—

Senator SCHUMER. I see. So—

Mr. SCHLOZMAN.—the phrase that the Public Integrity Section used.

Senator SCHUMER.—this is—this book is a book of informal policies? Let me see here. I don't see that on the cover here.

Mr. SCHLOZMAN. Senator—

Senator SCHUMER. It doesn't say "Informal Policies of the Justice Department—choose to follow them or not as you wish." I don't see that written here.

Mr. SCHLOZMAN. Senator, it has been described by the Public Integrity Section as an informal policy.

Senator SCHUMER. Uh-huh.

To you verbally?

Mr. SCHLOZMAN. Yes.

Senator SCHUMER. Is there any indication in writing that they regarded this as informal?

Mr. SCHLOZMAN. I—I mean, there may be. I don't know.

Senator SCHUMER. OK.

So can you tell me what the difference is between a formal policy and an informal policy?

Mr. SCHLOZMAN. My understanding of it is, is that the Department, again, as had been described to me as, is the Department does not time indictments to an election. So a formal policy has been described to me as, if they said there will absolutely be no indictments prior to the election, that would be something more formalistic.

Senator SCHUMER. Right. OK. Uh-huh. All right.

Let me ask you this. And I appreciate my colleague. I just asked him if I might go on, since I'm over my time.

Who approved the ACORN indictments? Name names.

Mr. SCHLOZMAN. Craig Donsanto in the Public Integrity Section.

Senator SCHUMER. And you. No one else?

Mr. SCHLOZMAN. Well, there's a Department review process, but I don't know what—I mean, if there—

Senator SCHUMER. Who did you talk to about the indictments, other than the—other than Mr. Donsanto?

Mr. SCHLOZMAN. I spoke with individuals in the—in the Deputy Attorney General's Office who advised—who asked me to—

Senator SCHUMER. Give me some names there, please.

Mr. SCHLOZMAN. Mike Ellston would be the only person with whom I spoke, which is the Deputy Attorney General's Chief of Staff.

Senator SCHUMER. What did he tell you?

Mr. SCHLOZMAN. He said, "Wait till you hear from us."

Senator SCHUMER. Uh-huh.
And did you?
Mr. SCHLOZMAN. Yes.
Senator SCHUMER. And they told you, "Go ahead"?
Mr. SCHLOZMAN. Yes.
Senator SCHUMER. OK.
Who else?
Mr. SCHLOZMAN. That was it.
Senator SCHUMER. That was the only other person you spoke to?
Mr. SCHLOZMAN. That is correct. That is correct.
Senator SCHUMER. And did anyone call you about these particular indictments and urge you to move forward or not move forward from either inside or outside the Justice Department? Any other person?
Mr. SCHLOZMAN. No.
Senator SCHUMER. Not a one?
Mr. SCHLOZMAN. Not a one.
Senator SCHUMER. OK.
So, in other words there was no communication between you and the White House in any way on this issue?
Mr. SCHLOZMAN. That is absolutely correct.
Senator SCHUMER. Or with any Justice Department official and the White House, as far as you know.
Mr. SCHLOZMAN. As far as I know.
Senator SCHUMER. You don't know or you—
Mr. SCHLOZMAN. I don't know.
Senator SCHUMER. OK.
How about Republican Party officials from Georgia or anywhere else? Any—any—did you speak to anyone of that—who would meet that description?
Mr. SCHLOZMAN. I don't have—no.
Senator SCHUMER. No.
Mr. SCHLOZMAN. No.
Senator SCHUMER. OK.
Do you know of anyone who did in the Justice Department?
Mr. SCHLOZMAN. I do not.
Senator SCHUMER. OK.
How about elected officials in Georgia or anywhere else?
Mr. SCHLOZMAN. On—on the ACORN indictments?
Senator SCHUMER. Uh-huh.
Mr. SCHLOZMAN. No.
Senator SCHUMER. I'm sorry. I'm saying "Georgia" here. I should be saying "Missouri". Sorry. So let me ask them again: Any Republican Party officials from Missouri or anywhere else?
Mr. SCHLOZMAN. No.
Senator SCHUMER. OK.
And elected officials in Missouri or anywhere else?
Mr. SCHLOZMAN. No.
Senator SCHUMER. OK.
Any advocacy groups?
Mr. SCHLOZMAN. No.
Senator SCHUMER. So you spoke to no one, no one, no one?

Mr. SCHLOZMAN. Outside of my office and the individuals I identified in the Public Integrity Section and the Deputy Attorney General's Office.

Senator SCHUMER. OK. I think that finishes my questions.

So, Senator Whitehouse?

Senator WHITEHOUSE. Thank you.

Just in terms of the volume that Senator Schumer's been looking at, the preface says that the book is "intended to assist Federal prosecutors and investigators in performing this important part of their mission, i.e., successful investigation and prosecution of corruption in the election process."

It says that it is "intended as a reference tool for personnel employed by the Department of Justice, including U.S. Attorney's Offices and the Federal Bureau of Investigation." It says that "the discussion in this book represents the views and the policies of the Criminal Division."

It says that it "addresses how the Department handles all forms of Federal election offenses." It says that it "summarizes the Department's policies, as well as key legal and investigation considerations related to the investigation and prosecution of election crime."

Did anybody, in the course of this discussion, ever stick up for the clearly articulated policy not to indict, immediately pre-election, an election offense? Did anybody stick up for it? Clearly you didn't. Let me ask you this: were you even aware of that at the time of the indictment?

Mr. SCHLOZMAN. I mean, I was aware of the general policy, that the Department refrains from indicting certain election-related crimes before an election, which is why—

Senator WHITEHOUSE. Were you aware of this section of this—

Mr. SCHLOZMAN. I mean, I don't remember. I don't recall specifically looking at that pages—at those pages, but I did contact the Election Crimes Branch within the Public Integrity Section because I knew—

Senator WHITEHOUSE. Well, you're obliged to do that by the U.S. Attorney's manual, aren't you?

Mr. SCHLOZMAN. That's correct. Yes.

Senator WHITEHOUSE. And you indicated that the—I forget the name of the gentleman you spoke to. DeSanto?

Mr. SCHLOZMAN. Donsanto. Yes.

Senator WHITEHOUSE. Donsanto. That you then went ahead to announce the indictment at his "direction" was the word you used twice.

Mr. SCHLOZMAN. Yeah. I mean, when I—we asked him if we should go forward or if we should refrain from bringing the case until afterwards, and he said if you've got an indictable case, bring it.

Senator WHITEHOUSE. The U.S. Attorney's manual doesn't give him a directive role on this, does it? Doesn't it say that the U.S. Attorney is obliged to consult?

Mr. SCHLOZMAN. I think, yes, it does say that we are required to consult him.

Senator WHITEHOUSE. To consult.

Mr. SCHLOZMAN. Yes.

Senator WHITEHOUSE. OK.

Did anybody in the process anywhere—clearly he didn't stick up for this guideline. He gave you a green light to go ahead. You didn't stick up for the guideline. Did anybody in your staff have any reservations about the timing of this?

Mr. SCHLOZMAN. Senator, my—no, as a matter of fact. And we—we contacted the Public Integrity Section and they're the ones who handled the Department's policy on this issue.

Senator WHITEHOUSE. So up and down throughout the entire Department of Justice, not one person stuck up for this rule in the Federal Prosecution of Election Offenses Manual?

Mr. SCHLOZMAN. My—the Public Integrity Section—we consulted with them and they're the ones who are the experts on this issue. They said no policy was even implicated, and so we went forward.

Senator WHITEHOUSE. No policy was even implicated?

Mr. SCHLOZMAN. That's what Public Integrity Section said.

Senator WHITEHOUSE. But—

Mr. SCHLOZMAN. They're the experts on this issue, Senator.

Senator WHITEHOUSE. You said that you were aware that there was a policy in the Department against these immediate pre-election indictments.

Mr. SCHLOZMAN. Right. And—

Senator WHITEHOUSE. If they said no policy was even implicated, did you remind them that there was actually this policy out there, or—

Mr. SCHLOZMAN. Senator, let me clarify. What they said was, is the policy is that you do not do an investigation that would require the interviewing of individual voters. And because our case did not involve any specific election, it involved voter—false voter registration forms and didn't require any individual voters to be interviewed, that there was no policy implicated. Now, that was their interpretation and they're responsible for administering the Election Crimes Manual.

Senator WHITEHOUSE. You also indicated to the media at the time—pre-election—you had press conferences about this pre-election, didn't you?

Mr. SCHLOZMAN. No, we did not.

Senator WHITEHOUSE. Did you have a press statement?

Mr. SCHLOZMAN. Yes.

Senator WHITEHOUSE. OK.

And you indicated that in the press statement that this was a national investigation?

Mr. SCHLOZMAN. Yes, we did, at the direction of the Public Integrity Section.

Senator WHITEHOUSE. What was national about it?

Mr. SCHLOZMAN. Senator, I'm not able to talk about any of—any part of that investigation.

Senator WHITEHOUSE. What do you mean, you're not able to talk about it? This was your investigation, wasn't it?

Mr. SCHLOZMAN. Senator, I'm just not able to talk about any other parts of that criminal matter like that. I mean, that's—that's prosecutorial—I mean, that's privileged information and I'm just not able to go into any other parts of an ongoing Department investigation.

Senator WHITEHOUSE. OK.

But your testimony is that when you said that it was a national investigation—you're the one who brought that up, not me—that the reason for that is because it—because there are ongoing, other investigative matters that are confidential.

Mr. SCHLOZMAN. I'm saying that I made that statement at the direction of—of Public Integrity Section.

Senator WHITEHOUSE. At the direction—the Public Integrity Section is directing what you say in your press releases as a U.S. Attorney?

Mr. SCHLOZMAN. Senator, I—I made—they strongly suggested that I make that statement in response to any press inquiries, and I—I followed their guidance.

Senator WHITEHOUSE. OK.

And you have no idea why they would want you to mention that it was a national investigation, and when I ask you how it's a national investigation you say, oh, no, no, that's confidential—why would they want to raise that confidential aspect of the investigation to the press immediately before an election?

Mr. SCHLOZMAN. Senator, I'll let them speak for themselves. And to the extent that I have certain knowledge of—of other parts of the investigation, I just can't talk about that.

Senator WHITEHOUSE. What is "ACORN"?

Mr. SCHLOZMAN. I forget the exact word that it stands—

Senator WHITEHOUSE. Not what it stands for. What is it? It's an organization?

Mr. SCHLOZMAN. It's an organization that, among—I think, other things, it seeks to register individuals to vote. It may have other functions, but that's certainly one of them.

Senator WHITEHOUSE. One of their primary functions is to seek to register individuals to vote. Correct?

Mr. SCHLOZMAN. Correct. Correct.

Senator WHITEHOUSE. Do you have an opinion as to the political affiliation or bent of the organization or the people that they seek to organize to vote?

Mr. SCHLOZMAN. No.

Senator WHITEHOUSE. You don't consider them to be, say, an organization that would be more likely to register Democratic voters?

Mr. SCHLOZMAN. Senator, my understanding is that they do employ many individuals who are not wealthy. I mean, they're poor individuals. But in terms of registration, I'm not sure that—I certainly don't have any knowledge that they're targeting individual—or not targeting other individuals. I mean, they're registering individuals to vote.

Senator WHITEHOUSE. You don't associate them as a Democrat-leaning organization?

Mr. SCHLOZMAN. I mean, Senator, I—no. I mean—I mean, they probably do have more Democrats and Republicans. I mean, maybe they are. I mean, I—but I don't certainly discriminate in who I target for a prosecution. And they were very cooperative in this case. I mean, they were—they were actually the victims in this case.

Senator WHITEHOUSE. Well, I think at this point I have just about had enough here. So I think at this point, Mr. Schlozman, you are excused.

Shall we leave the record open at this point or should we just proceed to the next? One week. OK.

Mr. Schlozman, if you'd like to add to your testimony in any respect, the hearing will be—the record of this hearing will be held open for another week so that you may do so.

Mr. SCHLOZMAN. Thank you.

Senator WHITEHOUSE. Thank you. Thank you for your testimony.

Mr. SCHLOZMAN. Thank you.

[Whereupon, at 4:44 p.m. the hearing was paused and resumed back on the record at 4:45 p.m.]

Senator WHITEHOUSE. Our second witness today is Todd Graves, the former U.S. Attorney for the Western District of Missouri, currently a lawyer in private practice with Graves, Bartel & Marcus, LLC.

Mr. Graves was nominated by President Bush to be U.S. Attorney for the Western District of Missouri in 2001 and served in that position from October, 2001 until his resignation in March, 2006.

Mr. Graves received a bachelor's degree summa cum laude in agricultural economics from the University of Missouri in 1988, and his law degree and a Master's degree in Public Administration from the University of Virginia in 1991.

After law school, Mr. Graves was an Assistant U.S. Attorney for the State of Missouri, and then in private practice with the Bryant Cave law firm until his election as Platte County Prosecuting Attorney in 1994. At the time of his election he was the youngest full-time prosecuting attorney in Missouri and he held that office until his appointment as U.S. Attorney in 2001.

As U.S. Attorney, Mr. Graves oversaw a staff of 60 attorneys and 60 non-attorney support personnel in Kansas City, Jefferson City, and Springfield, Missouri. During Mr. Graves' tenure as U.S. Attorney, felony filings in his district doubled, rising from approximately 500 cases per year to 1,000.

I thank Mr. Graves for coming to appear before the committee today and I look forward to his testimony.

Mr. Graves, would you please stand to be sworn?

Mr. GRAVES. I will.

[Whereupon, the witness was duly sworn.]

Senator WHITEHOUSE. Thank you. Please be seated.

STATEMENT OF TODD GRAVES, FORMER U.S. ATTORNEY, WESTERN DISTRICT OF MISSOURI, KANSAS CITY, MISSOURI

Mr. GRAVES. Mr. Chairman, thank you for the opportunity to address this body. I don't know if you remember, but we served together on the Executive Working Group when you were the Attorney General of the State of, I believe it was, Rhode Island.

From 2001 to March 2006, I had the honor of serving as the U.S. Attorney for the Western District of Missouri. From January 1995 to September of 2001, I was the elected State prosecuting attorney for the Sixth Judicial Circuit, Platte County, in Missouri. In total, I served nearly 12 years as a public prosecutor. It was a privilege and I loved every minute of it.

As a U.S. Attorney, I served at the pleasure of the President. I will always be grateful for the opportunity President Bush and my senior Senator, Kit Bond, gave me to serve.

I believed in the goals of this administration. The number-one criminal enforcement priority was the prosecution of felons in possession of firearms, and my district rapidly climbed to be number-one in the country in those cases.

In fact, it was just a few years ago that I sat before this committee and testified about the success of that program in our district and that is largely due to an Assistant U.S. Attorney named Paul Becker.

From the first day—from my first day in office, long before it was even a national priority, aggressively prosecuting those who exploit children over the Internet was my top local priority. From them to now, the Western District continues to be a national leader in prosecuting Internet predators.

Fair and sure enforcement of the death penalty was a priority of this administration and we enforced the death penalty. During my tenure, 10 percent of all those on Federal Death Row had been sent there from my district. I personally tried one of our death penalty cases and I was preparing to try another when I left.

We doubled the number of felony cases filed per year from 500 to 1,000. We prosecuted corrupt officials and judges, major drug traffickers, corporate thieves, cold-blooded killers, and a pharmacist who, in the name of greed, watered down chemotherapy drugs for thousands of cancer patients.

The Western District of Missouri is staffed by many prosecutors who would rather try tough cases than sleep. We had, and they continue to have, an exemplary record.

When I received a call from Mike Battle in January of 2006 telling me that I had "served honorably and that I had performed well, but that the decision had been made at the highest levels of government that it was time to give another person a chance to serve in my district", I accepted that without complaint.

In fact, I had previously made no secret among my U.S. Attorney colleagues that I'd planned to leave office in 2006 and open my own law practice. I always assumed that the administration knew that and wanted me to leave in time to replace me before the 2006 elections and a possible change in the Senate Majority and the Majority of this committee.

To this day, I bear no rancor or bitterness over that phone call. I had long planned to go and it was the President's prerogative. The private legal practice I started with my partners in Kansas City has succeeded far beyond my hopes and I am thankful, especially in light of current events, that I left the Department of Justice over a year ago. I would have been very happy to have stayed out of this situation altogether.

The public prosecutor in our system of justice bears a tremendous responsibility. We delegate to the prosecutor vast discretion in making decisions that can, with the full weight and authority of the government, take a person's liberty, property, reputation, and in some cases, their life. Those decisions are not Democrat or Republican decisions.

Decisions of prosecutorial discretion—and I know that the Chairman has been a prosecutor—are extremely difficult and they cause good prosecutors to lie awake at night, grappling for the right an-

swer. But once a decision is made, the prosecutor owns it. He or she bears the responsibility for that decision.

Both as a State and Federal prosecutor, I acted as a professional. If a decision came before me and there was clear guidance, I followed it. On the other hand, if prosecutorial discretion was required, I exercised my independent judgment: no apologies and no excuses. I was responsible for my decisions.

That is our system. Yet the system only works so long as the people believe in the institution of public prosecutor. The Department of Justice is a special place, with many talented and motivated people. But each attorney who represents the government bears a nearly sacred responsibility to uphold the reputation and honor of that institution.

As I have heard former Deputy Attorney General Jim Comey say, when an attorney appears in Federal court and announces that he or she represents the United States of America, the judge or jury accepts this as true and believes the next thing that attorney says, not because of who they are, but because of who they represent.

Although the reputation and honor of the Department of Justice has been accumulated across many generations and many fine prosecutors, it is easily lost. My hope and request from this body, as an American citizen who no longer represents the government, is that the politics of this situation can be set aside and that all the parties in this process can work together to quickly enhance and maintain the reputation and honor of the Department of Justice to the benefit of our great country.

[The prepared statement of Mr. Graves appears as a submission for the record.]

Senator WHITEHOUSE. Thank you, Mr. Graves. As somebody who has served in a similar seat, I accept and agree with your statements that it presents the prosecutor a nearly sacred responsibility.

I think Deputy Attorney General Comey has, not only in the statement that you quoted but in other statements he has made, publicly and before these committees, set the bar where it should be.

Let me go back to the call from Michael Battle. Did he, when he indicated that they would be asking you to resign, suggest that there was any performance-related reason?

Mr. GRAVES. He made it very clear that there weren't. That's the first thing he said: there are no performance issues. You have—he—I quoted from what he said: "You've served honorably and you've performed well, but the decision has been made at the highest levels of government to give another person a chance."

Senator WHITEHOUSE. And so no reference to misconduct either?

Mr. GRAVES. None. None whatsoever.

Senator WHITEHOUSE. So do you have any idea what Ms. Goodling was getting at last month when she testified before the House Judiciary Committee that the decision to remove you as U.S. Attorney may have been related to an investigation by the Department's Office of the Inspector General?

Mr. GRAVES. Yes. That—I know exactly what she was talking about. I was immediately angry over that comment. I think it is

another example of those who have a bright spotlight cast on them for their conduct, attempt to shift those things to the people that—that were asked to leave.

I immediately contacted the Office of Inspector General. I got a copy of that report. I released it to the press. What that was, was in the context of an employment matter. We had someone raise an allegation against me. And as you know, when you're dealing with an employment matter, a whistle-blower is something you have to deal with.

So we called the bluff of the person and I turned that in to the Department of Justice. I initiated that investigation. The investigation was conducted. It was about standing in a picture line for a picture with the Vice President of the United States.

The investigation found that I did nothing wrong. Interestingly enough, another U.S. Attorney from another district was standing next to me in the picture line. So, it was—I think it was really a non-event.

I think the way that she offered that and left that sort of laying out there without more meat on the bones was—I think it was a slur against my reputation. I took it very personally. That's why I immediately released the document.

The Office of Inspector General confirmed that they'd never opened any other investigation against me. And I'd be happy to have that investigation made a part of this record for inclusion so that anybody can see it.

Senator WHITEHOUSE. It will be done.

Mr. GRAVES. OK.

Senator WHITEHOUSE. Were you, at the time, preparing to try a death penalty case?

Mr. GRAVES. We had a case, a particular case, that has still not been tried of a woman—I was a State prosecutor before I was a Federal prosecutor and my expertise, if I ever developed one, was sort of in the mental defense.

And we had a case where a woman was murdered, the government alleged—it hasn't been tried yet—and her baby was cut from her womb before she died. That case took place less than 20 miles from where I was born in a rural part of the State.

That was a very important case to me. That was literally the only reason why I hadn't left the Department before, because I—I had young kids and other things that I wanted to do. But I wanted to stay around and try that case. We tried to get it to go the previous fall. They'd postponed it. It was supposed to go last year, and that is something that was left undone.

Senator WHITEHOUSE. Did you ask to stay on to pursue that case at the time?

Mr. GRAVES. Yeah. I had very little contact with the Department, other than Mr. Battle's call. I had some—a little bit of back-and-forth from him. But I did contact my senior Senator's office and I said I would like to stay to complete this case.

Senator WHITEHOUSE. And what signal did you get back from the Department in respect to that?

Mr. GRAVES. And as I said to them, I'm perfectly willing—I mean, I understand the objective and I'm perfectly willing, you know, to move on. It's—it's—it's something that, you know,

doesn't—doesn't cause me a lot of concern, but that I'd like to try this case. And the answer I got back is, we've considered it and we want you to go ahead and go on.

Senator WHITEHOUSE. And in terms of the decision, you were informed that it came from the very highest levels of government. Have you generated or become aware of any other information more specifically where that decision came from?

Mr. GRAVES. No, I haven't. Frankly, it was something—again, it did not—I just moved on. I accepted that. I didn't—I didn't probe. I did sort of, you know, ask around if anyone had heard anything just in general and nothing came back, without even mentioning my situation. And I don't know any more than that.

Senator WHITEHOUSE. Did they ever tell you why?

Mr. GRAVES. They specifically told me—well, yes. They told me it was because they wanted to give another person a chance to serve. That's what they told me.

Senator WHITEHOUSE. In 2005 when you were still the U.S. Attorney, Mr. Schlozman, who's just testified here, was then the Acting Assistant Attorney General in charge of the Civil Rights Division.

Mr. GRAVES. Uh-huh.

Senator WHITEHOUSE. He authorized a national Voter Registration Act suit against the State of Missouri, and Democratic Missouri Secretary of State Robin Carnahan. The Department then filed this suit, accusing Missouri and Ms. Carnahan of failing to eliminate ineligible people from lists of registered voters. According to press accounts, the Department did so over your reservations, that the case lacked merit.

What were your reservations about the case? And did you express reservations to the Department, and how were they expressed?

Mr. GRAVES. Well, I had—I had had a run-in with the Department that was very significant in 2003 over a cross burning case. It was a case that had been mediated in front of a Federal magistrate and there had been someone from the Civil Rights Division at main Justice in the room when it had been mediated and had authority. And as you know, Federal magistrates don't do mediations unless everybody in the room has authority to bind their parties, because they don't want to waste their time.

It had been a very difficult mediation. It had—it had been settled. And as one of—it was a civil mediation of a civil rights case and it had followed a criminal prosecution for these individuals that had burned these crosses, or burned a cross in a person's yard.

And the Department came back—then the Acting Director—and I honestly don't even remember that person's name—called me and said, we're not going to go forward with this settlement.

And the way the Department works, civil rights has authority to act without U.S. Attorneys in civil rights matters, but U.S. Attorneys do not have authority to act without Civil Rights. Our discussion got very heated and I ended up hanging up the phone, telling them that I would not participate in what they wanted to do.

Later, I got an e-mail and I drafted an e-mail back. They wanted to remove some provisions from the settlement, some punitive provisions against the defendant. And I—

Senator WHITEHOUSE. Against the defendant who had burned the cross?

Mr. GRAVES. Burned the cross. And he happened to be from a rural part of the very county where I'd been the elected prosecuting attorney. I knew this person. I knew that when he got out that it was—there was a high likelihood that the same sort of behavior would continue. And—

Senator WHITEHOUSE. But they wanted to remove punitive provisions that you had already negotiated—

Mr. GRAVES. Right.

Senator WHITEHOUSE.—from the agreed civil remedies for somebody who had burned a cross in somebody's yard.

Mr. GRAVES. Right. Because the criminal remedies—because he'd been sentenced to prison, once he got out, that's over. The only way to have sanctions controlling his behavior in the future—

Senator WHITEHOUSE. Yeah.

Mr. GRAVES.—was to have a civil settlement. And there was a provision that he cannot drink alcohol, and I can't remember what the other ones were. And someone at the Department didn't think that was in accord with the theory of prosecution or the theory of what civil—civil rights settlements should be. And I was a lunch-pail prosecutor. I was just a guy out in Kansas City who was trying to do my job. And—and because I had two concerns about that.

One is, my reputation was on the line with the Federal magistrate because we had committed to that. Two is, I wasn't going to back up on this guy because I knew that, you know, when he got in trouble again I would have to own that decision and take responsibility for it, and I didn't think it was a right decision.

So I sent a strongly worded e-mail. I no longer have that e-mail because I'm not in the Department, but I went back through my computer. And the language—sometimes, because the computer system at the Department is sort of at the office, I typed it up the night before. And the language of that e-mail I have, and I also have submitted that and would be happy to have that included in the record.

And the person that I was told was going to contact me to mediate this after I—mediate it with the Department after I'd thrown down the gauntlet, they told me that Brad Schlozman was going to be the guy, the peacemaker in the matter.

So I had talked to him, maybe the next week, and as it turned out I wouldn't back up, I wouldn't change my position. My reputation in the legal community in Kansas City was more important to me than my reputation in the halls and many offices, you know, staff level at main Justice, and they—they—they ended up doing what we wanted.

Senator WHITEHOUSE. I'd stop you right there on that point.

Mr. GRAVES. OK.

Senator WHITEHOUSE. To make the point to you that I think that one of the reasons that we have locally appointed U.S. Attorneys is so that they will make exactly that kind of call. It's one of the concerns that I have about the, for want of a better word, infiltration of the U.S. Attorney corps by people who have limited contact with the home district—

Mr. GRAVES. Uh-huh.

Senator WHITEHOUSE.—but are sent out as emissaries of the operatives in main Justice.

In that context, how did you greet the arrival of Mr. Schlozman as the next U.S. Attorney?

Mr. GRAVES. Well, I mean, I—I was—I was sort of indifferent. I—I had made my plans. As you—I've left other public offices before and the most important thing, I think, is to sort of let the next person do whatever and just stay out of their way.

Senator WHITEHOUSE. Was he known in the Missouri legal community at the time?

Mr. GRAVES. He was not known to the Missouri legal community. I knew him because of this previous civil rights case, and against that backdrop he was also involved in the voting rights case, and so I knew that he had—he had mentioned to me that he was a Kansas City guy and I knew that he had contacts in the community, certainly at the high school level. But as far as I knew, I mean, I—I'd never heard of him before I'd talked to him on the phone.

Senator WHITEHOUSE. And you presumably know your way around the Missouri Bar and prosecutive world pretty well.

Mr. GRAVES. I've been—you know, it hasn't been that long, but I've—I've been there for a while.

Senator WHITEHOUSE. Yeah.

What was his role—what was your experience on him in the cases in which you were directly engaged?

Mr. GRAVES. OK. The first one was a civil rights case and I did not deal with him—or the first one was the cross burning civil rights case. I did not really deal with him after that, my assistant did. The Department, after, you know, some fairly strongly worded things to me, eventually agreed with our position and they entered into that—that settlement.

Then fast forward a few years. It came to my attention that there was a letter that they wanted to send—I believe it was the Secretary of State, the Attorney General, and some others—on a voting rights lawsuit. And I read through it and thought about it and I had some—I had some concerns about it.

If you've been a U.S. Attorney you understand that sometimes components of main Justice want to do something and it's not a good idea, but it's not really for you—they have independent jurisdictional authority over you.

And I remember—what I remember—and again, this is several years ago as I was dragging my feet on signing the letter. I don't remember if a request was ever specifically asked that we sign the letter, but I was voiding signing the letter. I believe Mr. Schlozman signed that letter.

I thought at the time that this was a bad idea. I thought there was sort of a main Justice rush on this and we—what I would describe, is we started kind of slow-walking it in the district.

I did not have any negative conversations with the Assistant handling this for the local district because I didn't think it was appropriate for me. I mean, you know, we were going to do what we were going to do. I didn't think it was appropriate for me to start poisoning the well because I knew that they were going forward with this and I didn't think it was a Rule 11 violation.

Again, it's about—it's just knowing where it's going to end up and the responsibility for it, and I wasn't being asked, you know, whether I thought they should proceed.

So I—how I would describe what I did, was I—we slow-walked it. It was inevitable and I just sort of stepped aside and absented myself from the situation. Wasn't involved in the discussion of the case.

I got periodic e-mail updates from the AUSA who was acting as local counsel, but I don't really even remember responding to them and I was not part of—in the Department of Justice, sort of the currency of the realm is the press release and I was not part of the press release when they signed that—when they filed that case.

So I don't—I don't see—first of all, I have no idea if that has anything to do with me getting a phone call from Mike Battle, and I want to be clear about that. But I don't see how anyone could claim that no one noticed, with my prior experience with Civil Rights, that I was not—I was not front and center on that case.

Senator WHITEHOUSE. That's a pretty bright red flag, actually, if the U.S. Attorney won't sign the letter and doesn't participate in the press releases. You said that's the coin of the realm.

Mr. GRAVES. Yeah. Usually you're fighting over who's on the press release and who's first, and who gets a quote, and—you understand how that works.

Senator WHITEHOUSE. Yeah.

In terms of the filing of these charges in the, literally, days before an election at the time that you were the U.S. Attorney, were you aware of the much-discussed policy that we've been talking about here that suggests that election-related charges should not be brought in the immediate run-up to an election?

Mr. GRAVES. Yeah. I was—I had had some training. I had that book. I'd had some training on it. But of course, all—all the Department policies are—there's sort of a feel there. I think election-related that would influence the election would be the key.

For instance, I once filed a case fairly close to election with the U.S. Attorney in Kansas where voters had been voting on both sides of the line. It had been investigated from a previous election.

We filed that, but there was no way that that would influence—you know, I don't know whether those were Democrat voters or Republican voters, and the public would have no way of influencing that.

But something that clearly was an investigation about that election and about something that would impact that election, meaning that it was an identifiable group of one candidate or the other, it would have been my understanding that you would not—you would not do that.

Senator WHITEHOUSE. In your judgment, if an organizing group were actively registering voters the way ACORN does, in my view, primarily for Democratic voters, and presumably they had registered a considerable number of voters, if they were being at all effective at what their intended task was, and then the government, at the last minute, brought charges that cast into question the legality of registrations that had been brought by that organization, would you think that that might have any kind of chilling

effect on voters who had been registered other than the immediate subjects of the charges?

Mr. GRAVES. Yeah. I'm somewhat hesitant to speculate on that because I know there were good career prosecutors involved in this in Missouri and I hate to—without—as someone who's prosecuted cases I know that it's very contextual.

Senator WHITEHOUSE. The testimony is that they didn't make the call as to when the indictment—

Mr. GRAVES. Right.

Senator WHITEHOUSE.—would be announced. The testimony today was that that was made by the head of the Public Integrity Section.

Mr. GRAVES. Right.

Senator WHITEHOUSE. And so, as far as I'm concerned, if I were the U.S. Attorney, my—the line assistance wouldn't really have a horse in that race.

Mr. GRAVES. Right.

Senator WHITEHOUSE. They would have done their job and it would be my job to see to it that policy guidelines were met and that I wasn't making announcements immediately before an election.

Mr. GRAVES. My—when—I was out—I'd been out of the U.S. Attorney's Office for a long period of time when that happened. When I read about it in the paper, knowing—I have a—I still have a copy of that.

Senator WHITEHOUSE. Yeah.

Mr. GRAVES. I don't know if that violates a policy that I still have a copy, but it surprised me.

Senator WHITEHOUSE. Yeah.

Mr. GRAVES. It surprised me that they'd been filed that close to an election.

Senator WHITEHOUSE. After you left the U.S. Attorney's Office you stated that, "When I first interviewed with the Department I was asked to give the panel one attribute that describes me. I said 'independent'. Apparently, that was the wrong attitude."

Could you explain why you now think that that was the wrong attitude?

Mr. GRAVES. Well, that was—that was in response to—to so much of what I've seen since I left there. That did happen. There was an interview, and I don't remember who was there. I can remember, David Margolis was there.

It was—you know, I thought of that question, sort of the old question of, if you were a box of cereal, what kind of cereal would you be, and why? They wanted that one question or that one attribute, and that's the one I gave them. And I was surprised at the reaction that I got, because it was sort of like a lead balloon.

And I had come up as a State prosecutor and I had colleagues that were Republicans and I had colleagues that were Democrats, and that was sort of the—the—the ideal that we all aspired to, was—I was elected as a Republican. I'm a—I'm a—to this day, I mean, I'm a—I'm a committed Republican conservative. When I—

Senator WHITEHOUSE. But a lot of prosecutors are prosecutors first and—

Mr. GRAVES. When you put the suit on, you really leave it at the door. My First Assistant while I was at the State level and while I was at the Federal level was a Democrat and I didn't even know that till years after we started working together. It's just not something that—you really try to set that aside, because, as I said in my opening statement, I mean, these are not Republican or Democrat decisions.

Senator WHITEHOUSE. Would it be fair to describe you in sort of the Bud Cummins category then?

Mr. GRAVES. I don't think anyone's in Bud Cummins' category.

Senator WHITEHOUSE. I know he's a special guy. But in terms of being non-performance related and being told that they'd like you seat vacated so they could put somebody else in and it being the Department's call that this took place.

Mr. GRAVES. That was what was clearly communicated to me. And, you know, like I say, that was—and it sounded like Mr. Battle was sort of reading from a script, although it wasn't that—but, you know, he made it clear that he was to tell me, you know. By who, he wouldn't tell me—

Senator WHITEHOUSE. Yeah.

Mr. GRAVES.—but that he was to tell me that there were no performance issues. They wanted to give another guy a chance to serve. We, as U.S. Attorneys, are not, you know, promised two terms. That's not part of the deal. And I agree with—you know, actually, I agree with all that. It is—we're not—you know, public office is a privilege, it's not a right, and so I accepted that.

Senator WHITEHOUSE. When Kyle Sampson came before this committee he testified as follows: "In the end, eight total U.S. Attorneys were selected for replacement: Bud Cummins, in mid-2006, and the other seven in a group in early December of 2006." Based on everything you know about your situation, was that a true statement or would you add yourself to that group?

Mr. GRAVES. You know, I have an active practice and I don't—I actually have not seen all the hearings and followed—I've caught some of them and I—I didn't see that, so I don't know exactly what—what Kyle Sampson was referring to.

I mean, I clearly was a U.S. Attorney who was given a push to leave the Department in early 2006. I don't know how he was defining the categories, you know, to catch the numbers, but—but I was given that call in early 2006.

Senator WHITEHOUSE. OK.

Let me ask you one last question. I appreciate your time with us this afternoon. This is something that has just bothered me to no end, and I'd just like to get your two cents' worth on it.

When Kyle Sampson came before this committee, one of the—one of the things that he said in his testimony was that it would be improper for any U.S. Attorney, any prosecutor, himself, to attempt to influence or interfere with any particular case for partisan or political improper purposes.

Mr. GRAVES. Uh-huh.

Senator WHITEHOUSE. Which obviously I agree with. My point isn't that the statement is wrong, my point is that the statement is wildly under-inclusive of what would be improper.

Mr. GRAVES. Uh-huh.

Senator WHITEHOUSE. Not long after that, the U.S. Attorney himself came and testified before us, and in almost verbatim language, which is interesting because Kyle had testified to us that they didn't contact anybody when they prepared their testimony.

He used almost exactly the same language, again, that it would be "improper to attempt to influence or interfere with a particular case for partisan or improper purposes". And then just recently, Brian Rohrcasse used almost that exact same phrase again in a press release that came out.

And I'm trying to figure out where that comes from. It looks an awful lot to me like the elements of criminal obstruction of justice, but criminal obstruction of justice, as you'll recall, uses slightly differently terminology. You just put the three pieces side by side and they're practically a match.

Mr. GRAVES. Uh-huh.

Senator WHITEHOUSE. I don't know if it comes out of some OPR guideline. I've asked the Office of Inspector General to look into it. Is that a phrase that rings a bell with you in any respect?

Mr. GRAVES. No, it doesn't.

Senator WHITEHOUSE. It's funny that it comes out all three times, almost verbatim, from these very high-level sources.

In terms of your view that being a U.S. Attorney carries a nearly sacred responsibility to do the right thing, do you think that that is the right place to draw the line on what is improper and what is not in terms of allowing political influence to affect your judgment as a prosecutor?

Mr. GRAVES. You know, I think that—that you can't—one of the things we spoke about earlier was, the U.S. Attorney should be from a local—you know, should be from the local community, for a lot of reasons. That's because he—he or she will bring their sort of understanding of the community, common sense, and will be able to make those decisions that we rely on prosecutors to make that could affect life, liberty, freedom, and property.

And so I think that sort of life experiences are something that you have to bring to the office and that you should apply to the decisions you make, but partisan—Republican, Democratic, Green, whatever—is something that should not be part of your decisions in hiring, it should not be part of—

Senator WHITEHOUSE. Irrespective of whether it relates to a particular case?

Mr. GRAVES. Irrespective of whether it relates to a particular case. I always said I want to try—I want to hire prosecutors that would rather try tough cases than sleep, and I don't care if they're a Democrat or if they're a Republican. If they don't want to put people in jail that deserve to be put in jail, I don't want to hire them.

So there's a philosophical sort of test there, but if they're a Democrat, I mean, some of the—some of the people in my office that I have the highest regard for that I promoted, that, you know, have done a tremendous job, it's because they were—they were pro players that could throw a football, you know, into the end zone in important games, and that's what I was looking for.

Senator WHITEHOUSE. Well, I thank you, Mr. Graves.

I see that my Chairman has returned and arrived and I am, embarrassingly, now sitting in his seat in full view of an entire group of people, and cameras to boot. So, I'll get out of the way.

I do want to say that I appreciate your remarks at the beginning. Mr. Chairman, he, Mr. Graves, indicated that he thought it was important the committee conduct itself in such a way that the Department's reputation could be restored.

And I just want to say from your testimony today, I think that if people like you and Jim Comey were in the leadership of this Department and understood the world the way you do, we wouldn't be having this problem.

Chairman LEAHY. Thank you. No, no. Just stay right there. I'm not going to add to the questions. I know which questions you asked. I spoke to Mr. Graves earlier and told him how much I appreciated him coming here.

And I appreciate what you said about the integrity of the people who work for the Department of Justice. I have always had enormous respect for them. I've hired people, a number of people in my office, who were with the Department of Justice. I always consider that a high mark. Most of them, I didn't have the foggiest idea what their politics were, whether they were Republicans or Democrats. I, frankly, didn't care. I just wanted them to do a very good job here.

When I was a prosecutor I never knew the politics of anybody I hired. I felt as you just said: if somebody broke a law, go get them and prosecute them. That's the way I felt.

I also feel that prosecutors have a solemn duty to use discretion where it actually enhances justice. But you don't use discretion because of political pressure, you do it because it actually makes sense.

When I was in law school at Georgetown I was invited, with a handful of those of us who were going to meet with the then-Attorney General who was telling us why we should go to the Department of Justice, and he made it very clear that there were certain things.

He had great respect for the President, though the President was right in certain areas. But he'd made it very clear to the President that he, the President, could not interfere with anybody in the Criminal Division, including one who was prosecuting a strong, strong supporter of the President who helped get him elected in the first place, that he would not—and the same with civil rights or anything else, and pointed out that he didn't know the politics of any of us. We probably did either at that age.

But based on our grades and whatnot, wanted us there and was assuring us that there would be no politics played in that division. I think it was Attorney General Robert Kennedy. He was making it very clear. There was probably nobody closer to his brother, the President, than he, but as history showed they prosecuted people who had helped get President Kennedy elected in the first place.

Both Senator Whitehouse and I have had the privilege of being prosecutors. He was U.S. Attorney, as you probably know. And I think what's been most frustrating in this committee and why there's been so much criticism from both Republicans and Democrats has come especially from those who served as prosecutors, we

understand as you do what the rules are. You don't play politics. Justice is really—it's almost a cliché, but justice is blind. And I appreciate you coming here.

I appreciate, Senator Whitehouse, you taking the time to fill in. Unfortunately, I was in two different things here. But we'll continue this. Thank you very, very much.

Mr. GRAVES. Thank you.

Chairman LEAHY. We stand in recess.

Senator WHITEHOUSE. And we'll keep the record open a week.

[Whereupon, at 5:19 p.m. the hearing was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Questions from Senator Dianne Feinstein to Bradley Schlozman following the June 5, 2007 Hearing of the Senate Judiciary Committee

1. During your testimony you agreed to submit, in writing, the names of all section chiefs whom you ordered removed, and all section chiefs whom you ordered transferred.

- Please provide the name of each section chief in the Civil Rights Division whom you ordered or suggested to be removed, and the position from which he or she was removed.

  Albert Moskowitz (Chief, Criminal Section)

- Please provide the name of each deputy section chief in the Civil Rights Division whom you ordered or suggested to be transferred, and the position from which he or she was transferred.

  Elizabeth Johnson (Deputy Chief, Special Litigation Section)
  Robert Berman (Deputy Chief, Voting Section)

- For each person named in response to the items above, please provide the basis for your order or suggestion.

  In each case, the personnel moves were grounded in a desire to best match the skill sets of these individuals with the needs of the Division. In the case of Mr. Moskowitz, I also relied heavily on the recommendation of the Deputy Assistant Attorney General overseeing the Criminal Section. In the cases of Mr. Berman and Ms. Johnson, I also relied heavily on the recommendations of the career section chiefs.

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Questions from Senator Dianne Feinstein to Bradley Schlozman following the June 5, 2007 Hearing of the Senate Judiciary Committee

2. During your testimony you agreed to submit, in writing, the names of career attorneys whom you ordered transferred out of the Appellate Section of the Civil Rights Division. You also agreed to provide the names of career attorneys who were allowed to return to the Appellate Section after you ordered them to be transferred out of the section.

- Please provide the name of each career attorney in the Appellate Section whom you ordered or suggested to be transferred out of the section.

  Two attorneys were transferred out of the Appellate Section during my supervision of that Section: Teresa Kwong and Karen Stevens. A third attorney, Tovah Calderon, was transferred off the Appellate Section's formal rolls during her detail to the Hill, but she returned directly to the Section at the conclusion of her detail.

- For each person named in response to the item above, please provide the basis for your order or suggestion.

  With respect to Ms. Kwong and Ms. Stevens, my decision, which followed consultations with both my appellate counsel and the Appellate Section chief, was grounded in a desire to best match the skill sets of these individuals with the needs of the Division.

  With respect to Ms. Calderon, I wanted to add another attorney to the Section to help handle the growing workload. I knew that Ms. Calderon's detail was likely to last nearly a year, and I did not want to keep the slot vacant for that period of time.

- Please provide the name of each career attorney who was allowed to return to the Appellate Section after you ordered him or her transferred out of the section, and explain the process through which he or she returned to the section.

  It is my understanding that Ms. Stevens, Ms. Kwang, and Ms. Calderon all have, or soon will be, returning to the Appellate Section. Assistant Attorney General Kim oversaw those individuals' return to the Appellate Section. As the transfers all occurred following my departure from the Civil Rights Division, I am unfamiliar with the process involved.

- Was your decision to order or suggest the transfer of any attorney out of the Appellate Section based, in whole or in part, on an intent to fill the position with an attorney who would adopt more conservative views?

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No.

- When positions were open after attorneys were transferred out of the Appellate Section, did you fill those positions with attorneys who had conservative and/or Republican credentials?

  The two individuals who filled the vacant Appellate Section slots were both Honors Program hires with extraordinarily impressive credentials. Both graduated at the top of their law school classes and clerked for federal appellate judges. With respect to one of the attorneys, I do not recall even meeting him before authorizing his placement in the Appellate Section, and I have no idea what his political views are. With respect to the other attorney, I am aware that he is an expert in religious liberties law but I do not know his political affiliation. Neither attorney, however, was placed in the Appellate Section for reasons other than the individual's academic background, demonstrated legal and analytic skills, and superior work ethic.

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Questions from Senator Dianne Feinstein to Bradley Schlozman following the June 5, 2007 Hearing of the Senate Judiciary Committee

3. In response to questions from Senator Whitehouse, you stated that you spoke to Craig Donsanto, the head of the Election Crimes Branch, and Michael Elston, the chief of staff to the Deputy Attorney General, before bringing the indictments against the former ACORN workers.

- Was the Public Integrity Section aware of the fraud allegations against the former ACORN workers before your office brought the allegations to the section's attention?

  I have no reason to believe that the Public Integrity Section was aware of the specific fraud allegation involving the ACORN workers in Kansas City before my office brought the matter to the Section's attention.

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Questions from Senator Dianne Feinstein to Bradley Schlozman following the June 5, 2007 Hearing of the Senate Judiciary Committee

4. You testified that the head of the Election Crimes Branch told your office that the indictments in the ACORN case "did not implicate any of the DOJ informal policies" on pre-election investigations, because "there was no need to actually interview any voters in this case." The Department's written guidelines, however, state (at page 10) that "[w]ith very few exceptions, *no overt investigation, and* no interviews with individual voters, should occur until after the election allegedly affected is over." The guidelines explain that this rule "eliminates, or at least minimizes, the possibility that the investigation itself will become a factor in the election." The point is reiterated on page 61 of the guidelines, which warns that "any investigation undertaken during the final stages of a political contest may cause the investigation itself to become a campaign issue."

- Is it the official view of the Department of Justice that the only type of election crime investigation that should be deferred until after an election is one that entails interviewing of voters?

  As a threshold matter, policies in this area are established by the Public Integrity Section and the Criminal Division. I am not in a position to state the Department of Justice's official views in this area. In the cases indicted in my district, I acted following my office's consultation with the Public Integrity Section's Election Crimes Branch.

- Is it the official view of the Department of Justice that interviews with individual voters are the only type of investigative activity that could "become a factor in the election" or "become a campaign issue"?

  Policies in this area are established by the Public Integrity Section and, presumably, the Criminal Division leadership. I am not in a position to state the Department of Justice's official views in this area. In the cases indicted in my district, I acted following my office's consultation with the Public Integrity Section's Election Crimes Branch.

- You stated during your testimony that the Department is "issuing a new book" of guidelines on the prosecution of election crimes. Will the new book eliminate the current rule barring overt investigation, leaving only the rule that bars interviews with individual voters?

  As far as I know, policies in this area are established by the Criminal Division's Public Integrity Section.

- In a June 11 letter to Chairman Leahy, you wrote that the policy against interviewing voters in the pre-election period is "intended to avoid actions that could conceivably have a chilling effect on voting." Does DOJ currently have

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any policy against pre-election investigations that have other effects on voting – such as rallying a certain group of voters to go to the polls? Will the new book focus only on the "chilling effect" and not on all pre-election investigations that could "become a factor in the election" or "become a campaign issue"?

Policies in this area are established by the Public Integrity Section and, presumably, the Criminal Division leadership. I do not have additional information responsive to your questions.

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Questions from Senator Dianne Feinstein to Bradley Schlozman following the June 5, 2007 Hearing of the Senate Judiciary Committee

5. In your written testimony, you suggest that the "problem" that gave rise to the Department's 2005 lawsuit against Missouri was recognized by Missouri's Secretary of State, a Democrat. You quoted her statement about the fact that in one county in Missouri, over 150 percent of the voting age population was registered to vote in 2004.

Yet data from the Election Assistance Commission show that in the same election, there was a county in Texas where over 230 percent of the voting age population was registered to vote. And in Utah, 12 of 29 counties had more than 100 percent of the citizen voting age population registered to vote.

- Did the Department conduct any inquiry into voter registration in Texas or Utah after the 2004 election?
- Are the state election officials in Utah and Texas Republicans?
- How many Republican state election officials have been sued by DOJ's Civil Rights Division from 2001 to 2006?
- How many Democratic state election officials have been sued by the Civil Rights Division in the same period?

The lawsuit filed by the United States against the State of Missouri actually involved two separate claims. First, the lawsuit alleged that the State had failed to assure that registered voters would be notified, as required by the NVRA, prior to their removal from the poll lists. The State's failures in this regard were egregious: in one county alone, some 40 percent of the registered voters were removed from the active voter list without the notification required by the NVRA. Second, the lawsuit alleged that the State had failed to maintain a reasonable voter registration list maintenance system. Again, the State's failures were egregious and widespread. Approximately one fourth of all counties had more registered voters than persons of voting age, and two counties' voter lists contained more names than the entire population of the county.

The Civil Rights Division has examined similar apparent discrepancies in many other states. According to a report of the Election Assistance Commission and Census data, there are ten states in which 10% or more of the jurisdictions conducting voter registration had more registered voters than citizens of voting age. The complete list of such states is: Iowa, Massachusetts, Mississippi, Nebraska, North Carolina, Rhode Island, South Dakota, Texas, Utah, and Vermont. I do not know the political affiliation of the responsible officials in each of these states, and the

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Department does not maintain or consider the political affiliation of such officials.

The states which have been named as defendants in lawsuits by the Voting Section since 2001 are as follows:

Cases Raising Claims Under the NVRA

U.S. v. State of New Jersey (D.N.J. 2006)
U.S. v. State of Maine (D. Me. 2006)
U.S. v. State of Indiana (S.D. Ind. 2006)
U.S. v. State of Missouri (W.D. Mo. 2005)
U.S. v. State of New York (N.D.N.Y. 2004)
U.S. v. State of Tennessee (M.D. Tenn. 2002)

Cases Raising Claims Under the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA")

U.S. v. State of Connecticut (D. Conn. 2006)
U.S. v. State of North Carolina (M.D.N.C. 2006)
U.S. v. State of Alabama (M.D. Ala. 2006)
U.S. v. State of Georgia (N.D. Ga. 2004)
U.S. v. Commonwealth of Pennsylvania (M.D. Pa. 2004)
U.S. v. State of Oklahoma (W.D. Okla. 2002)
U.S. v. State of Texas (W.D. Tex. 2002)

Cases Raising Claims Under the Help America Vote Act

U.S. v. State of New Jersey (D.N.J. 2006)
U.S. v. State of Maine (D. Me. 2006)
U.S. v. State of Alabama (M.D. Ala. 2006)
U.S. v. New York State Board of Elections (N.D.N.Y. 2006)

Cases Raising Claims Under 42 U.S.C. §1974

U.S. v. State of Georgia (N.D. Ga. 2006)

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Questions for Bradley Schlozman from Sen. Kennedy

1. You acknowledge you ordered the transfer of three career attorneys out of the Appellate Section of the Civil Rights Division. I understand is that two of those attorneys have returned to the Section and the third is in the process of doing so.

A. You ordered the immediate transfer of Karen Stevens, an African American woman, from the Section when she was seven months pregnant. She filed a complaint based on race and sex discrimination, and she was reinstated to her position in the Section. Ms. Stevens has always received favorable performance evaluations. Why did you order the transfer of Ms. Stevens? Do you agree with her reinstatement? Do you contend that you did not engage in discrimination on the basis of race, sex or pregnancy?

I felt this move was in the best interests of the Division, and I made the decision only after consulting with both the Appellate Section chief and other personnel. The transfer was in no way based on Ms. Stevens' race, sex, pregnancy, or other improper basis. While my views are irrelevant inasmuch as I have been gone from the Civil Rights Division for nearly seventeen months, I have no objection to Ms. Stevens' return to the Appellate Section.

B. Ms. Stevens had served in the Appellate Section since 2001. Shortly before she was transferred, she had applied for a newly created management position in the Section. Did you review her resume in connection with that application? Did you order her transfer because you learned from that review that she had served as a Counsel to the Assistant Attorney General for Civil Rights before joining the Appellate Section?

I do recall that Ms. Stevens applied for a Senior Litigation Counsel position in the Appellate Section. She was not selected for that post. With respect to her transfer, it had nothing to do with her prior employment.

C. Have you been investigated by OPR or the IG for your treatment of Ms. Stevens? If so, is that investigation ongoing, or has it been resolved?

I am not in a position to know the investigatory activities of the Inspector General or the Office of Professional Responsibility.

D. You ordered the transfer of Tovah Calderon out of the Appellate Section while she was on detail from the Section to the Senate Judiciary Committee. After you left the Division, she was permitted to return to the Section. Why did you order her transfer? Do you think it is appropriate to transfer an employee involuntarily while she is serving as a detailee on the Senate Judiciary Committee at the request of a member of the Committee? Did the transfer have anything to do with the fact that she was on detail or the work she was doing on the detail?

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As an initial matter, Ms. Calderon never actually worked anywhere in the Division other than the Appellate Section. She returned to the Appellate Section immediately after her detail was completed. At the time of my decision, however, there seemed to be a growing case load in the Appellate Section, and I wanted to bring in another attorney to help handle the load. Inasmuch as there were no vacancies and Ms. Calderon was scheduled to be on her detail for a full year (and potentially more, based on my prior experience with detailees, some of whom do not even return to the Division following their detail), I thought it advisable to make room on the Appellate Section's books for another attorney by transferring Ms. Calderon to another section. My decision was in no way based on the work she was doing on her detail.

E. You ordered that Teresa Kwong not be allowed to return to the Appellate Section from her maternity leave. Why did you want Ms. Kwong out of the Appellate Section?

I felt this move was in the best interests of the Division, and I made the decision only after consulting with both the Appellate Section chief and other personnel.

F. Does it concern you that all three of these attorneys were women, one of them was seven months pregnant and the other was on maternity leave when you took action to transfer them?

My transfer decisions had absolutely nothing to do with the individuals' race, gender, pregnancy status, or other improper consideration.

2. During your tenure in the Civil Rights Division, several experienced attorneys in the Appellate Section were informed that they would not be assigned civil rights cases, but would only be permitted to work on immigration cases, defending deportation orders. These attorneys, all of whom were longtime employees of the Civil Rights Division, understood this action to be punitive and as an effort to drive them out of the Division.

A. Did you instruct Section Chief Flynn or any other management official in the Appellate Section not to assign civil rights cases to any of the following attorneys?

Lisa Edwards
Marie McElderry
Tovah Calderon
Teresa Kwong
Karen Stevens
Linda Thome

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Jennifer Levin

Please explain the circumstances.

Every component in the Justice Department, including the Civil Rights Division, has been assigned immigration appeals since Deputy Attorney General Comey initiated the policy in November 2004 to help the Civil Division deal with its backlog of deportation cases. I determined that it would be more efficient, at least for a period of time, to have certain attorneys focus exclusively on immigration appeals – thereby developing an expertise in the area – rather than dividing the work evenly among the entire Section or Division. The assignments were not punitive.

B. Did you give an instruction to reassign a civil rights case from any of these attorneys to another attorney?

Although I do not remember the specific individuals or subject matter involved, I do vaguely recall asking that at least one case be reassigned to either the Senior Litigation Counsel or a new Honors Program hire with extraordinary writing skills who was new to the Section and had a relatively light docket.

C. Did you instruct Section Chief Flynn that Deputy Chief Mark Gross should only be allowed to work on immigration cases and should not be allowed to review civil rights matters? If so, why?

Yes. I thought, given the specialized nature of the immigration cases, it would be more efficient to have one supervisor in the Appellate Section handle the review of all immigration appeals rather than dividing the responsibility among all members of management.

3. Did you say that you were going to replace attorneys in the Appellate Section with "good Americans?" What did you mean by "good Americans?" Please identify the bad Americans who were serving in the Appellate Section and the characteristics that made them bad Americans. Do you think it is appropriate to classify public servants as bad Americans?

I do not recall any such conversation. That having been said, I frequently use the term "great American." I use the phrase casually as a term of endearment. Indeed, anyone who knows me well knows that I refer to Democratic and Republican friends/colleagues alike as "great Americans."

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4. Did you at any time instruct Section Chief Flynn to conceal from an attorney in the Appellate Section the fact that you were directing him to engage in a personnel action on the attorney, including transferring the attorney or directing cases or other assignments? If so, why?

> ***I discussed the transfers with Section Chief Flynn before they were implemented. Contrary to recent press reports, these personnel moves were not directed over his objection. I also did not instruct Flynn to conceal my role in the moves, nor did he do so to my knowledge. What I did do was to tell Flynn, following our discussion, that as the Section chief and a member of management, he should express his support of the moves in the discussion with the affected employees. I considered this "united front" to be consistent with good management principles.***

5. In 2005, the year you served as Acting Assistant Attorney General and Deputy Assistant Attorney General, a significant number of attorneys in the Appellate Section did not receive annual performance evaluations, which are required by federal personnel rules. You held up and never issued these evaluations. Why?

> ***I do not recall intentionally holding up any performance evaluations. I recall only that my appellate counsel was making additions at my request to the narratives of some of the evaluations, which may have delayed their issuance. I might add that I do not recall ever hearing any complaints on this issue before now.***

6. Did you explain your refusal to issue performance awards to Section Chief Flynn? What did you say?

> ***There were a very limited number of performance awards that could be awarded to members of the Senior Executive Service in the Civil Rights Division. It was not my practice to explain, nor do I recall explaining, my decision to Section Chief Flynn, or any other section chief, of why he/she was not going to receive a performance award.***

7. Please identify the attorneys who received performance awards and the number of years each had served in the Division. Please also identify the race and gender of each such attorney.

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It is not clear what time frame or what level of attorney you are referring to in this question. For members of the Senior Executive Service, the Department of Justice puts a firm cap each year on the number of individuals to whom each Division can give performance awards. For career attorneys and staff, every year, each Section in the Civil Rights Division was allotted a pool of bonus money to be divided among the attorneys and staff in the Section. The Assistant Attorney General's Office also had some additional funds that it could use to supplement the money allocated to the Sections. I predicated bonus decisions at all times on the basis of merit and did not consider individuals' race or gender.

8. Please identify the attorneys in the Appellate Section who received performance awards for FY 2005. Please identify the race and gender of each award recipient.

I would refer you to the Department of Justice for this information.

9. How many African American Attorneys worked in the Criminal Section when you joined the Civil Rights Division?

Six

10. WJLA TV recently reported that only 2 of 50 attorneys in the Criminal Section were African Americans. How many African American attorneys worked in the Criminal Section when you left?

Two

11. As Deputy Assistant Attorney General, you controlled hiring for the Criminal Section. How many African American career attorneys did you hire for the Criminal Section during your tenure in the Civil Rights Division? How many African American attorneys left the Criminal Section during the same period?

Hiring for the Criminal Section was handled jointly by then-Deputy Assistant Attorney General Wan Kim, who oversaw the Section, and myself. Attorneys were hired after being judged individually based on a comprehensive review of their academic background, legal and analytical skills, unique life experiences, interest in the work of the Division, and a personal interview.

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During my tenure, in the Criminal Section, two African American attorneys entered on duty and six departed. It is, of course, misleading to focus on any one Section in the Division. More relevant is the fact that, from FY02-FY05, the majority of attorneys hired to work in the Civil Rights Division were minorities or women (41% were women, 27% were minorities). In addition, the Division hired or promoted more minorities to positions of leadership during the first five years of this Administration than during the entire eight-year period of the prior Administration. Further, nearly 10% of the attorneys we hired were African-Americans, which is approximately 2.5 times the percentage of African-Americans lawyers in the general workforce according to a 2004 American Bar Association study.

12. You stated during your testimony before this Committee that you boasted about your hiring of conservatives for career attorney positions in the Civil Rights Division. To whom did you make these boasts?

I do not recall specific individuals to whom I made such a comment.

13. Since it is impermissible to hire on the basis of partisanship or ideology, how did you know that you were hiring conservatives?

The Civil Service Reform Act and corresponding regulations prohibit hiring on the basis of race, color, religion, national origin, marital status, age, handicap condition, or political affiliation. I did not hire on the basis of any of these prohibited factors. In fact, I often stated affirmatively during interviews that I did not care what an individual's political views were.

My focus was on hiring talented lawyers into the Division who had excellent academic backgrounds, respect for the rule of law, and who would not bring a personal agenda to the enforcement activities of the Division. While I employed no litmus test regarding an applicant's position on any particular issue, I did look for individuals who were committed to enforcing the law as Congress wrote it and the courts interpreted it, not how those individuals personally wished the law were written or interpreted.

I had (and have) no idea what the political or ideological leanings of the overwhelming majority of attorneys hired into the Civil Rights Division during my tenure are. I did surmise the views of some, based on conversations. But individuals were not hired because of their political views. And my hiring record demonstrates clearly that

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I hired and promoted individuals with backgrounds across the spectrum.

14. Please list all of your travel during your tenure in the Civil Rights Division, including each location visited and the dates of those visits. Also, please identify any employee of the Department of Justice who accompanied you on any travel.

With respect to international travel, I traveled to Bangkok, Thailand, on November 14, 2003, through November 23, 2003, for a human trafficking conference. I traveled to Tallinn, Estonia, on March 31, 2004, through April 3, 2004, to participate in the International Information Programs and the U.S. Speaker and Specialist Program; I took personal travel on March 27-30. I traveled to Singapore, Malaysia, and Cambodia on December 30, 2004 through January 12, 2005, for the President's Trafficking Initiative. I traveled to New Delhi, India on March 13-22, 2005, for a trafficking assessment for the State Department. I traveled to Bern, Switzerland, and Tokyo, Japan on June 12-26, 2004, for human trafficking meetings and a conference with Swiss and Japanese officials; I took personal travel on June 17 and 18 in Bern and on June 21 in Tokyo. I traveled to Beijing, China, on August 7-12, 2005 to meet with Chinese officials on human rights; I took personal travel on August 11. I traveled to Taipei, Hong Kong, and Manila on November 23, 2005 through December 7, 2005, to meet with officials on human trafficking; I took personal travel on November 26 and 27 in Taipei. I traveled to Dar es Salaam, Tanzania, on January 3-17, 2006 to meet with officials on human trafficking. I was accompanied by T. March Bell, the Civil Rights Division's Senior Special Counsel for Human Trafficking on the trips to Thailand, Estonia, Singapore, Malaysia, Cambodia, India, and Tanzania. I was accompanied by U.S. Parole Commission Commissioner Cranston Mitchell on the trip to China.

Domestically, I traveled to Detroit, Michigan on June 12-13, 2003; to Reno, Nevada on July 9-10, 2003; to San Francisco on July 23-25, 2003; to Baton Rouge, Louisiana on August 12, 2003; to Brooklyn, New York on August 20, 2003; to Columbia, South Carolina on September 2-4, 2003; to St. Louis, Missouri on September 10-11, 2003; to Trenton, New Jersey on January 13, 2004; to New Orleans, Louisiana on March 4-5, 2004; to Philadelphia, Pennsylvania on March 16-17, 2004; to Los Angeles, California, on March 18-19, 2004; to Phoenix, Arizona on March 22-23, 2004; to Philadelphia, Pennsylvania on April 19-20, 2004; to Phoenix, Arizona on April 21-22, 2004; to Denver, Colorado on May 3-4, 2004; to Kansas City, Kansas on May 16-17, 2004; to New Orleans, Louisiana on May 19-21, 2004; to Tampa, Florida on June 8-9, 2004; to Jackson,

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Mississippi on July 1-2, 2004; to Tampa, Florida on July 15-17, 2004; to Boston, Massachusetts on August 5-6, 2004; to Houston, Texas on August 12-13, 2004; to Albuquerque, New Mexico on August 15-19, 2004; to New York, New York on August 22-23, 2004; to Fort Lauderdale, Florida on August 30 through September 1, 2004; to Lancaster, Pennsylvania on September 18-19, 2004; to Hartford, Connecticut on September 22, 2004; to Albuquerque, New Mexico on September 26-30, 2004; to Los Angeles, California on October 3-4, 2004; to San Diego, California on December 4-7, 2004; to Cincinnati, Ohio on December 13-14, 2004; to Cincinnati, Ohio on February 24-25, 2005; to Cincinnati, Ohio on March 10, 2005; to New Orleans, Louisiana on April 7-9, 2005; to Albuquerque, New Mexico on April 12-15, 2005; to New York, New York on April 18, 2005; to Boston, Massachusetts on May 5-6, 2005; to San Francisco on July 1-2, 2005; to New Orleans, Louisiana on July 11-13, 2005; to Williamsburg, Virginia on September 18-19, 2005; to Phoenix, Arizona on September 25-27, 2005; to Detroit, Michigan on November 3, 2005; to Wichita, Kansas on January 22-24, 2006; to San Francisco, California on February 12-14, 2006; and to Kansas City, Missouri on March 20-23, 2006. I traveled with an array of different Civil Rights Division and other Department of Justice officials during these trips.

15. You testified that you did not know Michael Thielen, the head of the Republican National Lawyers Association. Did you ever receive resumes that came to you from Mr. Thielen, either directly or through Hans Van Spakovsky or others?

I do not know the original source of all resumes recommended to me by Mr. von Spakovsky. I would add that all attorneys were ultimately judged individually based on a comprehensive review of their academic background, legal and analytical skills, unique life experiences, interest in the work of the Division, and a personal interview.

16. The Committee has been told that you devised a recruitment and referral program through which you asked people outside the Division to identify and refer conservative and/or republican lawyers to you to interview for career positions in the Division. Did you ever ask anyone to identify conservative or Republican lawyers for the Division? Please identify those individuals.

During my nearly three years in the Civil Rights Division, I occasionally mentioned to friends and acquaintances that the Civil

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Rights Division had attorney vacancies, and I suggested that these individuals encourage attorneys who they knew and thought highly of to apply to the Division. Of course, all applicants to sections that I supervised were interviewed by both a career section chief and me. Moreover, all applicants were judged individually based on a comprehensive review of their academic background, legal and analytical skills, unique life experiences, interest in the work of the Division, and a personal interview.

17. Was any lawyer referred to you because he or she was a conservative or a Republican?

I do not know exactly what motivated the individuals who referred attorneys for potential employment in the Civil Rights Division. I would hope that attorneys were recommended at least primarily because they were thought to be bright lawyers with outstanding legal skills who were interested in the work of the Division. I might add that, regardless of why any attorney was encouraged to apply, he/she was judged by the career section chief and Deputy Assistant Attorney General on an individual basis based on a comprehensive review of the attorney's academic background, legal and analytical skills, unique life experiences, interest in the work of the Division, and a personal interview.

18. Ty Clevenger has stated that his name and resume were forwarded to you by Michael Thielen in 2005. You initiated contact with Mr. Clevenger by calling him. You directed him to sanitize his resume by removing references to the Republican National Lawyer's Association and the Federalist Society. According to Mr. Clevenger, you directed him to a website where there was a posted vacancy announcement and told him to submit his sanitized resume. Do you dispute any of these facts?

I do not remember how Mr. Clevenger's resume came to my attention nor do I remember any specific conversations with him. (As I stated at the hearing, I do not know Michael Thielen and have no recollection of getting resumes from him.) I can only describe my general practice in this area.

On occasion, I would receive from some third party what was obviously a political resume of an individual potentially interested in employment in the Civil Rights Division. (It is my experience that many attorneys in Washington have both a political and a non-political resume, tailored for the type of job they are seeking.) If I was impressed with the individual's credentials, either I or a counsel

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might call him/her and inquire as to his/her interest. If the individual was seeking a political position in the Division, I might refer the resume on to the White House liaison. If the individual was seeking a career position, I would encourage him/her to remove overtly political references from the resume and formally submit the resume to the Division's internet application website. I made this suggestion because political affiliations had no relevance in the selection of career attorneys.

Of course, all applicants were ultimately judged individually based on a comprehensive review of their academic background, legal and analytical skills, unique life experiences, interest in the work of the Division, and a personal interview with both the career section chief and the Deputy Assistant Attorney General.

Incidentally, the resume Mr. Clevenger formally submitted to the Civil Rights Division did reflect his membership in the Federalist Society.

19. Were other attorneys referred to you in a similar way? Which of them did you contact before they applied through official channels? Which of them did you direct to sanitize their resumes?

As I noted at the hearing, I believe the kind of situation described in question 18 occurred on a handful of occasions during my nearly three-year tenure in the Civil Rights Division. I do not recall the names of any specific applicants to whom I gave such guidance.

20. Please produce every e-mail related in any way to the hiring of these attorneys.

I no longer have access to e-mails from my tenure in the Civil Rights Division.

21. In the second week of April 2005, you and Hans Van Spakovsky interviewed a candidate for a career attorney position who was referred to you because of his membership in the Republican National Lawyer's Association and the Federalist Society. During that interview, which took place in your office, did you complain that too many attorneys in the Voting Section were liberals or Democrats? Did you boast that since taking power away from Voting Section Chief Joe Rich in 2003, you had already hired eight conservative Republicans as career trial attorneys to make the Voting Section more balanced?

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I do not recall the details of an interview from more than twenty-eight months ago. However, I do not see how I possibly could have made such a comment in April 2005 because, at that time in my tenure, I had only interviewed and hired approximately two candidates for positions in the Voting Section.

22. You testified that as U.S. Attorney, before seeking indictments against four defendants for voter fraud, you called Michael Elston. When you called Mr. Elston, had you or your office already had contact with the Public Integrity Section regarding the indictments? If so, please describe that contact.

I did not contact Mr. Elston; he phoned me, presumably after receiving the standard report that is prepared and distributed to the Department's leadership prior to the indictment of any election-related crime. The Public Integrity Section had been consulted about the case prior to my office's contact with Mr. Elston.

23. Did you call Mr. Elston because you were dissatisfied with your contacts with the Public Integrity Section?

I did not call Mr. Elston nor was I dissatisfied with the advice provided by the Public Integrity Section.

24. Did Mr. Elston play a role in obtaining approval for you to seek the indictments? Please describe all of your contacts with Mr. Elston regarding the indictments.

I do not know exactly what role Mr. Elston played. My office (i.e., the U.S. Attorney's Office) received a call from Mr. Elston a day or two before the indictments advising us that we should await word from him before presenting to the grand jury. On the morning the indictments were returned, Mr. Elston phoned to say that the Deputy Attorney General's Office had no objection to us going forward.

25. With whom did Mr. Elston discuss the indictments?

I do not know.

26. Please provide all documents reflecting any communication with Mr. Elston regarding the indictments.

I am not in a position to provide intradepartmental correspondence.

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27. Please provide all documents reflecting your communication or your office's communication with the Public Integrity Section or any other component of the Department of Justice related to the indictments.

I am not in a position to provide intradepartmental correspondence.

28. Please explain in detail the circumstances that led you to indict the wrong person.

Following the indictment of Stephanie Davis, law enforcement authorities learned that she was the victim of identity theft. As a result, the charges against Ms. Davis were dropped, and the individual actually responsible for committing the crimes was charged with both voter registration fraud and identity theft.

29. Please describe the full extent of your reading of employees' e-mails at any time during your tenure in the Civil Rights Division. Provide the names of employees whose e-mail you read.

In August 2005, shortly after the Civil Rights Division had filed a lawsuit against the City of Boston pursuant to Sections 2 and 203 of the Voting Rights Act, we learned of an unethical communication from former Voting Section attorney David Becker. In particular, one of the city's lawyers advised a Voting Section attorney assigned to the case that Becker had e-mailed the city on April 20, 2005, while he was still employed by the Division, and criticized the merits of the case. (Becker left the Civil Rights Division on April 30, 2005.) In that e-mail, Becker also noted that he soon would be leaving the Justice Department and offered to serve as a consultant on the case for the city.

One of the Voting Section attorneys assigned to the case requested that the city turn over the April 2005 e-mail it had received from Becker, and the city's lawyer agreed to do so. Once we received this e-mail from the city, I made a referral to the Office of Professional Responsibility (OPR). I discussed with OPR the possibility that there might be additional unethical correspondence between Mr. Becker and the city. OPR suggested that the Division's front office review Mr. Becker's e-mails because we would be in a better position to identify relevant communications.

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During the course of the review of Mr. Becker's e-mails, I came across an e-mail from a then-current employee, Toby Moore, to Mr. Becker, who had, at that point, already left the Division, that appeared to divulge privileged client information. I alerted OPR of the finding and made a referral on Mr. Moore. I discussed with OPR the possibility that there might be additional inappropriate e-mails from Mr. Moore. OPR then suggested, as it had done with Mr. Becker, that the Civil Rights Division front office review Mr. Moore's e-mails because we would be in a better position to identify relevant communications.

30. Did you read Toby Moore's e-mails before or after you filed an OPR complaint against him? Did you read the e-mails of other employees? How many employees? How many e-mails?

See Response to Question 29.

31. Did you ever discuss your hiring practices with Kyle Sampson, Monica Goodling or Michael Elston? Did you ever discuss hiring conservatives or Republicans with them?

I do not recall any such discussions.

32. While you were in the Civil Rights Division, were any Division requests to interview Honors Program or Summer Law Intern Program candidates rejected by the Deputy Attorney General's office?

I am not aware of any such rejections.

33. While you were U.S. Attorney, did you clear proposed hires through the Executive Office of U.S. Attorneys? If so, were any rejected?

I was required, as an interim U.S. Attorney, to secure approval from the Executive Office for U.S. Attorneys (EOUSA) to fill vacancies for certain positions, including Assistant U.S. Attorneys. My requests to fill the vacancies were approved.

34. How many cases pursuant to section 2 of the Voting Rights Act alleging discrimination on the basis of race against African Americans were filed while you were DAAG or Acting Assistant Attorney General for Civil Rights?

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No new cases were filed in court, although a number of Section 2 cases were being actively investigated and litigated during my tenure. They include:

- *United States v. Charleston County, S.C.: Although the case was filed in district court prior to my arrival, during my tenure the Voting Section actively litigated the case, which challenged the at-large method of electing members of the Charleston County (S.C.) Commission. The case alleged that the at-large method diluted the voting strength of African American voters. It was during my tenure that the Division litigated the case before the U.S. Court of Appeals for the Fourth Circuit and the U.S. Supreme Court.*

- *United States v. City of Euclid, Ohio: This case was actively investigated during my tenure in the Division and I, in fact, personally authorized the filing of the lawsuit against the city. A letter was sent to the city during my tenure advising them of this authorization and inviting settlement negotiations. The investigation revolved around the Division's concerns that the city's mixed at-large/ward system of electing the city council diluted the voting strength of African-American citizens. During our investigation, we discovered that although African-Americans comprised nearly 30% of Euclid's electorate, and despite there being eight recent African-American candidates for city council, not a single one had ever been elected to that body. As is common in Section 2 cases, settlement negotiations between the Department and the city dragged on for many months, and the Division, after I had left, eventually was forced to file suit against the city.*

- *United States v. Noxubee County, Miss.: Although the Section 2 claim in this case alleged that the practices of Noxubee County officials discriminated against white voters, African-American voters were also victims in the case. Indeed, the suit also alleged that Noxubee County officials coerced, threatened, and intimidated both white and African-American voters in violation of Section 11(b) of the Voting Rights Act.*

- *I would also note that during my tenure, the Division authorized two vote dilution actions on behalf of African-Americans under Section 2 of the Voting Rights Act, but ultimately those suits were not filed because African-American candidates were elected to offices in those jurisdictions.*

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I think it is important to add that, during my tenure, the Voting Section also filed numerous other race-based cases pursuant to Section 2 of the Voting Rights Act. They include:

- *United States v. Osceola County, Fla.: This case challenged the at-large system for electing the county's Board of Commissioners under Section 2 of the Voting Rights Act, alleging that the system unlawfully diluted the votes of Hispanic voters and that it had been adopted and maintained with a discriminatory purpose. Although Hispanics comprise more than one-third of the county's electorate, the county had never elected a Hispanic candidate to the Board under the at-large system or to any county-wide office.*

- *United States v. City of Boston: This case alleged that the City's election practices and procedures discriminate against citizens of Spanish, Chinese, and Vietnamese heritage, so as to deny and abridge their right to vote in violation of Section 2 of the Voting Rights Act. The Section 2 cause of action alleged, inter alia, that the city treated English-proficient Hispanic and Asian-American voters disrespectfully; and improperly influenced, coerced, or ignored the individuals' ballot choices. The lawsuit also included Section 203 claims on behalf of the aforementioned Hispanic voters.*

- *United States v. Long County, Ga.: This suit under Section 2 of the Voting Rights Act alleged that Long County officials required Hispanic residents whose right to vote had been challenged on the grounds that they were not U.S. citizens to attend a hearing and prove their citizenship, even though there was no evidence calling into question their citizenship and even though similarly situated non-Hispanics were not required to do so. According to the complaint, the defendants' conduct had the effect of denying Hispanic voters an equal opportunity to participate in the political process and to elect candidates of their choice.*

- *United States v. Village of Port Chester, N.Y.: This lawsuit was authorized during my tenure even though it was not filed until I after I had left the Division. The case alleged that Port Chester's at-large system of electing its governing board of trustees dilutes the voting strength of the Village's Hispanic citizens, in violation of Section 2 of the Voting Rights Act.*

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35. How many such cases alleging discrimination against whites were filed during the same period?

> ***One. That case, filed in February 2005 against officials in Noxbuee County, Mississippi, alleged that the practices of local election and party officials discriminated against white voters in violation of Section 2 of the Voting Rights Act. White voters, however, were not the only victims in the case. The suit also alleged that Noxubee County officials coerced, threatened, and intimidated both white and African-American voters in violation of Section 11(b) of the Voting Rights Act.***

36. In response to a question about politically-biased hiring, you testified, "I knew that there was a vetting process up in the Attorney General's office." How did you learn about this "vetting process"? Did you voice any concerns or file any complaints once you "knew" that biased hiring was going on? If you did, please provide some documentation. If not, why not?

> ***I was advised of the vetting process by the Executive Office for U.S. Attorneys. While I had suspicions about the process based on rumors, I did not voice any concerns because I had no definitive awareness that improper hiring was occurring.***

37. A recent article in the *National Journal* reports that members of the Bush-Cheney campaign were concerned about Mr. Graves' handling of voter fraud issues in the run-up to the 2004 election. Mark "Thor" Hearne, then national election counsel for the campaign and subsequently founder of the now-defunct voter-fraud "watchdog group" American Center for Voting Rights, was concerned that Mr. Graves "was not taking seriously allegations that ACORN workers were registering people who did not qualify to vote." He then "took his complaints to senior officials in Justice's Civil Rights Division and to the White House." You were at that time a senior official in the Civil Rights Division and oversaw the voting section. Were you one of the officials Mr. Hearne contacted? Were you aware of his contacts with any other officials in the Division? What action did you and your colleagues take in response?

> ***Mr. Hearne did not contact me personally regarding any complaints. I recall that he sent a complaint regarding allegations of voting fraud in Missouri to the Civil Rights Division, and that document was shown to me by the Division's voting counsel. I think that the letter was then forwarded by the voting counsel to the Criminal Division's Public Integrity Section, which is responsible for coordinating investigations of election crimes.***

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38. The *National Journal* also reported that "Hearne boasted" of "having discussions with administration officials who wanted Graves replaced." Were you one of those officials who, in the run-up to the 2004 election, wanted Mr. Graves replaced? Were you aware of any other officials who took that position? Who?

> ***Mr. Hearne did not contact me regarding Mr. Graves. Prior to the recent press reports, I was not aware of anyone seeking Mr. Graves' ouster as U.S. Attorney.***

39. In the run-up to the 2004 election, then-U.S. Attorney for the District of Minnesota, Thomas Heffelfinger, reported allegations that the secretary of state had issued voter ID regulations that discriminated against Native Americans. Joseph Rich, then chief of the Voting Section, suggested that you quashed any investigation of these allegations. You testified, however, that you and your voting counsel Hans von Spakovsky ordered Mr. Rich "to go ahead and contact the chief election official, which is the secretary of the state. If there was information there that proved valuable, then any investigation could be followed up." If the secretary of state did not provide valuable information, the investigation would be halted. Please explain why you gave orders that would allow the target of the investigation to bring it to a halt just by refusing to cooperate.

> ***The natural starting point for investigating allegations related to the Secretary of State's interpretation of a state statute would be to contact the Secretary of State and determine if the regulations at issue were being interpreted in a way that discriminated against a particular class of individuals. In my experience, there are often misunderstandings in this area that can easily be cleared up with a phone call. Although I do not know the results of any communications the Voting Section had with Minnesota officials in the Fall of 2004, there is no basis for suggesting that the investigation would have to be halted if the Minnesota Secretary of State did not provide us with the type of information necessary to fairly evaluate the allegation and analyze the applicable law. To the contrary, if the Secretary of State's information proved unhelpful or if she simply refused to fully cooperate, additional investigation could (and should) have been conducted. In short, I did not halt any investigation.***

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Written Questions for Bradley J. Schlozman
Submitted by Chairman Patrick Leahy and Senator Edward M. Kennedy
June 14, 2007

Please provide the following documents, including documents stored electronically, to the Committee:

1. Any and all documents you reviewed in preparation for your June 5, 2007, testimony before the Committee.

   I reviewed all the documents that are publicly posted on the Civil Rights Division's website. See http://www.usdoj.gov/crt/crt-home.html. I also reviewed the responses to the "Questions for the Record" submitted by: Assistant Attorney General Kim following his Senate Judiciary Committee oversight hearing on November 16, 2006; Attorney General Gonzales following his House Judiciary Committee oversight hearing on April 6, 2006, his Senate Judiciary Committee oversight hearing on July 18, 2006, and his Senate Judiciary Committee oversight hearing on January 18, 2007; and Deputy Attorney General McNulty following his Senate Judiciary Committee hearing on February 9, 2006, and his House Judiciary Committee hearing on February 9, 2007. I further reviewed the Office of Professional Responsibility documents, which were previously turned over to this Committee following my testimony. I also reviewed the e-mail correspondence between the U.S. Attorney's Office and the Public Integrity Section, regarding the November 2006 ACORN voter registration fraud prosecutions. I additionally reviewed certain e-mails provided to me by the Civil Rights Division and I reviewed the resumes of individuals hired during my tenure, all of which have already been disclosed to this Committee pursuant to a prior Committee document request submitted to Assistant Attorney General Kim.

2. Any and all documents consisting of or regarding communications between you or anyone in the Western District of Missouri U.S. Attorney's Office with the Election Crimes Branch of the Public Integrity Section, the Office of the Deputy Attorney General, any other Justice Department office or official, any White House office or official, or any third party related to the decision to file criminal charges against four individuals on November 1, 2006, for filing false voter registration applications.

   I am not in a position to release intradepartmental correspondence.

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3. Any and all documents related to the potential or actual hiring, dismissal, transfer, or discipline of an employee by you, under your supervision, or with your knowledge, as well as any documents relating to assignments of cases or other matters, performance awards and performance evaluations by you, under your supervision, or with your knowledge, including, but not limited to, any screening of potential hires for career positions at the Department of Justice for political allegiance, or related to any consideration in hiring decisions for career positions at the Department of Justice of applicants' political party affiliation, ideology, membership in a nonprofit organization or loyalty to the President.

I do not have access to personnel records or electronic documents from my time in the Civil Rights Division or U.S. Attorney's Office. I would add that the Inspector General and the Office of Professional Responsibility are investigating the Department's personnel practices.

4. Any and all documents, with the exception of court filings, related to enforcement by you or under your supervision of any law related to voting.

I do not have access these to these documents inasmuch as I have been gone from the Civil Rights Division for nearly eighteen months.

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Written Questions for Bradley J. Schlozman
Submitted by Chairman Patrick Leahy
June 14, 2007

1. Mr. Schlozman, when you were Acting Assistant Attorney general in charge of the Civil Rights Division in 2005, you authorized a National Voter Registration Act suit against the State of Missouri and Missouri Secretary of State Robin Carnahan, a Democrat, accusing the state of failing to eliminate ineligible people from lists of registered voters. The Department filed this suit over the reservations of then-U.S. Attorney for the Western District of Missouri Todd Graves that the case lacked merit. After Mr. Graves' dismissal several months later, the Attorney General appointed you to replace him as interim U.S. Attorney and you prosecuted this case that you had approved as Acting Assistant Attorney General.

   A. Did Mr. Graves' reservations about filing this suit to purge the voter rolls play any role in his dismissal or your replacement of him as U.S. Attorney?

      I have no idea why Mr. Graves was dismissed. Nor do I have any reason to believe that this case had anything whatsoever to do with my appointment.

   B. Did Mr. Graves' record on pursuing voter fraud allegations generally play a role?

      I have no idea why Mr. Graves was dismissed.

2. Two months ago, U.S. District Court Judge Nanette K. Laughrey tossed out this suit, concluding, "It is ... telling that the United States has not shown that any Missouri resident was denied his or her right to vote as a result of deficiencies alleged by the United States. Nor has the United States shown that any voter fraud has occurred." Yet, inexplicably you have testified that "the suit did not allege fraud nor was fraud relevant in any way to the case."

   A. Increased voter participation and elimination of fraud were the primary goals of Congress when it mandated that the States make reasonable efforts to maintain accurate voter registration lists. The absence of evidence of fraud or voter suppression during the relevant time period weighs heavily in favor of a finding that the Defendants' efforts have been reasonable. How can you maintain even after the court's decision that voter fraud is irrelevant to the case?

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B. Why did you authorize and then prosecute this case if you did not have evidence that out-dated registration roles led to ineligible voters at the polling place?

[Responding both to parts A and B] The lawsuit filed by the United States against the State of Missouri actually involved two separate claims. First, the lawsuit alleged that the State had failed to assure that registered voters would be notified, as required by the NVRA, prior to their removal from the poll lists. The State's failures in this regard were very serious: in one county alone, some 40 percent of the registered voters were removed from the active voter list without the notification required by the NVRA. Second, the lawsuit alleged that the State had failed to maintain a reasonable voter registration list maintenance system. Again, the State's failures were very serious, with some county voter lists containing more names than the entire population of the county.

To get more specific, consider that the data provided by the State of Missouri showed that 12 counties had dropped more than 20% -- and in one county, as noted above, a staggering 40% -- of their registered voters from active registration in a single nine-month period. These numbers strongly suggested improper removals. Moreover, in interviews with Justice Department attorneys, Missouri county clerks admitted that they were removing or suspending voters from the roles in ways that contravened the NVRA. One county clerk, for example, said that his office had suspended over 10,000 registrants merely on the ground that they had not voted in past elections, a decision which violates Sections 8(b)(2) and (d) of the NVRA. This same clerk told one of the Department's attorneys that he then allowed the removed voters to vote, but only if they produced identification; this demand for identification is not supported by the law. Meanwhile, clerks in other counties conceded that they had removed voters from the roles without sending those voters the formal notifications required by the NVRA. And still other county clerks admitted removing voters from the roles for failing to vote, or on the word of an election judge, or after a personal visit to a home, none of which is a sufficient basis under federal law.

It is the position of the United States that it is not necessary to prove actual fraud or, for that matter, the actual denial of the right to vote for any specific individual who was removed from the active voter list in violation of the NVRA. The Act sets forth practices and procedures by which States are required to maintain accurate and current voter registration rolls so as to avoid both improper removals and the listing of persons ineligible to vote.

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The core issue in the case was whether the responsibility for compliance could be delegated by the State to its subdivisions, thereby allowing the State to disperse and avoid responsibility for the command of Congress that "the State shall" undertake the responsibilities of the NVRA. This is an important issue. Across the United States, individual states have as many as 1,800 subdivisions responsible for voter registration. If upheld on appeal, the position of the trial court would cripple enforcement of the NVRA, and undermine Congress' laudable purposes in enacting the statute. Incidentally, the United States' appellate brief, recently filed in the U.S. Court of Appeals for the 8th Circuit, can be found at: http://www.usdoj.gov/crt/briefs/missouri.pdf

3. Section 7 of the National Voter Registration Act (NVRA) requires state-funded public assistance agencies to provide voter registration services as well as offer assistance in completing all necessary registration forms. However, according to a report by the NVRA Registration Project, voter applications at public assistance agencies have declined significantly, from 2.5 million applicants from 1995-1996, to just over a million in 2003-2004—a nationwide drop of over 59 percent. What have you done as a U.S. Attorney or in your former role in the Civil Rights Division to enforce Section 7 of NVRA?

The Department did receive a report noting the sharp decline in voter registration applications submitted at state public assistance agencies. Respectfully, however, the statistics cited in the report you identify do not demonstrate widespread non-compliance by states with Section 7 of the NVRA. Indeed, a preliminary analysis indicated that over the same period, there had been an even sharper decline in beneficiary caseloads of one of the largest federal public assistance programs, AFDC/TANF, subsequent to Congress' welfare reform legislation. With far fewer persons participating in this major public program, one would expect that fewer voter registration transactions would be generated.

Civil Rights Division personnel did meet with representatives of the groups that produced the referenced report and invited them to provide specific information of specific agency violations in particular states. The Division also noted and encouraged the groups' success in working cooperatively with states to obtain voluntary compliance improvements.

I would add that the Department has vigorously enforced all of the NVRA's provisions, with the largest number of enforcement cases filed under the statute since the initial round of litigation after the Act became effective. In fact, during my own tenure in the Civil Rights Division, we filed a Section 7 case, United States v. State of New York (N.D.N.Y. 2004), alleging that the State of New York was violating the NVRA by failing to

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offer voter registration opportunities at those offices serving students with disabilities at the state's public universities and colleges, which the statute requires. (Incidentally, I also recall that in 2002, shortly before my arrival, the Division had filed suit against the State of Tennessee alleging that the State violated the NVRA by failing to implement voter registration opportunities in state public assistance offices and by failing to ensure that driver's license applications, including renewal applications, also serve as voter registration applications.)

During my tenure, based on my recollection, the Division also sent warning letters on at least two occasions to states or counties regarding possible violations of the NVRA, including Section 7, and worked effectively to bring those jurisdictions into compliance. The Division likewise devoted considerable time working with the Election Assistance Commission on NVRA issues, including work on the national voter registration form and the NVRA state survey. In addition, the Division frequently reached out to state and local election officials, and we made speakers available upon request to discuss the requirements of the NVRA so as to encourage voluntary compliance.

4. During the time the lawsuit was being authorized, filed and prosecuted, Missouri was considering passage of a restrictive voter ID law that it did eventually pass. Press reports have suggested that there was guidance from the White House or the Department to try to get this bill passed.

   A. Did you or anyone else at the Department or White House have contact with proponents of voter ID in Missouri while that legislation was pending?

      I do not recall discussing the proposed voter ID law in Missouri with any of its proponents while the legislation was pending. I have no knowledge of contacts by anyone else at the Department or White House regarding this legislation.

   B. Was this lawsuit used or intended to be used as evidence to support passage of the Missouri voter identification law?

      I certainly did not use it, nor did I intend for it to be used, for any purpose other than addressing the State of Missouri's alleged non-compliance with the requirements of the NVRA.

5. On November 2, 2006, the day after you brought indictments for filing false voter registration forms on the eve of the election, you were quoted in the Kansas City

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Star newspaper referring to the indictments by saying: "the national investigation is very much ongoing."

A. Is this "national investigation" still ongoing?

I no longer have any role whatsoever in the supervision of election crime prosecutions, so I am not in a position to know whether any investigations are ongoing or not.

B. Where else was this investigation going on?

See answer to 5.A.

C. How many convictions have resulted from it?

See answer to 5.A.

D. What evidence that ineligible voters were going to the polls was there to form the basis for a "national investigation?"

See answer to 5.A.

6. Before you issued the press statement on November 2, 2006, did you give any consideration to what effect it would have on the election or whether, in doing so, you might "cause the investigation itself to become a campaign issue" as warned about in the Justice Departments' guidebook on "Federal Prosecution of Election Offenses"? How did you resolve this apparent conflict between your bringing of the indictments and then issuing a press release and the policy set forth in the guidebook?

As I noted at the hearing, I did not think these indictments would have any effect on the upcoming election nor do I think they did. Further, based on my office's consultation with, and the suggestions of, the leadership of the Public Integrity Section's Elections Crimes Branch, I thought it appropriate to go forward with the voter registration fraud indictments and allow the United States Attorney's Office press officer to respond to press inquires in the manner he did. Incidentally, the United States Attorney's Office did not issue any press release on this case; the district's press officer did, however, respond to media inquiries.

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7. Recently, the *New York Times* had two front page stories reporting that there is actually scant evidence of voter fraud despite the current Justice Department's intense focus on prosecutions this crime. Indeed, these articles describe how the Justice Department's inability to demonstrate any organized efforts to skew federal elections led to a politically-motivated effort to alter the draft of an Election Assistance Commission report because it found that little voter fraud existed around the nation. Why has the Justice Department prioritized the prosecution of individual cases of "voter fraud" when there is scant evidence that this crime is being committed or that there is any conspiracy to thwart or alter an election? What evidence is there of an organized effort to *change federal elections* by fraudulent voting?

I have no role in setting any Departmental priorities or policies on prosecuting election-related crimes.

8. According to the Justice Departments' guidebook on "Federal Prosecution of Election Offenses", "Criminal prosecution is appropriate only when the facts demonstrate that the *defendant's objective was to corrupt* the process by which voters were registered, or by which ballots were obtained, cast, or counted." With regards to the indictments you filed on November 1, 2006 alleging the filing of false voter registration applications, what specific evidence did you have of an objective to corrupt that demanded that you go against the weight of the evidence and decades old Justice Department policy?

Pursuant to Section 9-85.210 of the U.S. Attorney's Manual, my office consulted with the Elections Crimes Branch of the Public Integrity Section before bringing the voter registration fraud indictments. The leadership of that section advised that the indictments were appropriate under Justice Department policy. All four defendants charged in the case have since pleaded guilty. As far as policy shifts, I have no role in establishing Departmental policies in this area.

9. The Justice Department's guidebook on "Federal Prosecution of Election Offenses" clearly states that "voters should not be interviewed or other voter-related investigation done, until the election is over. Such overt investigative steps might chill legitimate voting activities." You testified that the filing of the November 1, 2006, indictments was not a violation of the guidebook's policy because no voters were interviewed. Are you saying that you didn't conduct any investigation before you filed the indictments? If so, do you normally indict cases without doing any investigation before you file an indictment?

The local FBI office conducted an investigation and presented the evidence it found to a grand jury. Significant evidence was also obtained from both ACORN and the Kansas City Board of Election Commissioners, each of which were extremely cooperative with the investigation. In this case there

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were no voters to be interviewed, as the registration forms that underlay the charges were fakes.

10. You brought the November 1, 2006, indictments just days before the election and targeted individuals who submitted registration forms weeks before. Your rush to indict them was so hurried that one of the four people you indicted turned out to be the wrong person. On November 1, 2006, your office charged Stephanie Davis with causing a false registration form to be submitted. Later, your office dismissed the charges against Stephanie Davis, and filed charges against Carmen Davis.

    A. Was Stephanie Davis erroneously indicted by your office?

    Following Ms. Davis' indictment, law enforcement authorities learned that she was the victim of identity theft. As a result, the charges against Ms. Davis were dropped, and the individual actually responsible for committing the crimes was charged with both voter registration fraud and identity theft. That individual has pleaded guilty.

    B. Did you interview her or conduct any sort of investigation before indicting her?

    There was an investigation that preceded the indictment.

11. During your June 5 appearance, you testified at least nine times that you filed the criminal charges against four individuals on November 1, 2006—on the eve of a national election- "at the direction of" of Craig Donsanto in the Election Crimes Branch of the Department's Public Integrity Section. In a June 11 letter you reversed this testimony, telling the Committee that you were, in fact, not directed to do so by the Election Crimes Branch. Rather, you directed the Assistant U.S. Attorney working on the case to consult with that branch.

    A. Please describe any contacts or communications between your office and the Election Crimes Branch of the Public Integrity Section, including Mr. Donsanto. Please include the date or dates of any contacts, who was involved, and what was communicated to or from you or anyone in your office regarding these matters.

    At my direction and consistent with the Justice Department's Election Crimes Manual, almost immediately after receiving allegations of voter registration irregularities in Kansas City during the first week of October 2006, the Assistant U.S. Attorney assigned to the case

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contacted Mr. Donsanto in the Public Integrity Section's Election Crimes Branch. She discussed with him both the substance and timing of the indictments.

B. What advice or guidance did Mr. Donsanto give to you or anyone in your office regarding the timing of filing the indictments and in what form was this advice or guidance communicated?

Mr. Donsanto stated to the Assistant U.S. Attorney assigned to the case that, if the office had an indictable case, his recommendation would be to indict right away.

C. To your knowledge, did anyone else in the Department of Justice or the White House speak with Mr. Donsanto or anyone else in the Election Crimes Branch about this case or these indictments, including about the timing of filing the charges? If so, who, and on what date or dates, and in what form?

I have no knowledge of any such contacts.

12. You testified that you spoke with Michael Elston, the Deputy Attorney General's Chief of Staff, regarding the investigation that led to the indictments of these four individuals on November 1, 2006.

A. On what dates did you speak with Mr. Elston regarding this matter?

I believe I spoke with him on October 31 and November 1, 2006.

B. Why did you contact Mr. Elston regarding this matter?

I did not contact Mr. Elston; he phoned me.

C. What did you communicate to Mr. Elston regarding this matter and what did he communicate to you?

I described the nature of the investigation and my office's communications with the Public Integrity Section's Election Crimes Branch.

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D. To your knowledge, what action did Mr. Elston take regarding this matter after speaking to you?

I do not know what specific actions Mr. Elston took.

E. Did you speak with Michael Elston regarding any other indictments filed while you were U.S. Attorney for the Western District of Missouri? If so, which indictments?

Mr. Elston, who is a former federal prosecutor and appellate chief in the U.S. Attorney's Office for the Eastern District of Virginia, and I are personal friends and we spoke about various cases from time to time. I am certain that, given his position as chief of staff to the Deputy Attorney General, Mr. Elston spoke with many U.S. Attorneys about their cases and other matters affecting U.S. Attorneys' Offices.

13. Did you or anybody from your office speak to or otherwise communicate with anyone in the White House regarding the investigation that led to the indictments of these four individuals on November 1, 2006. If so, whom, on what date or dates, in what form, and what was communicated?

I did not speak with anyone in the White House regarding this case, nor am I aware of anyone else speaking with the White House regarding the case.

14. Did you or anybody from your office speak to or otherwise communicate with anyone in the Department of Justice other than Michael Elston and Craig Donsanto regarding the investigation that led to the indictments of these four individuals on November 1, 2006. If so, whom, on what date or dates, in what form, and what was communicated?

As is quite common, the Assistant U.S. Attorney assigned to the case consulted with appropriate investigators and other Justice Department prosecutors, including representatives of the Public Integrity Section who have experience prosecuting such cases so as to gain from their insight and expertise.

15. Did you or anybody from your office speak to or otherwise communicate with any third party regarding the investigation that led to the indictments of these four individuals on November 1, 2006. If so, whom, on what date or dates, in what form, and what was communicated?

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I am not aware of any communications with third parties other than the complainants, i.e., ACORN and the Kansas City Board of Election Commissioners.

16. I understand that career hires made by interim or acting U.S. Attorneys must be approved by the Executive Office for U.S. Attorneys and that any supervisory hires in those offices involve interviews by Department officials in Washington. This is contrary to the practice for Senate-confirmed U.S. Attorneys, who do not need approval from Washington.

    A. When you were interim U.S. Attorney for the Western District of Missouri, were you denied approval for any of your proposed career hires?

    No.

    B. Was Monica Goodling involved in interviewing or reviewing career hires of Assistant U.S. Attorneys or for other positions while you were interim U.S. Attorney? How was she involved?

    During my tenure as interim U.S. Attorney, I had no personal knowledge of Ms. Goodling being involved in actually interviewing applicants for career Assistant U.S. Attorney (AUSA) positions. I was aware that Ms. Goodling generally had to approve interim U.S. Attorneys' authority to fill vacant AUSA positions and other sensitive slots.

17. When considering, recommending or approving candidates for appointment to career positions at the Department, did you ever consider applicants' political party affiliation, ideology, membership in a nonprofit organization or loyalty to the President, or otherwise screen potential career hires for political allegiance? If so, please provide details. Are you aware of whether others at the Department considered those factors in making decision regarding career hires? If so, whom?

    During my tenure, all candidates for career attorney employment were judged individually based on a comprehensive review of their academic background, legal and analytical skills, unique life experiences, interest in the work of the Department, and a personal interview. Applicants were not hired based on their political party affiliation, membership in a nonprofit organization, or loyalty to the President.

    With respect to ideology, I did not employ any sort of ideological litmus test. I sought instead to hire individuals who would vigorously enforce the laws under the Civil Rights Division's jurisdiction, irrespective of their own

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political or ideological views. Of course, to the extent an applicant expressed a strong interest, or had a particularly developed background, in one of the Division's enforcement priorities – e.g., religious liberties, human trafficking, minority language issues, institutional reform, etc. – I considered that to be a positive.

As I noted at the hearing, I had heard rumors that Ms. Goodling considered political affiliation in approving hiring decisions for career positions. I also knew that, although the decision to authorize the hiring of AUSAs by interim U.S. Attorneys was technically vested in EOUSA, Ms. Goodling exercised great control in this area. Knowing this, and in order to maximize the chances of obtaining authority to hire an additional AUSA, I recall once noting the likely political leanings of several applicants in response to a query from EOUSA about the candidates being considered for the position. However, none of the individuals I referenced was hired, nor do I believe they were even interviewed. Indeed, I adopted an apolitical hiring process in which I completely turned over the process (i.e., selecting candidates to be interviewed, interviewing candidates, and recommending a candidate to be hired) to a hiring panel consisting of three veteran career prosecutors in my office – the First Assistant U.S. Attorney, the Senior Litigation Counsel, and a Supervisory Assistant U.S. Attorney. I had no role in the selection of candidates to be interviewed nor did I participate in the interviews; all of that was done by the three career prosecutors. The only thing I did was to formally make an offer to the candidate recommended by the hiring panel.

18. Were you ever in receipt of information forwarded by Leonard Leo, Executive Vice President of the Federalist Society, regarding the name, resume, or recommendation of any potential candidate for hiring for a career position at the Department? If so, how did you act on that information? Did you or anyone else at the Department consider the source of the information in when considering or recommending that candidate(s) for appointment to career positions at the Department?

Yes. I recall Mr. Leo recommending an individual for a career attorney position in the Civil Rights Division. That individual was not hired.

All candidates for career attorney employment were ultimately judged individually based on a comprehensive review of their academic background, legal skills, unique life experiences, interest in the work of the Division, and a personal interview.

19. Were you ever in receipt of information forwarded by Michael Thielen, Executive Director of the Republican National Lawyers' Association, or anybody from the

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Republican National Lawyers' Association, regarding the name, resume, or recommendation of any potential candidate for hiring for a career position at the Department? If so, how did you act on that information? Did you or anyone else at the Department consider the source of the information in when considering or recommending that candidate(s) for appointment to career positions at the Department?

I do not recall receiving any resumes or recommendations from officials with the Republican National Lawyers' Association. As noted in the previous answer, all candidates for career attorney employment were ultimately judged individually based on a comprehensive review of their academic background, legal skills, unique life experiences, interest in the work of the Division, and a personal interview.

20. Were you ever in receipt of information forwarded by Scott Bloch, the Special Counsel at the U.S. Office of Special Counsel, regarding the name, resume, or recommendation of any potential candidate for hiring for a career position at the Department? If so, how did you act on that information? Did you or anyone else at the Department consider the source of the information in when considering or recommending that candidate(s) for appointment to career positions at the Department?

I recall receiving a recommendation of a candidate for a career attorney position from Mr. Bloch. My recollection is that the individual was not hired.

As noted in the previous answer, all candidates for career attorney employment were ultimately judged individually based on a comprehensive review of their academic background, legal skills, unique life experiences, interest in the work of the Division, and a personal interview.

21. Were you ever in receipt of information forwarded by Jan Williams, whether while she was at the White House Office of Presidential Personnel or during her tenure at the Department as White House Liaison, regarding the name, resume, or recommendation of any potential candidate for hiring for a career position at the Department? If so, how did you act on that information? Did you or anyone else at the Department consider the source of the information in when considering or recommending that candidate(s) for appointment to career positions at the Department?

I do not recall receiving any resumes, referrals, or recommendations from Ms. Williams for career attorney positions.

22. Were you ever in receipt of information forwarded by Monica Goodling, Kyle Sampson, or Wan Kim regarding the name, resume, or recommendation of any

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potential candidate for hiring for a career position at the Department? If so, how did you act on that information? Did you or anyone else at the Department consider the source of the information in when considering or recommending that candidate(s) for appointment to career positions at the Department?

I do not recall receiving any resumes, referrals, or recommendations for career attorney positions from Ms. Goodling or Mr. Sampson. I do recall discussing various applicants with Mr. Kim, who served as my colleague and later my boss in the Division. I have great respect for Mr. Kim and generally deferred to his recommendation on such matters.

As noted earlier, however, all candidates for career attorney employment were ultimately judged individually based on a comprehensive review of their academic background, legal skills, unique life experiences, interest in the work of the Division, and a personal interview.

23. You testified that you received resumes from Alex Acosta and Hans von Spakovsky of potential candidates for hiring for career positions at the Department? How did you act on the information you received? Did you or anyone else at the Department consider the source of the information in when considering or recommending that candidate(s) for appointment to career positions at the Department?

Mr. Acosta served as my boss and Mr. von Spakovsky served as the Division's voting counsel. I have great respect for both individuals. Some of the candidates referred by these individuals were hired and, if I recall correctly, others were not.

As noted earlier, however, all candidates for career attorney employment were ultimately judged individually based on a comprehensive review of their academic background, legal skills, unique life experiences, interest in the work of the Division, and a personal interview.

24. How did Monica Goodling assist you in obtaining your position as interim U.S. Attorney in the Western District of Missouri, as you testified? When and how did you communicate with her about your interest in that position and about your appointment?

I first became aware that Mr. Graves was resigning his position as U.S. Attorney when I read a story in the Kansas City Star on March 10, 2006, reporting on his departure. Either that day, or the following Monday, I communicated my interest in the interim U.S. Attorney position to Monica Goodling, Kyle Sampson, and David Margolis. The selection committee for the interim post consisted of Michael Battle, Monica Goodling, and David

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Margolis. I do not know how the decisionmaking process worked, other than that I was selected for the position.

25. On January 4, 2007, you filed a mortgage fraud indictment against Katheryn Shields, a Democrat, the day before she filed to run for mayor of Kansas City.

    A. How did the fact that Ms. Shields was going to run for public office factor into your decision to file this indictment?

    It played no role whatsoever.

    B. With whom did you consult about the timing of filing this indictment?

    Along with the long-time Assistant U.S. Attorney prosecuting the case, I consulted with the First Assistant U.S. Attorney, Senior Litigation Counsel, and chief of the General Crimes Unit. All are veteran career prosecutors in the District.

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QUESTIONS FOR THE RECORD
FOR BRADLEY SCHLOZMAN

On June 11, 2007, you wrote the Committee to revise your June 5, 2007 testimony regarding whether the Elections Crime Branch "directed" you to file indictments prior to the November 2006 election.

- What prompted you to revise your testimony?
- Specifically when did you realize that your prior testimony was incorrect or needed clarification?

I had already clarified my testimony in questioning from Senator Whitehouse at the hearing to note that U.S. Attorneys' Offices are required to consult with the Public Integrity Section before initiating grand jury investigations or pursuing indictments of election-related crimes, but that the Public Integrity Section does not direct U.S. Attorneys' Offices as to the substance or timing of such charges. I realized upon my return to the office that it would be useful to further clarify that, although the director of the Public Integrity Section's Elections Crimes Branch had suggested when the charges should be brought, the responsibility for doing so was mine.

Prior to obtaining indictments against the four employees of the Association of Community Organizations for Reform Now (ACORN) in advance of the November 2006 election, had you read the manual Federal Prosecution of Election Officials (6th ed. Jan. 1995)?

I was familiar with certain sections of the manual, including the chapter on prosecuting voter registration cases and the need to consult with the Public Integrity Section before doing so.

Prior to obtaining those indictments, were you aware of the following admonition from that manual, which is written in underscored type: "Thus, most, if not all, investigation of an alleged election crime must await the end of the election to which the allegation relates."

Yes. But the director of the Public Integrity Section's Election Crimes Branch (who authored the Department's Election Crime Manual) advised my Assistant U.S. Attorney that the policy of postponing certain election crime indictments did not apply in this case because the charges pertained to voter registration fraud (which examined conduct during voter registration), not fraud during an ongoing or contested election.

According to a May 31, 2007 *Los Angeles Times* story, "one of the first acts" of former U.S. Attorney Tom Heffelfinger's replacement, Rachel Paulose, was to remove the Assistant United States Attorney (AUSA) "who had written the 2004 e-mails to

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Washington expressing concern about Native American voting rights. . . from overseeing voting rights cases."

- Did you, whether directly or indirectly, complain about the AUSA's actions or otherwise request that the AUSA who wrote the 2004 referral be removed from overseeing voting rights cases? If so, to whom were the complaints or requests directed?

  No.

- Did anyone do so at your request? If so, to whom were the complaints or requests directed?

  No.

- To your knowledge, did anyone else in the Civil Rights Division make such a request or complain about him? If so, to whom were their complaints or requests directed?

  I have no knowledge of any such complaint.

Did you, in any way, criticize former U.S. Attorney Tom Heffelfinger, his staff, or his office for raising concerns about the State of Minnesota ruling on the question of the validity of tribal identification for Native American voters who cast votes outside of tribal reservations?

I do not recall registering any criticism of Mr. Heffelfinger regarding this incident. Nor would I have any reason to do so.

Regardless of accuracy of the Minnesota Secretary of State's legal analysis underlying her decision regarding the use of tribal identification cards for Native American voters casting ballots outside of tribal reservations, did Tom Heffelfinger or his staff do anything improper in raising a possible voting rights issue in the fall of 2004, including in the timing or manner in which it was raised?

I have no basis for believing that Mr. Heffelfinger acted improperly in any way on this issue.

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SUBMISSIONS FOR THE RECORD

My Record

From September 2001 to March 2006 I had the honor of serving as United States Attorney for the Western District of Missouri. From January 1995 to September 2001 I was the elected state Prosecuting Attorney in Sixth Judicial Circuit of Missouri. In total, I served nearly 12 years as a public prosecutor. It was a privilege, and I loved every minute.

As United States Attorney, I served at the pleasure of the President. I will always be grateful for the opportunity that President Bush and my senior Senator, Kit Bond, gave me to serve as United States Attorney.

I believed in the goals of the Administration. The number one criminal enforcement priority of the Administration was prosecuting felons in possession of firearms, and my district rapidly climbed to be the number one district in the country in the number of felons in possession of firearms cases prosecuted.

From my first day in office, long before it was even a national priority, aggressively prosecuting those who exploit

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children over the internet was my top local priority. The Western District of Missouri continues to be a national leader in prosecuting internet predators.

Fair and sure enforcement of the death penalty was a priority of this administration, and we enforced the death penalty. During my tenure, 10% of all those on federal death row had been sent there from my district. I personally tried one of our death penalty cases and was preparing to try another when I left.

During my tenure as United States Attorney, we doubled the number of felony cases filed per year from around 500 to 1000. We prosecuted corrupt officials and judges, major drug traffickers, corporate thieves, cold-blooded killers, and a pharmacist who, in the name of greed, watered-down the chemotherapy drugs of thousands of cancer patients.

The Western District of Missouri is staffed by many prosecutors who would rather try tough cases than sleep. We had--and they continue to have--an exemplary record.

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My Resignation

When I received a call from Mike Battle in January of 2006 telling me that I had "served honorably" and that I had "performed well," but that the decision had been made "at the highest levels of government" that it was time to "give another person a chance to serve" in my district, I accepted that without complaint.

In fact, I had previously made no secret among my U.S. Attorney colleagues that I had planned to leave office in 2006 and open my own practice. I always assumed that the Administration knew that and wanted me to leave in time to replace me before the 2006 elections--and a possible change in the Senate majority.

To this day, I bear no rancor or bitterness over that phone call—I had long planned to go, and it was the President's prerogative. The private legal practice I started in Kansas City has succeeded far beyond my hopes. I am thankful that I left over a year ago, and I would have been happy to have stayed out of this mess altogether.

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My View

The public prosecutor in our system of justice bears a tremendous responsibility. We delegate to the prosecutor vast discretion in making decisions that can, with the full weight and authority of the government, take a person's liberty, property, reputation, and in some cases, their life—those are not Republican or Democrat decisions.

Decisions of prosecutorial discretion are often extremely difficult, and they cause good prosecutors to lay awake at night grappling for the right answer. But, once a decision is made, the prosecutor owns it. He or she bears the responsibility for that decision.

Both as a state and as a federal prosecutor I acted as a professional. If a decision came before me and there was clear guidance, I followed it. On the other hand, if prosecutorial discretion was required, I exercised my independent judgment. No apologies and no excuses; I was responsible for my decisions.

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That is our system . . . but the system only works so long as the people believe in the institution of the public prosecutor.

The Department of Justice is a special place with many talented and motivated people, but each attorney who represents the government bears a nearly sacred responsibility to uphold the reputation and honor of the institution. As I have heard former Deputy Attorney General Jim Comey say, when an attorney appears in federal court and announces that he or she represents the United States of America, the judge or jury accepts as true and believes the next thing that attorney says. Although the reputation and honor of the Department of Justice has been accumulated across many generations, it is easily lost.

My hope and request as an American citizen who no longer represents the government is that the politics of this situation can be set aside, and that all the parties in this process can work together to quickly enhance and maintain the reputation and honor of the Department of Justice to the benefit of our great country.

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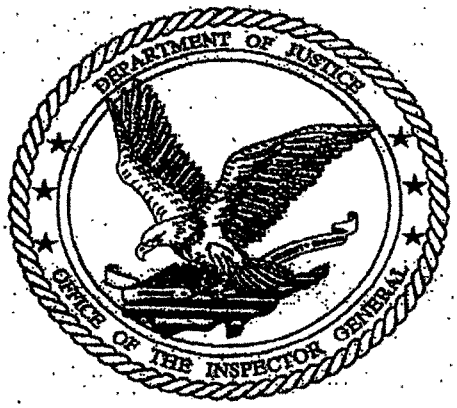
U.S. Department of Justice
Office of the Inspector General

Report of Investigation Regarding U.S. Attorney Todd Graves' Alleged Improper Political Activity and Use of a Government Vehicle



Office of the Inspector General
Oversight and Review Division
March 8, 2006

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I. INTRODUCTION

In October 2005, the Office of the Inspector General (OIG) received a complaint that Todd Graves, the United States Attorney for the Western District of Missouri, attended a fundraising event for his brother, Sam Graves, a U.S. Congressman from Missouri's Sixth Congressional District. The complainant also alleged that Todd Graves was driven to the event in a government vehicle by an employee of the U.S. Attorney's Office (USAO). The OIG's Oversight and Review Division initiated an investigation of the complaint.

To investigate the matter, we interviewed U.S. Attorney Graves and relevant employees in the USAO. We also interviewed [redacted] who allegedly had been driven to and from the fundraising event along with Graves. In addition, we reviewed the government vehicle logbooks maintained by the USAO for the year 2002.

This report details the allegations against Graves, the evidence relevant to each allegation, and our findings.

II. SUMMARY OF FACTS

Graves was sworn in as U. S. Attorney for the Western District of Missouri on an interim appointment by the U.S. District Court on September 17, 2001. He was confirmed by the United States Senate as the U.S. Attorney on October 11, 2001. Before becoming the U.S. Attorney, Graves was the Prosecuting Attorney for Platte County, Missouri. He had been elected to that position in 1994 and 1998.

According to the complainant, Graves had directed a paralegal in the USAO to drive Graves to and from a political fundraising event for his brother, Congressman Sam Graves. We interviewed the paralegal, who told us that in 2002 either his immediate supervisor or someone else asked him to drive Graves to a function. The paralegal said he thought that this occurred in September 2002. He said that he understood the function was "politically related" and that Congressman Sam Graves would be speaking at it. The paralegal said he thought that Todd Graves was going to observe the speech, although Graves did not discuss the event with him.

According to the paralegal, he and Graves left Missouri at approximately 10:00 a.m. in one of the government vehicles used by the office. They first drove to [redacted] to pick up [redacted] Once there, Graves went into the building while the paralegal remained with the vehicle. Graves returned to the vehicle with [redacted] after about 20 to 30 minutes, and the paralegal then drove them back into Missouri to Penn Valley Community College, where the paralegal said the event was

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being held. The paralegal said he was told to return to work. He did so and did not return to pick up [redacted] U.S. Attorney at the conclusion of the event.

The paralegal said that the law enforcement coordinator usually drives Graves to events but that he was not available that day. The paralegal said he was never asked to drive Graves anywhere again.

The paralegal's supervisor said he had a "vague recollection" of the matter. He said that within 30 to 65 days after the paralegal had been hired in March 2002, the paralegal came to him and told him that he had been asked to drive the U.S. Attorney to a function. The supervisor said that the paralegal did not tell him the nature of the function. He said that sometime after the event, the paralegal told him that he had driven Graves to a function where Sam Graves spoke. The supervisor said he did not know whether a government vehicle was used to drive Graves to the event, but that the office keeps a logbook which should reflect the destination and purpose of the trip.

The paralegal told us that after he returned to the office from taking the U.S. Attorneys to the event, another paralegal asked him if it was appropriate for Graves to be pulling him away from work so that Graves could see his brother. The paralegal told us that he discussed it with his supervisor and expressed his "dissatisfaction" because "driving around one's superiors" was very common in the Army and the paralegal did not want to feel like he was back in the Army. However, the supervisor said the paralegal did not express dissatisfaction with being asked to drive Graves to the event. To the contrary, the supervisor said the paralegal seemed almost "giddy" about being "included" by the U.S. Attorney so soon after he had started working at the office.

When we interviewed Graves, he told us that he did not attend a political event involving Congressman Sam Graves at Penn Valley Community College, and that he had never been to that college. We asked Graves whether he attended any political events involving Congressman Graves in 2002. At our request, Graves reviewed his calendar for 2002, particularly around the September time period. He said he could only find reference to one event that was political and at which both he and his brother were present – a note in his electronic calendar stating that Vice President Cheney would be in town on April 4, 2002.

Graves stated that he believed the allegations concerning his attendance at a political event related to this April 4, 2002, Cheney event. He said that the Cheney event was held at the Westin Crown Center (Crown Center) in downtown Kansas City, which was 5 or 10 ten blocks from Penn Valley Community College. Graves said he learned of the event from his brother, and then later received a call from someone at the United States Secret Service, probably just a few days before the actual event. Graves stated that the Secret Service has a certain number of photo opportunities to give out to local people,

and that they usually are given to law enforcement officials, such as chiefs of police. Graves said these opportunities, which involve having the person's picture taken with Vice President Cheney, are "highly sought after." Graves said he was invited by the Secret Service to have his photograph taken with Vice President Cheney at the Crown Center event.

Graves said that the event was a lunchtime event. He described the event as a "fundraiser," although he said he could not recall if it was specifically for his brother or for the Republican party in general. Graves said he went to the Center, where he waited in a hallway with several other people. He said he could hear the event going on in another room, and described feeling "weird" because he was not allowed to actually go into the room where the event was being held. Graves said he did not believe he "attended" the fundraiser because while at the Crown Center, he remained in a "service hallway" that was located by the kitchen of the facility. Graves stated numerous times that he never went inside the room where the speeches were being delivered. He said he believed his brother would have spoken at the event, although he did not recall hearing him do so.

Graves said that the event lasted "a long time," and the photo was taken after the speeches were over.[1] Graves said he mingled with others in the hallway, many of whom were law enforcement officials he already knew. Graves said he did not recall meeting anyone who was participating directly in the event, although he did recall people filing out of the event who he knew. He said he did not think he saw his brother at the event. He said he did not recall being introduced to anyone, or being identified specifically as the U. S. Attorney to people who did not know him.

We asked Graves how he got to and from the event, and he said he could not recall. He said he remembered having a meeting with [redacted] that morning at the courthouse [redacted]. He said he believed that that was the first time he had me[redacted] Graves said he did not remember returning to [redacted] although he said it was possible he did so. Graves said it was entirely possible he was driven to the Cheney event because of the limited parking situation there. He added that it was "atypical" for him to be driven anywhere.

When pressed to recall any other political functions he may have attended in or around 2002 with both his brother and with [redacted] Graves mentioned that he had attended an event involving Asa Hutchinson, then Director of the Drug Enforcement Administration (DEA). Graves stated that his

[1] Graves showed us a photo of him shaking hands with Vice President Cheney which he said was taken at the April 4, 2002 event. Graves' wife and children are in the photo as well. The photo appeared to have been taken in a hallway, with cinderblock walls in the background and fluorescent lights and pipes hanging from the ceiling.

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brother "may have gotten some political capital" out of the event, but he would not characterize the event as "political." Graves described the event as both a "drug summit" and a "press tour" for Hutchinson called "Meth in America: Not in Our Backyard." Graves said that the local congressman would have been invited to the event; however, Graves did not remember for certain whether Sam Graves was there. He said he also did not remember if [redacted] was there. Graves said he thinks the event was in May 2002.

Graves stated that he had not contacted the Executive Office for United States Attorneys (EOUSA) or other DOJ offices for guidance prior to attending the Cheney event. Graves said he did once seek approval to attend a political event at which former Attorney General John Ashcroft was appearing shortly after leaving office (in or about February 2005). Ashcroft was appearing on behalf of Sam Graves. Graves said he knew he would be attending the actual event, and so he contacted EOUSA beforehand for advice on what restrictions might be imposed on his participation.

We also interviewed [redacted] at his office in [redacted] At the beginning of the interview, [redacted] informed us that Graves had called him a few days earlier to give him a "heads up" that the OIG would be contacting him, and that Graves believed the matter concerned their attendance at a political event at which Vice President Cheney spoke. [redacted] said that before Graves reminded him about the event he had not remembered it. [redacted] said that although the OIG had already contacted him to set up the interview, he did not tell Graves that he had been contacted by the OIG about the matter.

We asked [redacted] about whether he had attended any political events with Todd Graves that involved Congressman Graves. [redacted] said that, after receiving the "heads up" call from Graves, he recalled attending the Cheney event with Graves in 2002.

[redacted] said that the Secret Service called him to invite him to have his photo taken with the Vice President at the Crown Center in Kansas City. [redacted] said that after receiving this invitation, he talked with Graves prior to the event and Graves told him he had been invited to the same event. Graves suggested that they go to the event together since [redacted] was not familiar with the area.

[redacted] said that Graves picked him up at his office in [redacted] and they went to the event together. [redacted] said he did not go into the event itself. He said he was with Graves the whole time, as best he could recall. He said that after the event, approximately 12 people who had been invited by the Secret Service to the event and who had been waiting "backstage" were lined up to meet the Vice President and to have their photo

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taken with him.[2] [redacted] said that the event lasted between one and two hours, and that the process of meeting everyone and taking the photos afterward took about five minutes. [redacted] said he did not meet Sam Graves at the event. He also said he did not see Todd Graves going around introducing himself or being introduced as the U.S. Attorney. He recalled seeing Graves having brief conversations with people he already seemed to know.

[redacted] said he did not remember what the purpose of the event was or whether it had been described to him as a political fundraising event by either the Secret Service or by Graves. However, he said he did not believe the event was solely for Sam Graves, as he recalled seeing members of his own Congressional delegation (and possibly Senator Pat Roberts) at the event. He said that the event occurred during the daytime.

We asked [redacted] about how he traveled to and from the event. [redacted] said that Graves and someone from Graves's office picked him up in an SUV. He said he did not know if it was a government vehicle. [redacted] said that the trip from his office to the event was only about 10 minutes. [redacted] said that, as best he could recall, he had not met Todd Graves before this event. [redacted]. He said that Graves came up to his office to introduce himself just before the two of them were driven to the event. The two were together in [redacted] office for about ten minutes.

[redacted] said he was certain that Graves was not driving and that someone else was driving because [redacted] and Graves were "let off by the door" at the event. [redacted] said the driver was a young (under 30) male who worked for Graves [redacted] said the driver had a military background, and thought he knew this based on what Graves might have told him.

According to [redacted] the driver of the vehicle asked Graves how to get to the Crown Center, then drove [redacted] and Graves there and dropped them off. The driver did not attend the event. [redacted] said he did not remember much about the return trip to his office, but was fairly certain he had been given a ride back to his office. [redacted] said that if the driver had been a different person, he probably would have remembered that. [redacted] said that Graves accompanied him back to his office because Graves was providing the transportation. [redacted] said he did not remember if he was taken back to his office in the same vehicle as the one he had been picked up in.

[redacted] said he was confident that the Cheney event was the only political event he attended at which Todd and Sam Graves were present.

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[2] [redacted] described the room where he waited to meet the Vice President as a "cinderblock-lined hallway."

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However, he cautioned that he would not have remembered the Cheney event had Graves not contacted him and refreshed his recollection about it.

[redacted] stated that he had only met Sam Graves once, in the summer of 2004, on the lawn of the Capitol in Washington, D.C. [redacted] said he had been in town for a [redacted] and had run into Todd Graves while getting off the Metro at Union Station, and that Graves had invited him to meet his brother, Sam Graves.

Lastly, [redacted] said he never heard of Penn Valley Community College and has never been there. [redacted] also said he had not attended the DEA event Graves had mentioned to us during his interview.

We reviewed logbooks documenting the use of the office's government vehicles to the extent such records could be found. We also interviewed [redacted] told us that, after a search of the office files, the logbook records for 2002 for the two vehicles yielded records dating back only as far as May 30, 2002, and May 28, 2002, for the two vehicles. Thus, we were unable to confirm through those records that a government vehicle had been used to take Graves to the Cheney event on April 4 of that year. The vehicle logbooks we reviewed do not reflect any trips to Penn Valley Community College or to [redacted]

III. OIG ANALYSIS

A. Graves's Attendance at a Political Fundraising Event

1. Applicable Restrictions on Political Activity

As a federal employee, Graves' political activities are subject to the restrictions in the Hatch Act, 5 U.S.C. §§ 7321-7326, and its implementing regulations in 5 C.F.R. § 734. For purposes of the alleged conduct at issue here, the relevant provisions include 5 U.S.C. § 7324(a), which provide that a federal employee may not engage in political activity while on duty or while wearing an official insignia. In addition, 5 C.F.R. § 734.303(c) provides that a federal employee may not allow his official title to be used in connection with fundraising activity.

In addition to the Hatch Act, the Department imposes additional prohibitions on Department political appointees. According to the Department's Ethics Office, the Department's longstanding policy has been that presidential appointees in the Department, including U.S. Attorneys, are prohibited from actively participating in political activities. This policy has been articulated in memoranda and documents issued by former Attorney

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General Janet Reno, starting in 1994. The policy also was adopted by her successor, former Attorney General John Ashcroft, in 2001 and is still in force as of the writing of this report.

Department policy prohibits political appointees from "active participation" in fundraising and campaign events for partisan candidates. See Attorney General Memoranda dated October 11, 1994; October 9, 1998; and August 8, 2000. "Active participation" includes "making a speech at a party function, appearing on the program, on the dais or in a receiving line of a political event, or allowing your name to be used in connection with the promotion of the event." Attorney General Memorandum dated August 8, 2000. The policy permits "passive participation," which is defined as merely attending a political event. However, the policy requires that a presidential appointee "must obtain approval from either the Deputy Attorney General or the Associate Attorney General prior to attending a political fund-raising event in a passive capacity." Attorney General Memorandum dated October 9, 1998; see also Attorney General Memorandum dated August 8, 2000.[3]

In November 2001, at an orientation session in Washington, D.C. for new U.S. Attorneys, a copy of the Attorney General's 2000 Memorandum was included under the "political activities" tab of a manual given to attendees. Graves told us he attended that session and believes he received the manual.

The United States Attorneys' Manual (USAM) also provides guidance to Department attorneys about restrictions on political activities by summarizing the Hatch Act regulations and referencing the stricter Department policy applicable to political appointees. The USAM also notes the need for Department attorneys to consult with the EOUSA's Legal Counsel for guidance on allowable political activities.

2. OIG Analysis

As a preliminary factual matter, we believe that the paralegal's recollection that he took U.S. Attorney Graves to a political event at Penn Valley Community College in September 2002 was erroneous. Both Graves and [redacted] said they had not been to the college, and the vehicle logs for the applicable period do not reflect any trips to Penn Valley Community College or [redacted]

[3] In 2001, Attorney General John Ashcroft continued the policies concerning restrictions on political activities of the Department's non-career appointees, including the restrictions in the Attorney General's 2000 Memorandum. Attorney General Ashcroft's decision to continue the restrictions on political activities by political appointees was sent by e-mail to the Department's components, including EOUSA, in 2001. In 2002 and 2003, e-mail messages again were sent to the Department components, including EOUSA, reminding the component heads of the restrictions on non-career appointees and attaching the Attorney General's 2000 Memorandum.

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We believe the event in question was the April 4, 2002, political function at the Crown Center at which Vice President Cheney spoke. Graves, [redacted] and the paralegal all remember essentially the same logistical arrangement and timeline for the event, including that (1) Graves was driven to [redacted] (2) Graves went upstairs to meet [redacted] for approximately 10 to 30 minutes prior to the event; and (3) the three all rode back to Kansas City, Missouri where the [redacted] entered a building where a political event was being held.[4] [redacted] also said that the driver was a young man who had served in the Army, a description that matches the paralegal in question.

Based on our interviews of Graves and [redacted] who said he was with Graves throughout the event, we concluded that Graves did not "participate" in the Cheney event within the meaning of the Hatch Act and its implementing regulations, in that Graves did not "engage in political activity" and did not use his official title in connection with fundraising activity. Graves also did not violate Department policy because he did not actively participate in the event, as by appearing on the dais or in a receiving line. He had limited interaction with local law enforcement officials already familiar to him, and he did not use his name or title in connection with promoting the event. The photograph of Graves and the Vice President was taken largely as a matter of courtesy and not to promote a fundraiser for a political candidate.

We also concluded that Graves did not passively participate in the event within the meaning of Department policy. Although Graves was physically present in the complex where the political event was being held, we concluded that his presence was limited to waiting in a service hallway or similar facility outside of the main hall where the speeches were being delivered. Thus, we do not believe he was required to seek approval from the Deputy or Associate Attorney General before going to the location where the fundraiser was held in order to have his photo taken with Vice President Cheney.

Finally, we concluded that Graves was not acting outside the scope of permissible activities for political appointees by having his photograph taken with the Vice President at the April 4, 2002, political event.

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[4] The discrepancy between the paralegal's recollection that the event was held at Penn Valley Community College and Graves's and [redacted] recollection that it was held at the Westin Crown Center may be explained by the fact that, according to Graves, Penn Valley Community College is within 5 or 10 blocks of the Crown Center. We consulted a map of downtown Kansas City, and the two locations appear to be just over a half mile apart.

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B. Graves' Use of a Government Vehicle

Relevant statutes and regulations make clear that government vehicles are to be used for "official purposes" only. 31 U.S.C. § 1344(a)(1); 41 C.F.R. Subpart 101-38.301 (Official Use of Government Motor Vehicles). In addition, the Attorney General's August 8, 2000. Memorandum prohibits political appointees from using a government vehicle while "engage[ing] in political activity."

We concluded that Graves did not improperly use a government vehicle to attend the Cheney event. First, we do not believe that Graves was acting outside the scope of his official duties by meeting briefly with the Vice President for a photo opportunity. As described above, we also concluded that he was not engaging in prohibited political activity by having the photo taken or otherwise by his conduct at the location where the political fundraiser involving his brother was held. Accordingly, we concluded that the use of the government vehicle to transport Graves to (or from) the event was not improper.

With regard to Graves asking the paralegal to drive him to the event, we question the appropriateness of Graves asking a paralegal, whose duties do not include driving the U.S. Attorney, to do this. While the paralegal did not object to Graves when asked to do this, his duties do not include driving the U.S. Attorney, and it is difficult for a subordinate employee to decline such a request from the U.S. Attorney. While we do not believe it was misconduct to do so, we believe that in the future Graves should avoid making such requests.

Finally, in the course of investigating this allegation, we found that the vehicle logbooks that the USAO maintained for the year 2002 did not comply with the requirements of the U.S. Attorney's Manual. Section 3-13.520 of the U.S. Attorney's Manual states that each USAO should "establish necessary procedures to maintain logs on the use of government vehicles which are utilized within the district." Further, "[t]he log shall be accessible for audit and contain at least the following information [which includes vehicle destination and purpose]. [redacted] told us that she was unable to find vehicle logbooks for the first five months of 2002. The existing logbooks for 2002 which we reviewed contained only vague references to where the vehicles were taken and for what purpose. [redacted] stated that she did not think the office had any formal, stated policy governing the use of government vehicles or the maintenance of logbooks until December 2005, when the office posted a policy on the office intranet.

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IV. CONCLUSIONS AND RECOMMENDATIONS

We did not find that Graves engaged in improper political activity by waiting outside the room where a political event involving his brother and Vice President Cheney was being held. Graves did not appear in the main venue where the political activity took place and he did participate in the activity. Rather, his attendance was limited to waiting in a separate room along with 10 or so other individuals selected by the Secret Service to have photographs taken with the Vice President at the conclusion of the event.

Because Graves' actions were not outside the scope of his official duties as U.S. Attorney, we also concluded that his use of a government vehicle in connection with the event was not improper.

In the course of our review, we found that the vehicle logbooks that the USAO maintained for the year 2002 did not comply with the requirements of the U.S. Attorney's Manual. We did not review the USAO's new policy or the logbooks it has maintained since then to determine whether they are in compliance with USAM requirements. We recommend that the USAO undertake that review to ensure it is in compliance with the requirements.

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Statement of Edward M. Kennedy
"Preserving Prosecutorial Independence: Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys? -- Part V"
June 5, 2007

Mr. Chairman, today we hold the fifth in our series of hearings into the independence of United States Attorneys and other parts of the Department of Justice. As we have learned more about the reasons for the firings of U.S. Attorneys, it has become increasingly clear that the Department of Justice has lost its way under the leadership of Alberto Gonzales.

When Mr. Gonzales came before the Senate as the President's nominee for Attorney General, many of us were concerned that he would not be able to distinguish between his role as White House Counsel and his role as Attorney General. As White House Counsel he had assisted the President in developing a series of disastrous policies that ran roughshod over the rule of law and damaged the United States in the eyes of the world. He promoted a breathtakingly expansive view of the President's authority. Yet, when he came before us seeking confirmation as Attorney General, he assured us: "With the consent of the Senate, I will no longer represent only the White House; I will represent the United States of America and its people. I understand the differences between the two roles."

That assurance has proven disastrously hollow. On issue after issue, Mr. Gonzales has exclusively served the President's agenda without any respect for his broader responsibilities to the rule of law as the Attorney General. The current U.S. Attorney scandal has exposed a Department of Justice that is blatantly open to partisan influence and has abandoned many of the traditions that keep the Department strong and independent.

It's no surprise the Department now finds itself embroiled in scandal over the firing of eight U.S. Attorneys. By his own account, Mr. Gonzales, as Attorney General, did not review the merits of firing these U.S. Attorneys. Instead, he allowed the process to be controlled by partisan staffers, who spoke repeatedly with the White House about replacing certain U.S. Attorneys.

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Karl Rove and President Bush each passed along to the Attorney General concerns about the alleged failure of U.S. Attorneys to pursue voter fraud cases with sufficient vigor. Over the past five years, the Department of Justice has pushed to prosecute voter fraud aggressively, but it has convicted only 86 people nationwide as of last year. The pursuit of virtually non-existent voter fraud at the ballot box was part of a Republican strategy to suppress legitimate voters through measures such as photo ID laws and voter roll purges, since such measures invariably suppress the votes of minority, elderly and disabled voters.

The purge of U.S. Attorneys clearly seems to have been part of an effort to ensure that partisan U.S. Attorneys would be in place in key states for the 2008 elections. New Mexico, Washington, Arkansas and Nevada are all closely contested states. When we included the states to which the Attorney General sent interim appointees in the past 2 years – Florida, Missouri, Iowa and Minnesota – the pattern is clear. This Administration, more than any other in memory, has attempted to use the Department of Justice as an arm of the Republican Party.

Today, we will hear from Bradley Schlozman, who served in the Civil Rights Division before receiving the first Attorney General appointment under the Patriot Act to serve as interim U.S. Attorney in the Western District of Missouri. Mr. Schlozman had a controversial tenure in the Civil Rights Division, presiding over both the 2003 Voting Rights Act preclearance of the Texas redistricting plan engineered by Tom Delay and the 2005 preclearance of Georgia photo ID laws that were later struck down by the courts because they suppress the votes of minorities. He also pushed lawsuits to purge voter rolls, and tried to keep private individuals from filing suits pursuant to the Help America Vote Act.

As U.S. Attorney, he indicted four individuals a week before the 2006 election for voter registration crimes, even though longstanding Department of Justice policy prohibited conducting investigations or filing charges in the period immediately before an election.

Equally significantly, disturbing reports have emerged that during Mr. Schlozman's tenure, partisanship and ideology were significant factors in hiring attorneys for the Civil Rights Division. We must examine in depth this apparent corruption of merit-based hiring that is essential to the fair, impartial and effective administration of justice.

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Thank you again, Mr. Chairman, for convening this very important hearing.

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Opening Statement of Senator Patrick Leahy
Chairman, Senate Judiciary Committee
Hearing on "Preserving Prosecutorial Independence: Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys? – Part V"
June 5, 2007

Today, the Committee continues its investigation into political influences affecting the Justice Department. Stonewalling by this Administration, conflicts in testimony and failures of memory by the Attorney General and others have greatly hampered our efforts to get to the bottom of these matters. When the President complains that these matters are being "drug out," he need look no farther than his own White House and the Justice Department leadership he appointed for the reasons this continues to fester. The Administration should come clean, quit hiding the truth and own up to its misdeeds. The functions of the Department of Justice should be above politics. Law enforcement, civil rights enforcement, and voting rights are all too important to be enmeshed in Karl Rove's partisan political operations.

Despite the testimony of officials from this Administration, we are learning through press accounts that many more than seven U.S. Attorneys were replaced and that perhaps a dozen or two dozen or three dozen were considered for firing. It was only through press accounts -- not the testimony of Department employees or the selective documents the Department has so far produced -- that the public learned that one of our witnesses today, Todd Graves, the former U.S. Attorney for the Western District of Missouri, was on those lists and asked to resign. He is from an earlier wave of replacements in 2006.

We have also learned in recent weeks about apparently extensive efforts by operatives of this Administration to screen the political allegiances of applicants for career law enforcement positions. Former Deputy Attorney General Jim Comey has said such efforts to apply a partisan litmus test strike "at the core of what the department is." We know from her guarded admissions before the House Judiciary Committee that Monica Goodling "crossed the line" in engaging in this conduct. Who else at the Department was involved, who knew this was going on, who acquiesced or approved it, who directed it? These are all questions that the Department of Justice has refused to answer or explain.

We have been notified that the Inspector General has expanded his investigation to include some of these matters. I am writing him asking whether he is also expanding his investigation to include the meeting in which Attorney General Gonzales made Ms. Goodling "uncomfortable" by inappropriately communicating with her about matters under investigation in what appears to be an effort to influence her testimony.

Our first witness today is Bradley Schlozman, the first interim U.S. Attorney appointed by Attorney General Gonzales pursuant to the authority granted in the Patriot Act reauthorization that has since been repealed by this Congress. We hope to learn the unvarnished facts from Mr. Scholzman about these unprecedented U.S. attorney replacements and use of partisan considerations in career hiring. We also have questions about Mr. Schlozman's role as the interim U.S. Attorney and while at the Civil Rights

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Divisions in pressing certain cases in connection with recent elections.

I am deeply troubled by what appears to be an effort by the White House to manipulate the Department into its own political arm. The White House cannot have it both ways -- it cannot withhold documents and witnesses and thereby stonewall the investigation and, at the same time, claim that the facts about White House influence over federal law enforcement have not been revealed in detail. Because the White House has continued its refusal to provide information to the Senate Judiciary Committee on a voluntary basis, I will soon have no choice but to issue subpoenas. If the White House continues to stonewall, the obvious conclusion is that they are hiding the truth because they have something to hide.

Today, I hope we can begin to better understand the role that efforts to influence elections in the name of pursuing "voter fraud" may have played a role in these dismissals of federal prosecutors. The American people deserve a strong and independent Department of Justice with leaders who enforce the law without fear or favor. Every week seems to bring new revelations about the erosion of independence at the Justice Department. This Administration was willing, in the U.S. Attorney firings and in the vetting of career hires for political allegiance, to sacrifice the independence of law enforcement and the rule of law for loyalty to the White House. The obligations of the Justice Department are to the Constitution, the rule of law, and to the American people, not to the political considerations of this White House.

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Department of Justice

STATEMENT

OF

BRADLEY J. SCHLOZMAN
ASSOCIATE COUNSEL TO THE DIRECTOR
EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

U.S. DEPARTMENT OF JUSTICE
WASHINGTON, DC

BEFORE THE

COMMITTEE ON THE JUDICIARY
U.S. SENATE

CONCERNING

"PRESERVING PROSECUTORIAL INDEPENDENCE: IS THE DEPARTMENT OF JUSTICE POLITICIZING THE HIRING AND FIRING OF U.S. ATTORNEYS? -- PART V"

PRESENTED ON

JUNE 5, 2007

Chairman Leahy, Ranking Member Specter, distinguished Members of the Committee:

Thank you for the opportunity to testify today. My service in the U.S. Attorney's Office for the Western District of Missouri was the highlight of my professional career. Although my thirteen months in office were relatively brief, I believe the outstanding Assistant U.S. Attorneys and staff in the District accomplished an extraordinary amount in that time. During my time there, for example, the District was ranked first in the country in the Justice Department's Project Safe Neighborhood Program, charging more felon defendants with unlawfully possessing a firearm than any other District in the entire county. The District also maintained its position as one of the top offices in the country in prosecuting child exploitation cases. Indeed, many components of the Project Safe Childhood initiative launched in this District have served as models for other Districts throughout the country. In a related vein, I introduced a Human Trafficking Task Force shortly after my arrival which, in less than a year, led to the indictments of numerous individuals in multiple prosecutions. Finally, the District's reinvigorated emphasis on public corruption precipitated a series of major investigations and prosecutions. All of these successes are due in large part to the incredible team of career prosecutors and staff in the Western District of Missouri, and I continue to be grateful for the honor of having served with them.

I also am incredibly proud of my approximately three years in the Civil Rights Division, where I was privileged to work with many brilliant and dedicated career attorneys who care

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passionately about ensuring equal justice. I served as a Deputy Assistant Attorney General from May 2003 until June 2005 and as Principal Deputy Assistant Attorney General from June 2005 until March 2006. From June 2005 until November 2005, I also served as the Acting Assistant Attorney General. During this slightly less than three-year period, I was honored to play an important role in advancing the work of the Division. I can say proudly that, due to the hard work of the career professionals, the Division was able to achieve unprecedented results during my tenure.

The accomplishments of the Voting Section, for example, were legion. In the slightly less than three years I spent supervising that Section, for example, the Division filed:

- ten Section 5 objections to protect African-American voters;
- thirteen minority language (Section 203) cases, nearly half of all such cases that had been filed in the history of the Voting Rights Act;
- a voter assistance case (Section 208);
- the first case ever filed to protect Filipino voters;
- the first case ever filed to protect Vietnamese voters;
- the first case filed under Section 11(b) of the Voting Rights Act since 1992;
- four cases under the Uniformed and Overseas Citizen Absentee Voting Act ("UOCAVA");
- three cases under the National Voter Registration Act ("NVRA"); and
- four cases under the Help America Vote Act ("HAVA").

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In fact, during just my five months as Acting Assistant Attorney General, we filed six Voting Rights Act cases, an average of more than one per month. To put this number in perspective, consider that the Division's 31-year average is just 6 Voting Rights Act cases per year.

The work of the Division's Special Litigation Section, which I also supervised, was similarly impressive. From 2001-2005, the Special Litigation Section initiated 58 new investigations pursuant to the Civil Rights for Institutionalized Persons Act ("CRIPA"), a more than 28 percent increase over the previous five-year period. Although I left before the end of Fiscal Year 2006, in that year alone, the Civil Rights Division handled CRIPA matters involving over 175 facilities in 34 states, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and the Territories of Guam and the Virgin Islands. These investigations ensured that the all too vulnerable residents of state mental health facilities, geriatric centers, juvenile facilities, and correctional institutions are afforded the federal constitutional and statutory rights to which they are due. At the same, the Special Litigation Section helped ensure the integrity of law enforcement by more than tripling the number of settlements negotiated with law enforcement agencies across the country from 2001-2006.

Turning to the Employment Litigation Section, I either authorized, reviewed, or oversaw the initiation of investigations, the filing of complaints, and/or the course of the litigation in some of the Division's most important employment discrimination cases in a decade. Among the more prominent examples are:

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- ***U.S. v. FDNY***: The complaint alleges that the City of New York uses written examinations that discriminate against blacks and Hispanics in the hiring of entry-level firefighters in the Fire Department of the City of New York ("FDNY"). According to the United States' complaint, of the FDNY's 11,000 uniformed firefighters in all ranks, only about 3 percent are black and 4.5 percent are Hispanic. These figures contrast sharply with the percentages of blacks and Hispanics in the city's police department. The United States alleges that the use of these examinations violates Title VII because they result in a disparate impact against black and Hispanic applicants and do not accurately determine whether an applicant will be able to perform the job of firefighter.

- ***U.S.. v. City of Chesapeake, Va.***: The complaint alleges that the City engaged in a pattern or practice of discrimination on the basis of race and national origin by screening applicants for entry-level police officer positions in a manner that has an unlawful disparate impact on African-American and Hispanic applicants. This case is currently being litigated.

- ***U.S. v. City of Virginia Beach***: The complaint alleges that the City engaged in a pattern or practice of discrimination on the basis of race and national origin by screening applicants for entry-level police officer positions in a manner that had an unlawful disparate impact on African-American and Hispanic applicants. This case was resolved through the entry of a consent decree on July 24, 2006.

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- ***U.S. v. State of Delaware***: The complaint alleges that the defendant's use of certain written examinations for the selection of entry-level state troopers had an unlawful disparate impact against blacks and was not job-related and consistent with business necessity, as required by Title VII. This suit was brought to trial and successfully prosecuted by the Division.

- ***U.S. v. City of Erie, Pa.:*** The complaint alleges that the City engaged in a pattern or practice of gender-based employment discrimination against women in the hiring of entry-level police officers by using a physical agility test that resulted in a disparate impact against women and did not otherwise meet the requirements of Title VII. The Section successfully prosecuted this case.

- ***U.S. v. City of Gallup, N.M.***: The complaint alleges that the City engaged in a pattern or practice of employment discrimination in hiring against American Indians based on race. This case was resolved through the entry of a consent decree on October 27, 2004.

- ***U.S. v. Los Angeles County Metropolitan Transportation Authority***: The complaint alleges that the MTA engaged in a pattern or practice of discrimination by failing or refusing to reasonably accommodate employees and applicants for employment who, in accordance with their religious observances, practices, and/or beliefs, need accommodation because they are unable to comply with a requirement applied by MTA management that employees in the MTA's

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Operations Division be available to work weekends, on any shift, at any location. The complaint further alleged that the MTA discriminated against a member of the Jewish faith and former bus operator trainee for the MTA by failing or refusing reasonably to accommodate his religious observance, practice, and/or belief of observing the Sabbath from sundown on Friday until sundown on Saturday and by subsequently discharging him from employment. This case was resolved through the entry of a consent decree on October 4, 2005.

Meanwhile, the Division's efforts to combat trafficking in persons, which I helped oversee, has been one of the Department's great success stories. Addressing an evil that is nothing less than modern-day slavery, the Civil Rights Division launched a major initiative to educate law enforcement, victim advocates, and the overall community about human trafficking and how best to eradicate it. Task forces were formed around the country, and the results have been spectacular. In Fiscal Years 2001-2006, the Civil Rights Division and U.S. Attorneys' Offices prosecuted 360 defendants, compared to the just 89 defendants charged during the prior six years, a more than 300 percent increase. In addition, 238 convictions/guilty pleas were secured during this period, a 250 percent increase over the 67 obtained in the previous six-year period. In that same time period, the Civil Rights Division and U.S. Attorneys' Offices opened no less than 639 new investigations, a nearly 400 percent increase over the 128 that had been opened in the previous six years. The assistance to victims has also been noteworthy. Indeed, prosecutors in the Civil Rights Division have facilitated "continued presence" for nearly 800 trafficking victims. And 1,166 trafficking victims from 75 countries have been assisted by the Civil Rights Division and other law enforcement personnel for refugee-type benefits under the

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2000 Trafficking Victims Protection Act. Few accomplishments have brought greater pride to my heart.

Additionally, I am equally proud of the career staff who were hired while I was in the Civil Rights Division. Working with career section chiefs, we hired outstanding attorneys with a wide array of backgrounds, always placing emphasis on academic records, clerkships, work experience, analytical skills, and knowledge of, and interest in, the Division's jurisdiction.

I am aware that there has been particular interest in the voter registration fraud cases against four employees of the Association of Community Organizations for Reform Now ("ACORN") brought during my tenure as interim U.S. Attorney in the Western District of Missouri. Since these cases remain pending, my comments must be limited, but I would like to clarify some matters that may be helpful to the Committee.

These cases, which were brought under the anti-fraud provisions of the National Voter Registration Act, were assigned to an experienced career Assistant United States Attorney, who consulted with the career leadership in the Department's Election Crimes Branch in accordance with the U.S. Attorney's Manual in conducting the investigation. The Department has adopted an informal policy of not interviewing voters during the pre-election period, which is intended to avoid actions that could conceivably have a chilling effect on voting. The policy clearly does not mean, however, that the Department forbids the filing of any charges around the time of an election. While the ACORN matter arose in October, Department policy did not require a delay of this investigation and the subsequent indictments because they pertained to voter registration

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fraud (which examined conduct during voter registration), not fraud during an ongoing or contested election. Consequently, the Department's informal policy was not implicated in this matter. In sum, there was nothing unusual, irregular, or improper about the substance or timing of these indictments. Three defendants have pled guilty and a fourth is scheduled to plea this week.

Another area of interest is a lawsuit against the State of Missouri and Missouri Secretary of State alleging violations of the National Voter Registration Act ("NVRA") voter registration list maintenance requirements. The complaint stated that Missouri both failed to remove ineligible voters and improperly removed or suspended eligible voters. Specifically, the complaint stated that the State failed to ensure that it has a uniform general program which makes a reasonable effort to ensure that (i) eligible voters are not improperly removed from the rolls, and (ii) ineligible voters are properly removed from the rolls consistent with the requirements and protections of the NVRA. According to the complaint, the State's lack of reasonable efforts had resulted in voters being removed without proper notice in some counties and no efforts were being made to remove ineligible voters in other counties. The suit did not allege fraud nor was fraud relevant in any way to the case.

A few days after the commencement of the suit, Missouri's Secretary of State issued a press release admitting the scope of the problem, as follows:

> In last year's election 29 Missouri counties and election jurisdictions had more persons registered to vote than people of voting age living in the jurisdiction. In one Missouri county, over 150% of the voting age population was registered to vote in the 2004 federal election. Clearly, a problem exists. It defies common sense that we would have more

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registered voters than people of voting age in any Missouri county.

In this case, however, the district court ruled against the United States basing the decision on the reasoning that the State properly allocated NVRA enforcement responsibilities to the individual counties. An appeal has been authorized in this case.

Thank you for providing me the opportunity to provide this statement. I look forward to answering any questions that Members of the Committee may have.

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June 11, 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

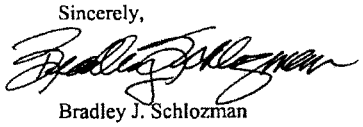
I wanted to take the opportunity to clarify my testimony with regard to the timing of the voter registration fraud indictments against four employees of the Association of Community Organizations for Reform Now ("ACORN"). Although I later clarified my testimony in responding to Senator Whitehouse's questioning at the hearing, I did state in response to various questions during my testimony that the long-time career head of the Public Integrity Section's Election Crimes Branch had "directed" me to file the indictments prior to the November 2006 election.

As required by Section 9-85.210 of the U.S. Attorney's Manual, at my direction, the Assistant United States Attorney assigned to the case consulted with the Election Crimes Branch prior to the filing of the indictments. I want to be clear that, while I relied on the consultation with, and suggestions of, the Election Crimes Branch in bringing the indictments when I did, I take full responsibility for the decision to move forward with the prosecutions related to ACORN while I was the interim U.S. Attorney.

My written testimony explicitly stated that the Department's informal policy of not interviewing voters during the pre-election period, which is intended to avoid actions that could conceivably have a chilling effect on voting, does not forbid the filing of any charges around the time of an election. While the ACORN matter arose in October, Department policy, as confirmed by the Elections Crime Branch (the director of which authored the Department's election crimes manual), did not require a delay of this investigation and the subsequent indictments because they pertained to voter registration fraud (which examined conduct during voter registration), not fraud during an ongoing or contested election. Consequently, the Department's policy was not implicated in this matter.

I hope this information clarifies my testimony at the June 5th hearing.

Sincerely,



Bradley J. Schlozman

cc: The Honorable Arlen Specter
Ranking Minority Member

35800.146

PRESERVING PROSECUTORIAL INDEPENDENCE: IS THE DEPARTMENT OF JUSTICE POLITICIZING THE HIRING AND FIRING OF U.S. ATTORNEYS?—PART VI

WEDNESDAY, JULY 11, 2007

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, Pursuant to notice, at 10:05 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Kohl, Feinstein, Feingold, Schumer, Durbin, Cardin, Whitehouse, Specter, and Grassley.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. I am probably the last person who would want to interfere with the work of those people who cover the history of the Hill and the Congress, especially the photographers, but I would also hope that you would be able to do this in such a way that it is respectful of Senators who are going to have to be able to ask questions.

Today the Committee welcomes Sara Taylor. Until recently, she was the White House Political Director. She is accompanied by her attorney, Neil Eggleston. We have made an exception here so that she can have him at the witness table with her to provide her with his advice and counsel.

In April, Senator Specter and I wrote to Ms. Taylor asking for her cooperation with the Committee's investigation. We did not hear back from her. Since then, she has left the White House. We have scheduled this hearing to learn more about the role White House political operatives played in the unprecedented firings of a number of U.S. Attorneys who had been appointed by the President.

I had a chance to meet with Ms. Taylor and her attorney just before this hearing. I thank her for appearing. I share with her my hope that she will cooperate with us by testifying to the best of her knowledge and information. Of course, that choice is hers.

I pointed out to Ms. Taylor that I believe very strongly that law enforcement should be above politics and that effective law enforcement in which the American people can have confidence requires its independence from partisan political activities.

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Nobody, from the cop on the beat to the prosecutor, should have to wonder whether they have to use a political litmus test before they prosecute somebody for wrongdoing. But that is what appears to have been compromise in this purge and by the signal it sent to prosecutors around the country.

There is clear evidence that Ms. Taylor, a top aide to Karl Rove, was among the staffers who played a key role in these firings and in the administration's response to cover up the reasons behind them when questions first arose. But the White House continues to cover up the facts and the reasons for the firings.

Now, Ms. Taylor's lawyer informed us last week that she would like to cooperate with our investigation, and I hope she will. The White House lawyers have resorted to an unprecedented blanket assertion of executive privilege.

I say "unprecedented" because I have been here over six administrations, Republican and Democratic, and I have never heard of such a blanket assertion of executive privilege. I did not even hear it during President Nixon's term.

They are seeking to interfere with the obligations of Ms. Taylor to testify, and the White House is seeking to prevent other witnesses and the Republican National Committee from providing information requested by this Committee and by the House Judiciary Committee.

Of course, this belated blanket claim of executive privilege belies the initial reaction of the White House and of the President himself to minimize his involvement and the involvement of Karl Rove in these matters, and this follows, I believe, the pattern we saw that culminated in the conviction of Mr. Libby for obstruction of justice, perjury, and lying in another matter.

It makes us ask the question: What is the White House trying to hide? And why would it interfere in Ms. Taylor's testifying if, as her lawyer says, she wishes to cooperate?

From the outset of this scandal, the President has spoken about the firing of U.S. Attorneys as if it were a matter handled and decided by the Attorney General and something Mr. Gonzales would have to explain to Congress and the American people. The President was hands off and at arm's length.

Are we now to understand when the White House claims executive privilege that these were decisions made by the President? That is a direct contradiction of the President's earlier statements that he was not responsible for this scandal, for the firing of such well-regarded and well-performing U.S. Attorneys, apparently in some instances for partisan political purposes and to affect elections.

When we had the Attorney General testify under oath, he did not know, according to his testimony, who added U.S. Attorneys to a list of those to be fired or the reasons they were added.

Indeed, the bottom line of the sworn testimony from the Attorney General, the Deputy Attorney General, the Attorney General's former Chief of Staff, the White House Liaison, and other senior Justice Department officials was that they were not responsible.

Senator Specter said recently that two of the questions at hand are: Who ordered the firings? And why? We need answers to these questions. Who did make these decisions? What it, in fact, the po-

litical operatives at the White House? Was it an attempt to affect elections? What role did Ms. Taylor and others in Karl Rove's White House Political Office play? And if the decisions were not made by anybody at the Justice Department, who made them?

For months, I have been giving the White House every opportunity to work with us voluntarily to provide the information we sought. This week, the White House ignored an opportunity to meet its burden of explaining its blanket privilege claim.

Specifically, what is it the White House is so intent on hiding that they cannot even identify the documents or the dates or the authors and recipients that they claim are privileged?

Would we see the early and consistent involvement of Ms. Taylor and other high-ranking White House political operatives in what should be independent and neutral law enforcement decisions?

Now, Ms. Taylor's honest testimony could help us begin to answer these questions. It is apparent that this White House is contemptuous of the Congress and feels that it does not have to explain itself to anyone—not to the people's representatives in Congress, nor to the American people. I would urge Ms. Taylor not to follow that contemptuous position and not follow the White House down this path.

This is a serious matter. It has serious consequences for the administration of justice. This is about the improper political influence of our justice system. It is about the White House manipulating the Justice Department into its own political arm. It is about political operatives pressuring prosecutors to bring partisan cases and seeking retribution against those who refuse to bend to their political will, such as the example of New Mexico U.S. Attorney David Iglesias, who was fired a few weeks after Karl Rove complained to the Attorney General about the lack of purported "voter fraud" enforcement cases in Mr. Iglesias' jurisdiction. It is about high-ranking officials misleading Congress and the American people about the political manipulation of justice.

Along the way, the subversion of the justice system has included lying, misleading, and stonewalling the Congress in our attempts to find out what happened. This administration has instituted an abusive policy of secrecy aimed at protecting themselves from embarrassment and accountability. Apparently, the President and the Vice President feel they, and their staff, are above the law. Well, in America, no one—no one—is above the law.

So I hope Ms. Taylor chooses to reject the White House insistence that she abet their stonewalling and instead work with us so that we can get to the bottom of what has gone on and gone wrong and correct it.

[The prepared statement of Senator Leahy appears as a submission for the record.]

Senator Specter?

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman.

I am pleased to see Ms. Sara Taylor here today on some very important issues facing the Department of Justice and the Nation, and from a preliminary discussion which I have had with her and

her attorney, I believe that she can provide some very important testimony with respect to the issues in the State of Arkansas.

And I think it is important for this Committee to move ahead as promptly as we can to find out as much as we can, and that is why I have talked to my colleagues about taking up the President's offer to make White House personnel available for limited questioning, even though I do not find it satisfactory on an objective basis.

I believe that a number of the President's conditions are acceptable. For example, I think we can do without the oath, although I would prefer to see sworn testimony because witnesses are subject to potential prosecution for false official statements.

I think we could do with a closed session, although I would prefer to see it open, so long as there is a transcript. When the President declines to permit a transcript, I think he is wrong. And I think that is for the protection of the witnesses, as well as for the importance to the Committee and the public to know precisely what was said, because people walk out of a closed-door meeting without a transcript and in perfectly good faith have different interpretations as to what was said.

But I would be prepared at this stage of the proceeding to even take the proceeding without a transcript. I think if Chairman Leahy and Chairman Conyers and others and I are going to be questioning witnesses, we can find out a good deal. And I think it is really important to get to the bottom of these issues.

There are very serious charges about asking U.S. Attorneys to resign for improper reasons. No one questions that the President has the authority to terminate all the U.S. Attorneys for no reason, as President Clinton did in January 1993, the start of his term. But, similarly, I think it is agreed that the President cannot terminate a U.S. Attorney or ask for a resignation for an improper reason.

But the Department of Justice is second only to the Department of Defense on the important functions of protecting the American people: the investigation of terrorism, the investigation of organized and violent crime, drug dealing, and many, many important subjects. And I believe that the continued tenure of Attorney General Gonzales, as I have said publicly and privately, is not in the national interest. But whether he stays is a matter for his decision and for the President's decision.

I think that separation of powers, I am not going to tell the President what to do, and I do not expect him to tell me what to do as a Senator. But I think it may well be, when we finish this investigation, that the reasons for his departure may be overwhelming. They are being built upon day by day.

Yesterday's headlines contained the additional misfeasance, perhaps even malfeasance, on the part of the Attorney General in not disclosing to Senate Committees the fact that the FBI had abused its authority and its power when he said that there were no instances when we were considering the reauthorization of the PATRIOT Act of abusive practices by Federal law enforcement officials.

And as these things mount and accumulate, I think we may well get to the point where even the Attorney General will see that his continued service is not in the national interest or the President

will see that the Attorney General's continued service is not in the national interest.

It is my hope that we will not proceed on the criminal contempt citation as to Ms. Taylor because no matter how solid her reasons may be for not testifying, it will not be publicly understood. I do not think that a criminal contempt citation is appropriate here for anyone.

There is a difference of opinion as to the claim of executive privilege. There are arguments on both sides. I candidly think that we have the better of the argument on congressional oversight.

But if it goes to court, it will take 2 years, and that is why I have urged my colleagues to take as much as we can get now and come back later, although I must emphasize that I find it totally unacceptable for the White House to impose a condition that we would not be able to followup.

I do not believe that we can voluntarily give up our constitutional authority on oversight as the facts develop, and I think the White House would yield on that issue. If they would not yield, I would not accept that as a condition for even the informal basis for proceeding.

But I think this hearing will give Ms. Taylor an opportunity to demonstrate that she did not leave because of the pendency of the subpoenas or the investigation, but those were plans which she had made a long time ago. I think we have to be very sensitive to reputations which are on the line.

Just a word or two from this Committee can place a cloud over an innocent individual which will last a lifetime. She will have an opportunity to say for the record that she had plans to leave a long time ago, and it was genuinely only coincidental.

Sometimes there are feigned coincidence, but I think she will outline the facts she had planned to leave, and the statement which she has provided demonstrates good faith to try to comply with the interests of oversight and still respect her obligation to the President. Even though she is no longer there, the executive privilege consideration would apply.

I look forward to your testimony, Ms. Taylor.

Thank you, Mr. Chairman. One addendum. I count one, two, three, four, five, six, seven Democrats here today. If anybody is watching C–SPAN 3 or if the staffs would notify Republican Senators, I could use some company.

Chairman LEAHY. For one thing, I do not think Senator Specter needs any company. He is a force unto himself. But we did set places for every single Republican. They were invited.

Senator SPECTER. Mr. Chairman, you may rest assured I will not leave.

Chairman LEAHY. Well, we set places for every Republican Senator. They could be here. But I know Senator Grassley wanted to speak for just a couple minutes, and I will allow him to do that, as did Senator Specter.

And those would be the only—I mean Senator Schumer, and those would be the only opening statements. But I would note just one thing on the offer, so-called offer from the White House. I have listened carefully to what Senator Specter has said, and I know no

one who can do a better job of cross-examination than Senator Specter.

But the offer, anytime we have asked the White House are they open to any kind of a counter-offer, they have said to us, "Take it or leave it." It would be behind closed doors, on their agenda, and it would have to be with the assurance there would be no followup, no matter what is said in there, no subpoenas, no followup.

And, of course, that is the part that we cannot accept. I have no problem with talking to people prior to a hearing and getting some idea of what they are going to say. But the idea there could be no followup, of course, is unacceptable.

Senator Schumer, you wanted a couple minutes?

STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Thank you, Mr. Chairman. First, let me thank you for your superb leadership in this Committee and on this endeavor.

And, Ms. Taylor, I want to thank you for at least coming before the Committee in response to our subpoena. I know it is not easy for you. I know you want to cooperate. Our quarrel is not with you. It is with those in the White House who wish to stymie our search for the truth.

Call it what you will, but the White House has issued a gag order, plain and simple. The President can dress it up all he wants in the lofty language of "executive privilege," but it is a gag order. And it is ill-considered and over-broad and unpersuasive.

We are repeatedly told that no one did anything wrong, but we have to take it on faith. And, sadly, we have been repeatedly reminded on issues big and small that our faith in the administration is misplaced, because there is an effort, it seems almost at all costs, to avoid telling the truth, the whole truth, and nothing but the truth.

In between this building and the White House is a courthouse where we can battle this out. But I hope the President wakes up to reality and reason. I hope he reconsiders in the course of this debate. I hope he understands that by stonewalling he does not serve his administration, he does not serve you, he does not serve the country as a whole. So I hope he does the right thing and allows you to do what you claim you want to do: tell the complete truth to this Committee and the American people.

Having said that, as both Senator Leahy and Senator Specter have said, there are questions that we may be able to ask that do not fall in the realm of privilege, and I appreciate the opportunity to do it.

I believe the privilege claim that the President has made is weak. It is weak because we are asking questions about a specific series of incidents—it is not a general broad range—about wrongdoing. It is weak because there is no other place to get the answers. And it is weak because some of the documents already that relate to this have been issued when we questioned the Justice Department.

In conclusion, again, I want to thank you, Mr. Chairman, for your leadership on this and for the opportunity to speak here this morning.

Chairman LEAHY. As I noted at the outset, I would also yield to Senator Grassley, who wanted to make a very short statement. Senator Grassley?

STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Thank you very much.

First of all, Mr. Chairman, to you and the Committee, I apologize that I was making some opening remarks at the Finance Committee, and I will probably have to go back there because we have a very important hearing on carried interest.

I would like to say a few words, first of all, to thank Ms. Taylor for appearing here today. I certainly do not envy her position. She could have chosen not to come before us. That is because she finds herself in the middle of a constitutional struggle between two branches of Government.

The executive branch has asserted executive privilege over communications and deliberations that Ms. Taylor had at the White House and, of course, the President does have the right to be able to get candid information from his advisors.

On the other hand, Congress needs to be able to conduct legitimate oversight of the executive branch. Ms. Taylor's presence here today shows courage and a willingness to cooperate with the Senate Judiciary Committee.

Let me share some personal information about Sara Taylor with my colleagues. She hails from my State of Iowa. She is from Dubuque, Iowa. I first remember meeting Sara at Lake Eleanor in Dubuque in September of 1980. It was her birthday, and she had just turned 6 years old.

It is my understanding that she was expecting to go to a pizza party for her birthday, but instead her parents took her to a picnic I was hosting during my first run for the Senate. I am not sure that was where she wanted to be on her birthday, but I certainly was pleased to meet her.

Sara has come a long way from her days growing up in Iowa. Her love of public service and hard work got her all the way to the White House, where she worked for President Bush for 8 years.

And after working for someone as hard as she did for that long and being loyal to him, I understand that it is not easy to buck the President and disobey his request not to comply with the Judiciary Committee's subpoena. I think she has chosen the right course of action by being here, and I thank you for doing that, Sara. And thank you for your loyalty to me over the years as well.

Chairman LEAHY. Thank you.

Ms. Taylor, please stand and raise your right hand. Do you solemnly swear that the testimony you will give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. TAYLOR. I do.

Chairman LEAHY. Ms. Taylor served until recently as the Deputy Assistant to the President and Director of Political Affairs at the

White House. During the 2004 campaign, she served as a senior strategist, helping to manage the campaign's message development, the paid media strategy opinion research, and strategic travel planning.

She had previously served as an Associate Director in the Midwestern States and Political Affairs Office. She first joined the President's team in April 1999 when she helped set up his Iowa caucus effort and managed the 2000 general election campaign in Michigan. She received a B.S. in finance from Drake University.

As you know, Ms. Taylor, the rules of our Committee call for you to have submitted your written statement by 10 a.m. yesterday. You have not done that, but we eventually got a statement, and that will be included in the record. If you wish to make a short summary—normally we would not allow that, but in this case I will make an exception. I do not hear any objection from any member of the Committee, so please go ahead.

STATEMENT OF SARA M. TAYLOR, FORMER DEPUTY ASSISTANT TO THE PRESIDENT AND DIRECTOR OF POLITICAL AFFAIRS, THE WHITE HOUSE, WASHINGTON, D.C.

Ms. TAYLOR. Mr. Chairman, Senator Specter, members of the Senate Judiciary Committee—

Chairman LEAHY. Is your microphone on? There is a little button in the front.

Ms. TAYLOR. Sorry about that. Mr. Chairman, Senator Specter, and members of the Senate Judiciary Committee, my name is Sara Taylor. Until about 7 weeks ago, I served as a Deputy Assistant to the President and the Director of the Office of Political Affairs at the White House.

Over the last 8 years I've worked in different capacities for President Bush. I know the President to be a good and decent man. I am privileged to have had the opportunity to serve him, and I admire his unflinching devotion always to do what he believes is right for the country.

The professional opportunities President Bush gave me have and will continue to have a profound impact on my life. I am grateful for the confidence he has shown in me.

I am here today to testify, pursuant to subpoena, before this Committee as a willing and cooperative private citizen. I must recognize, however, that the areas you would like to question me about today arise out of my service to the President in the White House.

I have received a letter from the Counsel to the President informing me that the President has directed me not to testify "concerning White House consideration, deliberations, communications, whether internal or external, relating to the possible dismissal or appointment of United States Attorneys, including consideration of possible responses to congressional and media inquiries on the United States Attorneys matters."

I have attached a copy of Mr. Fielding's letter to me to this statement, as well as the letter that my counsel, Mr. Eggleston, wrote to the Chairman and the Ranking Member.

Chairman LEAHY. That will be made part of the record.

Ms. TAYLOR. OK. Thank you.

The President has made the determination that the disclosure of this information would interfere with the operation of the executive branch. I intend to follow the President's instruction. I do not have the ability independently to assess or question the President's determination.

The current dispute between the executive and congressional branches of our Government is much bigger than me or my testimony here today. In light of the President's direction, I will answer faithfully those questions that are appropriate for a private citizen to answer while also doing my best to respect the President's directive that his staff's communications be privileged.

To the extent that I am not able to answer questions because of the President's directions, I commit to abide by a judicial determination that may flow from a subpoena enforcement action against the White House.

While I may be unable to answer certain questions today, I will answer those questions if the courts rule that this Committee's need for the information outweighs the President's assertion of executive privilege.

I look forward to answering your questions not covered by the President's assertion of executive privilege. I understand that during this hearing we may not agree on whether answers to particular questions fall within the prohibitions of Mr. Fielding's letter.

This may be frustrating to both you and me. I would ask that this Committee not infer than an invocation of Mr. Fielding's letter signals knowledge on my part. Within the constraints of Mr. Fielding's letter, I will do my best to answer your questions.

Thank you.

[The prepared statement of Ms. Taylor appears as a submission for the record.]

Chairman LEAHY. Ms. Taylor, why did you resign as White House Political Director?

Ms. TAYLOR. I am 32 years old, Senator. I have worked for the President for 8 years. At my age, almost 33, I have additional career and additional personal goals in my life, and I thought that this was the right time for me to head off and look at other career opportunities.

Chairman LEAHY. When did you first consider leaving the White House?

Ms. TAYLOR. I considered it last year. I thought a lot about it. I don't know when I first—probably around, you know, last summer I wondered if I would stay until the end, if I would—you know, and I informed Mr. Rove of my decision to leave in December.

Chairman LEAHY. Were the investigations into the replacement of so many U.S. Attorneys at all a factor in your consideration?

Ms. TAYLOR. Not whatsoever.

Chairman LEAHY. And you did not tell anyone that that may have been a factor?

Ms. TAYLOR. I'm sorry. I didn't understand.

Chairman LEAHY. And you have not told anyone at any time that that might have been a factor in your consideration?

Ms. TAYLOR. I don't believe I have ever told anyone that.

Chairman LEAHY. Thank you. Has anybody at the White House or otherwise made any commitment to you that you would be protected from legal consequences if you declined to testify today?

Ms. TAYLOR. I have never heard from anyone at the White House that they would protect me if I chose to follow this course?

Chairman LEAHY. Anyone outside the White House?

Ms. TAYLOR. I have not heard from anyone outside the White House?

Chairman LEAHY. Thank you.

Now, if the staff could give you a copy of a document numbered OAG1814.

Ms. TAYLOR. OK, thanks.

Chairman LEAHY. It is a series of e-mails. This is a February 16, 2007, e-mail exchange between you and Kyle Sampson. Is that correct?

Ms. TAYLOR. It is.

Chairman LEAHY. Are you familiar with this document?

Ms. TAYLOR. I have seen this document.

Chairman LEAHY. The last e-mail in this string is an e-mail from Mr. Sampson to an e-mail address st@gwb43.com.

Ms. TAYLOR. Yes.

Chairman LEAHY. Is that your Republican National Committee e-mail address?

Ms. TAYLOR. That is a domain controlled by the Republican National Committee that I used when I had political matters.

Chairman LEAHY. So that was your Republican National Committee e-mail address?

Ms. TAYLOR. Yes, that is, in fact, my address—was my address.

Chairman LEAHY. How frequently did you use this e-mail address?

Ms. TAYLOR. I used it a fair amount. I mean, people had the address and e-mailed me, and I got a lot of news clips on it, and I read those. So I think it's fair to say I used it—I used it regularly.

Chairman LEAHY. Any idea how often?

Ms. TAYLOR. I don't. I know from your press accounts that there are 66,000 e-mails, and I've heard that and I know that from the press. So I believe that there are 66,000 e-mails.

Chairman LEAHY. That would be using it on occasion?

Ms. TAYLOR. Well, it is a lot of e-mail, I believe, and I don't know with certainty that the e-mail that I have goes back to either 2001 or 2002.

Chairman LEAHY. Now, why did you send these e-mails regarding the Department's handling of the U.S. Attorney firings from your Republican National Committee e-mail account?

Ms. TAYLOR. Because I can tell you as an end user of the system that was set up early in the administration to make sure that the President's appointees who on occasion had to address political matters never violated the Hatch Act. And the reason for the e-mail account was so that I never put myself in a situation where I was violating the Hatch Act.

We particularly didn't want to spend taxpayer dollars on political matters. And so as a result of that system, I had, you know, two computers, two BlackBerrys, and as somebody who just generally

tried to be efficient with her time, sometimes just used the wrong computer.

Chairman LEAHY. Well, if you were to use that to—you or anyone would use that to involve yourself in hirings that were violative of the Hatch Act, that would not be a non-violation simply because it was done on an RNC computer rather than the White House. Is that correct?

Ms. TAYLOR. I'm not—

Chairman LEAHY. If you were to do something on there that violated the Hatch Act, political manipulations of hirings and firings that were precluded by the Hatch Act—I am asking you as a hypothetical—that would still be a violation whether you did it on a White House account or an RNC account, would it not?

Ms. TAYLOR. Well, I assume a violation of the law is a violation of the law. I think that, again, the purpose of the e-mail account was to make sure that if, you know, the President was doing Republican fundraising, as he has done in the past, that we were doing it on political equipment, not official equipment.

Chairman LEAHY. But the law is the law.

Ms. TAYLOR. I mean, I am not—

Chairman LEAHY. I am just trying to make sure—

Ms. TAYLOR. I am not an expert on the Hatch Act. I just—

Chairman LEAHY. I am trying to make sure I understand your answer. You said the law is the law. Is that correct?

Ms. TAYLOR. Well, I understand that if you were to break a law, you would obviously break the law. But, again, I'm not—I'm having trouble following where you're headed here, what you're trying to—

Chairman LEAHY. According to a report by the House Government Reform Committee—and this goes to the report you have referred to—the RNC has recovered over 66,000 e-mails, of which you are a part.

Ms. TAYLOR. Yeah.

Chairman LEAHY. Have you reviewed these e-mails to determine whether they are responsive to our subpoena compelling you to produce all the documents related to our investigation?

Ms. TAYLOR. My attorney has looked through my e-mails. That's correct.

Chairman LEAHY. What did you do with these e-mails?

Ms. TAYLOR. My attorney sent those e-mails to the White House for their determination as to whether those e-mails fell within executive privilege.

Chairman LEAHY. So you have not determined whether they were responsive to our subpoena?

Ms. TAYLOR. We have—I mean, my understanding is that my attorney went through my materials and submitted them—

Chairman LEAHY. Not my question. Have you determined whether they were responsive to our subpoena?

Ms. TAYLOR. I guess the answer to your question would be yes. We went through, looked at your subpoena, and gather any e-mail that we may have had or—may have had in our possession, and if we had e-mail, determined to turn it over to the White House so they could make a determination as to whether that e-mail—

Chairman LEAHY. So you did not make that determination.

Ms. TAYLOR. I asked my attorney to make that determination.

Chairman LEAHY. And did you determine that any of them were responsive—it is a simple yes or no question. Did you determine whether any of those e-mails would have been responsive to our subpoena?

Ms. TAYLOR. We sent e-mail—yes. We sent it to the White House, correct.

Chairman LEAHY. I almost feel like I am doing a practice run for the Attorney General testifying here, but let me ask you again. Did you determine whether any of those 66,000 e-mails were responsive to our subpoena?

Ms. TAYLOR. I believe that, as I said, my attorney went through it and determined that there were e-mail and sent those e-mails—so I guess the answer to your question is yes—to the White House for determination if—

Chairman LEAHY. But not to us. Not to us in answer to the subpoena.

Ms. TAYLOR. My attorney sent them to—Mr. Eggleston sent them to the White House for the determination if they fell within the guidelines of executive privilege.

Chairman LEAHY. Again, not my question, but we will get back to it in the second round. Since the 2004 election, did you speak with President Bush about replacing U.S. Attorneys?

Ms. TAYLOR. Senator Leahy, as you know, I have a letter from—

Chairman LEAHY. That is not my question. I am not asking you what was said or anything else. Did you speak with the President replacing about U.S. Attorneys? Not what the content of the discussion was, but did you speak with him, yes or no, about replacing U.S. Attorneys?

Ms. TAYLOR. Senator, I have a very clear letter from Mr. Fielding. That letter says and has asked me to follow the President's assertion of executive privilege, and as I read that, I determine my acknowledging whether a conversation occurred or did not occur would, in fact, be part of the deliberations.

Chairman LEAHY. Did you attend any meeting with the President since the 2004 election in which the removal and replacement of U.S. Attorneys were discussed?

Ms. TAYLOR. Again, I have a letter that has asked me to follow the President's assertion of executive privilege.

Chairman LEAHY. So you are not going to answer my question. Are you aware of any Presidential decision documents since the 2004 election in which President Bush decided to proceed with a replacement plan for U.S. Attorneys?

Ms. TAYLOR. I'm sorry. Could you repeat the question?

Chairman LEAHY. Are you aware of any Presidential decision documents since the 2004 election in which President Bush decided to proceed with a replacement plan for U.S. Attorneys?

Ms. TAYLOR. Again, I'm not—I've been asked not to comment on the internal workings and deliberations to—of the White House. And I would like to call the Committee to my opening statement which said—

Chairman LEAHY. I am just asking if you would answer that question. Your answer is that you will not answer any of those three questions. Is that correct?

Ms. TAYLOR. Yes.

Chairman LEAHY. Thank you.

Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman.

Senator Leahy and I have a longstanding record for bipartisanship and agreeing on many, many if not most matters. But I think it relevant for me to say at this time that I think your declining to answer the last series of questions by the Chairman was correct under the direction from White House Counsel.

Whether White House Counsel is correct on the assertion of executive privilege is a matter which will be decided by the courts. And as I said earlier, I think congressional oversight has the better of the argument. But it is not for us to decide. It is a judicial matter if it is going to be framed that way.

But I do believe when you are asked whether you had a conversation with the President, that even though it does not go to the issue of content of the conversation, that it comes under the interdiction of White House Counsel, which I agree that you are compelled to follow at this stage having been an employee.

But it is my hope that your refusal to answer the questions as articulated by the Chairman will not be the basis for a contempt citation, but I thought it important to have a contemporaneous statement by another lawyer, just another lawyer, as to my interpretation of the scope of the prohibition which you are laboring under.

Now let's come to some of the substance which I think you may be in a position to shed some light on. You served as Political Director at the White House?

Ms. TAYLOR. I did.

Senator SPECTER. There has been a question raised about the resignation of the U.S. Attorney in Arkansas, Bud Cummins, who was then replaced on an acting basis by Mr. Tim Griffin. And Mr. Tim Griffin was known to you from having served as the Deputy Political Director? Would you—you are nodding.

Ms. TAYLOR. Yes, he was known to me. He was the Deputy Political Director, and I had known him for quite a bit longer than that.

Senator SPECTER. Now, Mr. Griffin had extensive experience as a prosecuting attorney, correct?

Ms. TAYLOR. My knowledge is that he had been a prosecutor, a Federal prosecutor for 3 years in different jobs, I think two different jobs, if my memory serves me correct. I also know that Mr. Griffin was a 10-year JAG officer in the United States Army where he was also an Army prosecutor.

Senator SPECTER. And he had served as an Assistant to the Special Prosecutor is the Cisneros—

Ms. TAYLOR. I believe that's—

Senator SPECTER.—Independent Counsel investigation?

Ms. TAYLOR. I believe that's correct.

Senator SPECTER. So he had very substantial experience as a professional in the prosecution field.

Ms. TAYLOR. I believe he had significant experience.

Senator SPECTER. Now, with respect to the departure of Mr. Bud Cummins, who had been the United States Attorney in Arkansas, to your knowledge, what were the circumstances of his interest in staying on or leaving?

Ms. TAYLOR. You know, I had heard a while ago that he had planned to leave. I had read a press account that he—

Senator SPECTER. OK. "A while ago" is when?

Ms. TAYLOR. It may have—I don't know the specific time range, Senator. I had heard that he had, you know, been considering this, and maybe even as early as 2004 had indicated that he may be thinking about leaving.

Senator SPECTER. But, in any event, substantially before 2006?

Ms. TAYLOR. I believe that's the case.

Senator SPECTER. The question has been raised as to whether Mr. Cummins was forced out in order to make room for Mr. Griffin. Do you have any personal knowledge as to the answer to that question?

Ms. TAYLOR. Let me try to, again, just answer this while also respecting the President's assertion of executive privilege. Obviously, we're sitting here today because this whole situation was awkwardly handled.

To the best of my knowledge, Mr. Cummins had been considering leaving. Mr. Cummins had announced in the press that he was leaving. Mr. Cummins had said in the press that he had been thinking of leaving for a year. Mr. Cummins further said that he was—one of the reasons he was leaving is that he had four children, either college age or heading to college at some point.

And so, you know, we find ourselves in a situation where we have a U.S. Attorney who had been planning to leave, to the best of my knowledge. We had identified an exceptionally qualified candidate, and, you know, unfortunately Mr. Cummins has had to endure all this discussion about him being fired, which as far as I can tell he was, in fact, fired, but it's sad because, unfortunately, he had already said he was leaving, so here we are talking about a guy who wanted to leave getting fired. And had people communicated this, we might not find ourselves in this situation or sitting here today.

Senator SPECTER. Deputy Attorney General McNulty said that Mr. Cummins had done nothing wrong but was removed to make room for Mr. Griffin. Now, your testimony is quite to the contrary, that Mr. Cummins had planned to leave—

Ms. TAYLOR. Well—

Senator SPECTER. Wait a minute. I haven't finished the question yet.

Ms. TAYLOR. I'm sorry. I apologize.

Senator SPECTER. Mr. Cummins had planned to leave and that Mr. Griffin was an Arkansas resident and had prosecutorial experience and was a logical person to fill him in.

Now, how do you account for Mr. McNulty having a different conclusion, if you can account for it, that Mr. Cummins was removed or asked to resign to make room for Mr. Griffin?

Ms. TAYLOR. Again, it's—I don't know all the conversations that took place with Mr. Cummins, and I don't know sort of the entire timeline. I know what I read in the press, and I know what my personal knowledge was and what I heard. And so I think this is a situation where, you know, had there been better communication, we could have clearly avoided this situation.

Senator SPECTER. Ms. Taylor, would it be fair to say that you were closer to Mr. Griffin because of your association as his being your Assistant Political Director—

Ms. TAYLOR. I know Mr. Griffin very well. I have worked with him on several occasions. He was a Deputy—

Senator SPECTER. I hadn't finished my question. Closer to Mr. Griffin than Mr. McNulty was?

Ms. TAYLOR. Yes. I know Mr. Griffin quite well. I can't speak for Mr. McNulty's relationship with him, but I would be surprised if he knew him better than I did.

Senator SPECTER. All right. Now, there were also allegations that Ms. Miers, then-White House Counsel, had intervened and also suspicions that Mr. Karl Rove had intervened to replace Mr. Griffin in place of Mr. Cummins, what knowledge do you have of those matters?

Ms. TAYLOR. Again, I'm trying to follow sort of this process here so that I'm respectful of the President's assertion of executive privilege. You know, all I can say about Tim is that Tim worked in the White House. He worked with a lot of people. He worked with people at the Justice Department because he did a tour of service there. He worked with people in Arkansas.

A lot of people knew this individual, and a lot of people thought very highly of him. His character, his work ethic, and his skill I think spoke very highly to who he was. And so I don't think it would be—I think it would be fair for the Committee to assume that there are a lot of people who knew him and had an opinion of him and had the personal experience of working with him.

Senator SPECTER. Just one or two more questions, Mr. Chairman.

Did Mr. Rove or Ms. Miers intervene in the replacement of Mr. Cummins with Mr. Griffin?

Ms. TAYLOR. I can't answer that. I don't—I have—again, I'm trying to answer your questions and respect the—

Senator SPECTER. Can you not answer it because of the privilege or because you just don't know?

Ms. TAYLOR. I don't—I don't—I don't specifically know. I don't know for sure if one or both or either did.

Senator SPECTER. Your testimony is that Mr. Cummins had planned to leave and that Mr. Griffin was a logical replacement, and that is how you saw it.

Ms. TAYLOR. Yes, and I think it would be fair for the Committee to assume that other people saw it that way, too. And I'm basing that on the fact that Mr. Griffin worked there and other people knew him.

Senator SPECTER. I am being prompted by the Chairman to ask what other people knew. Occasionally I ask some of his questions.

Chairman LEAHY. I do not have to prompt Senator Specter.

Senator SPECTER. What other people were you referring to?

Ms. TAYLOR. Well, Mr. Griffin served in the White House. He was a Special Assistant to the President. He worked with many members of the President's team, including the President's senior staff. He worked with the members of the Counsel's Office. He had done a tour of service at the Justice Department. Because he's an Arkansas native, he worked closely with people in Arkansas.

So a lot of people knew him and thought highly of him, so, you know, I can only assume that other people would draw the same conclusion about his character, his work ethic, and his skill that I did.

Senator SPECTER. Thank you,

Ms. TAYLOR.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Specter. And following our—just so everybody will know what the list is under the early bird rule, it will be Senator Kohl, then Senator Grassley if he comes back, Senator Feinstein, Senator Feingold, Senator Schumer, Senator Durbin, Senator Whitehouse, and Senator Cardin. And we do have seats for other Republican Senators should they want to come and—

Senator SPECTER. Mr. Chairman, an inquiry. How many Democrats are present and how Republicans?

Chairman LEAHY. Seven Democrats and one Republican, but that one Republican is so formidable, it is a pretty even number.

I would note for the record—

Senator SPECTER. Oh, we agree again.

[Laughter.]

Chairman LEAHY. I would note for the record that every single Republican was invited, every single Republican was notified well over a week or two ago that we were going to have this hearing, and the seats and the memos and the papers and the water and, and, and, are set up for every single Republican. They could be here. They could be here if they wanted to be here.

Senator Kohl?

Senator KOHL. I thank you, Mr. Chairman.

Ms. Taylor, the appearance that politics plays a central role in the day-to-day business of the Department of Justice does call into question the integrity of our justice system, and it greatly troubles many of us. In particular, I am deeply troubled by the controversy surrounding the U.S. Attorney in the Eastern District of Wisconsin. According to his supervisors at the Department of Justice, both current and former, Mr. Biskupic was a solid performer, and as far as we can tell, nobody at DOJ had concerns about his performance or wanted him fired. And yet his name appeared on a list of poor performers who, in fact, should be fired.

After lengthy testimony from DOJ officials, we have yet to find anyone who recommended his removal, and the only concerns that have been expressed about his performance came from inside the White House, from the President himself and Karl Rove.

And so did you or Karl Rove ever request that Department of Justice officials remove Mr. Biskupic from his position as a U.S. Attorney?

Ms. TAYLOR. I don't know.

Senator KOHL. Did you or Karl Rove ever discuss Mr. Biskupic's performance with Kyle Sampson or other Department of Justice officials?

Ms. TAYLOR. I did not ever discuss it, that I ever remember. I don't recall. I don't believe I did.

Senator KOHL. Did you ever discuss his performance or possible removal with anybody else in the White House?

Ms. TAYLOR. Not that I recall.

Senator KOHL. Did anyone else at the White House discuss his performance with Kyle Sampson or other DOJ officials or suggest that he be removed from his position as the U.S. Attorney?

Ms. TAYLOR. Not that I recall.

Senator KOHL. Thank you very much, Mr. Chairman.

Senator FEINSTEIN. Thank you very much.

Ms. Taylor, I am going to ask you a series of questions, and you can elect to answer them or not. Who decided which U.S. Attorneys to fire and why were they selected?

Ms. TAYLOR. Again, I'm trying to do the best I can here and following the President's assertion of executive privilege and determine what is a deliberation and what is a fact-based question. So I really appreciate the Committee's under—

Senator FEINSTEIN. You decline to answer?

Ms. TAYLOR. Yes.

Senator FEINSTEIN. OK. Where did the plan to remove and replace several U.S. Attorneys originate?

Ms. TAYLOR. Again, I have to—the President's—

Senator FEINSTEIN. Thank you. OK.

What was the basis for deciding which U.S. Attorneys to fire? What criteria were used to determine which ones to let go?

Ms. TAYLOR. I don't know the answer to that.

Senator FEINSTEIN. What was your role? Did you add or remove names?

Ms. TAYLOR. I don't recall ever doing so.

Senator FEINSTEIN. OK. Did you make any suggestions regarding who should or should not be removed?

Ms. TAYLOR. The letter that Mr. Fielding has sent, that would—to me determines that would be a deliberation.

Senator FEINSTEIN. You decline. I just don't want-—

Ms. TAYLOR. OK. I appreciate it.

Senator FEINSTEIN. OK. When testifying before the Senate, Kyle Sampson, formerly Chief of Staff to the Attorney General, stated that the idea to avoid Senate confirmation for replacement of U.S. Attorneys was a bad staff plan that was eventually rejected in January of this year. He stated that you, Sara Taylor, supported the idea of avoiding Senate confirmation and that you were upset that the Attorney General backed away from that strategy.

Ms. TAYLOR. Is your—is your question about the Arkansas situation—

Senator FEINSTEIN. This is in—

Ms. TAYLOR.—or are you asking the question broadly?

Senator FEINSTEIN. He stated that you supported the idea of avoiding Senate confirmation and that you were upset that the Attorney General backed away from that strategy. That is in his testimony on pages 88 to 93. Essentially, I am asking, is that correct?

Ms. TAYLOR. I would—I believe, if my memory serves me correct—I read Mr. Sampson's testimony. I believe that he was talking about the Senate—the Arkansas situation specifically, and my recollection of my—I was upset at one point, I was upset greatly at one point because the day—

Senator FEINSTEIN. —I do not understand what you were upset about. What were you—

Ms. TAYLOR. I'm trying to explain. I'm trying to explain it to you.

Senator FEINSTEIN. OK.

Ms. TAYLOR. So the reasoning for me being so upset was that I saw a friend of mine, a colleague of mine, who had become the U.S. Attorney in the State of Arkansas—and we can debate how that happened, but he was, in fact, the interim U.S. Attorney. And as I understand it, there was a call where the Attorney General had let Senator Pryor know that the White House would not be nominating Mr. Griffin. And then he, as I understand it, called Mr. Griffin to inform him of that decision. And so, yes, I was very upset about that.

Senator FEINSTEIN. That is not quite my question. Let me repeat it again. Mr. Sampson testified that you supported the idea of avoiding Senate confirmation. I am not talking about the appointment. I am talking about avoiding Senate confirmation, and that you were upset that the Attorney General backed away. Is that correct?

Ms. TAYLOR. I don't believe that's an accurate reflect of my position. I was upset because we had pulled, in my view, sort of the rug out from underneath Tim Griffin and told him that we would not be nominating him. And that is why I was upset.

Senator FEINSTEIN. You were perfectly willing to have him go through Senate confirmation?

Ms. TAYLOR. I expected he would go through Senate confirmation.

Senator FEINSTEIN. OK. Then apparently Mr. Sampson did not testify accurately.

Ms. TAYLOR. Well, and I think what Mr.—and, again, I am trying to, you know, infer here, but I think that the discussion was—the point in which you leave him—because I want to be fair to Mr. Sampson. The point in which he is the interim U.S. Attorney, at that point does he stay in the job or does he be removed immediately? And so I certainly was supportive of him staying in that job for a period of time.

Senator FEINSTEIN. OK. In an e-mail exchange between you and Mr. Sampson in February of this year, you said Bud Cummins was removed because he was "lazy."

Ms. TAYLOR. I would—I'm sorry.

Senator FEINSTEIN. Since then, Mr. McNulty has testified before the House, and in response to your e-mail said, "No one has ever described Mr. Cummins to me as being 'lazy.'"

What led you to conclude that Mr. Cummins was lazy?

Ms. TAYLOR. That was an unnecessary comment, and I would like to take this opportunity to apologize to Mr. Cummins. It was unkind and it was unnecessary.

To answer your question, I had heard that. That may not be fair, and it is not my intention today to compound the embarrassment that e-mail may have caused him.

Senator FEINSTEIN. All right. But you did say that.

Ms. TAYLOR. I said it, and it was in the e-mail, yes.

Senator FEINSTEIN. OK.

Ms. TAYLOR. And I apologize for it.

Senator FEINSTEIN. Thank you for that.

In an e-mail to Kyle Sampson from William Kelley on Monday, December 4, 2006, he wrote, "We're a go for the U.S. Attorney plan. White House Leg., Political, and Communications have signed off and acknowledge that we have to be committed to follow through once the pressure comes."

Did you sign off or see that plan?

Ms. TAYLOR. Senator, I have to infer that that is a deliberation, and based on my understanding, it's not something I am to talk about here today.

Senator FEINSTEIN. All I am asking is if you saw the plan. The answer is yes or no.

Ms. TAYLOR. I did not see it. I don't recall seeing it.

Senator FEINSTEIN. Who, to the best of your knowledge, suggested names that were part of the seven U.S. Attorneys that were called on December 7th and told they were fired?

Ms. TAYLOR. I think that would be, you know, considered internal deliberations, and I can't answer that question.

Senator FEINSTEIN. Were you aware that U.S. Attorneys were going to be called on December 7th and asked to summarily resign?

Ms. TAYLOR. Again, under the President's assertion of executive privilege, I decline answering.

Senator FEINSTEIN. So you will not say whether you knew or did not know?

Ms. TAYLOR. Is that a fact-based question?

[Ms. Taylor confers with counsel.]

Ms. TAYLOR. On advice of my counsel, I had heard that there would be some U.S. Attorneys replaced. I don't recall knowing that that was the date that they were being replaced on.

Senator FEINSTEIN. OK. When you heard U.S. Attorneys were being replaced—and this was obviously following Mr. Cummins and a different set of U.S. Attorneys—what did you do?

Ms. TAYLOR. That I think falls well within the bounds of internal White House deliberations, and I can't answer that question.

Senator FEINSTEIN. OK. My time is up. Thank you very much. I appreciate it.

Ms. TAYLOR. Thank you, Senator.

Chairman LEAHY. Thank you.

Next is Senator Schumer.

Senator SCHUMER. Well, thank you, Mr. Chairman.

I thank the witness. This is a difficult time for you and the White House has put you in the position of sort of being a tightrope walker here, trying to answer questions. I think you are genuinely trying to answer questions you think you can, but not being able to answer some because of the privilege.

But it's a very difficult position to be in. And, in fact, you have answered some questions about views in the White House. Senator Specter asked you, for instance, about how Mr. Griffin was considered within the White House. Those are deliberations of somebody in the White House.

I think it shows two things. I think it shows how this broad claim of privilege just doesn't stand up, and I think it shows that it's a weak claim. I think your testifying to some of these things but not others weakens the claim further because of your genuine desire to answer questions that you can.

And again, this is not directed at you or your attorney, but I would ask people in the White House to look at what's happening here. It shows how specious much of their claim is and it shows how many things can be answered. So, I want to ask you a few questions related to you and your knowledge and not others and things that came out.

The first question I want to ask you is, how many times did people in political positions call you and ask you to get involved in something a U.S. Attorney was doing?

Ms. TAYLOR. The letter that I received from Mr. Fielding expressly stated "internal and external communications" and I believe that your question, as I understand it, would be an external communication and it's not something that I could answer.

Senator SCHUMER. But this has nothing to do with any deliberations within the White House whatsoever. I'm not asking you about talking to anyone within the White House. I'm not asking you even what you did after you received these communications. I'm simply asking you, from the outside of the White House, clearly not covered by privilege.

Ms. TAYLOR. If you're asking me how many times people called me, I don't know.

Senator SCHUMER. Was it more than once?

Ms. TAYLOR. I'm sorry. What was your—

Senator SCHUMER. How many times did political people, people in some political position or other, party-elected, whatever, call you and complain about a U.S. Attorney and what they were doing? More than once?

Ms. TAYLOR. Again—again, I believe that Mr. Fielding's letter is quite clear, that external communications—again, I'm trying to—and I appreciate your working with me.

Senator SCHUMER. You're trying to stay within the confines.

Ms. TAYLOR. I'm really trying to stay within the confines of the letter. It's the course that I've chosen to follow. And I am trying to be helpful to you, Senator, but I'm also trying to be respectful of my former employer. And so I just—I only can do my best as a non-attorney to infer that external communications falls—what you're asking me is an external communication.

Senator SCHUMER. OK. But what—

Ms. TAYLOR. I don't have an ability to independently assess what is covered under privilege and not, and so I'm following the letter that I have in front of me.

Senator SCHUMER. I appreciate that and I appreciate your sincere efforts. I take them as sincere, I do.

Ms. TAYLOR. Uh-huh.

Senator SCHUMER. And I appreciate the box that this letter has put you in. But I don't see—and maybe your attorney wants to answer this—how an external communication from somebody outside the Federal executive branch, executive branch to you, and just asking how many times you received it can in any way fall within the confines of the privilege, even the broad privilege outlined in Mr. Fielding's letter.

[Witness conferring with attorney.]

Ms. TAYLOR. I would like to answer the question: the letter says "external communications". I believe you asked me a question

about an external communication or a set of external communications, and so I'm going to follow the guidelines laid out by Mr. Fielding.

Senator SCHUMER. Well, if I might, with your permission, Mr. Chairman, I'd like to ask the counsel how there's any arguable claim that that fits under the privilege enunciated, any claim of executive privilege. We're not asking—we're asking about what someone else did and simply that Ms. Taylor received.

Chairman LEAHY. Mr. Eggleston, would you care to answer?

Mr. EGGLESTON. Yes. Thank you, sir. Mr. Schumer, I appreciate your sensitivity about the position she's in, but she, having spoken to me, has had to take the position that the President has made the assertion that he has made and we can't be in the business—and it's his right to make it, and we can't be in the business of saying and analyzing separately whether his assertion is appropriate or not appropriate.

We read the letter. The letter directs us not to testify about external communications. You're asking about external communications. If the White House were to call you and say we didn't mean those kinds of external communications, I assure you, she would answer those questions.

But as we read the letter, it appears to us—and what—I think the position we're in is, I don't represent the President and the President has written us this letter, and we just have to do our best to really follow the letter.

Senator SCHUMER. Sir, you're a good lawyer and I'm not going to put you on the spot, but I doubt that this discussion would fall under any privilege that any court would recognize because it simply doesn't even meet the definition arguendo.

Now, I understand you want to go with the letter, but there are certain—even internal communications that Ms. Taylor talked about. She did talk about, for instance, the view within the White House of Mr. Griffin. That's an internal communication. We're not here weighing which ones are harmful and which ones aren't harmful to the White House or to what anyone's pursuing. That's not how privilege works.

Ms. TAYLOR. With respect to Mr. Griffin, I told you what I thought other people think. You know, again, I will continue to try to be as cooperative as I can. I guess, you know, the only alternative is to just sit here and not answer any questions. And so I'm—

Senator SCHUMER. Well, I appreciate that. That's why I said what I said at the beginning.

Ms. TAYLOR. Yeah.

Senator SCHUMER. I would just note that this letter, that what you said here is, "The President directed me to testify concerning White House consideration, deliberation, or communication, whether external or internal, relating to the possible dismissal or appointment of U.S. Attorneys, including consideration of possible responses to congressional and media inquiries."

I'm not asking about dismissal and appointments of U.S. Attorneys. I'm simply asking, did any person from the political sphere, outside of the executive branch of the White House, which is the full extent of the privilege claim, communicated with you? And I

don't think—in all due respect to your attorney, I don't think it falls within the letter here or your statement at the beginning.

Mr. EGGLESTON. Mr. Schumer, may we consult again for a moment?

Senator SCHUMER. Please.

[Witness conferring with attorney.]

Chairman LEAHY. I would note that I'm giving Mr. Schumer a little bit of extra time because of the consultation between Ms. Taylor and her attorney.

Senator SCHUMER. Thank you, Mr. Chairman.

Chairman LEAHY. Because we had agreed to have the attorney there. Then after this line, we will then go to the next.

Ms. TAYLOR. You are a persuasive attorney, Mr. Schumer, and you have persuaded my attorney. But rest assured, that will not happen all day.

[Laughter.]

My job was the Political Director at the White House. One can say, by definition, I heard complaints about all things, all the time, from all over the country. That is a fair characterization. That is an unwritten part of the job description. So, you know, as to specific—

Senator SCHUMER. Well, how about complaints about U.S. Attorneys?

Ms. TAYLOR. I suspect there were phone calls made to me at times complaining about them. I don't recall any specific phone calls.

Senator SCHUMER. You don't recall any specific phone calls?

Ms. TAYLOR. I don't recall any specific phone calls.

Senator SCHUMER. OK. My time has expired.

Ms. TAYLOR. Thank you.

Chairman LEAHY. Thank you.

Senator SCHUMER. If we could have a second round, I'd like to pursue.

Chairman LEAHY. We will have a second round. Senator Durbin?

Senator DURBIN. Thank you, Mr. Chairman. Thank you, Ms. Taylor and Mr. Eggleston.

Each of us in political life is sustained by loyal, hardworking, talented people like yourself. When I heard Senator Grassley talk about your background, I thought in another life you might have been working on the Democratic side. We have many people just like you who sustain us.

Today we are seeing an age-old drama unfold again when political leaders at the highest level face hard questions and hard times. Sometimes they feed young, loyal, talented people like yourself into the line of fire. I'm sorry that you're sitting at this table, although I can see already that you handle yourself very well.

Karl Rove should be sitting at this table, not Sara Taylor. Karl Rove should be answering these questions, not you. If Karl Rove, whom I've known for over 30 years, were doing the right thing, he would have spared you this experience. He would be here right now, answering these questions.

And if the White House had done nothing wrong, then that would be the end of the story. But clearly, you can understand from our side of the table, we're having more and more obstacles tossed

in our path just to ask basic questions, and you've heard some of them today.

Let me ask you your relationship with Karl Rove and the White House. As Political Director, was he your boss?

Ms. TAYLOR. He was my boss.

Senator DURBIN. And what kind of contacts did you have with him on a daily basis?

Ms. TAYLOR. I had contact with him daily.

Senator DURBIN. Was it regular?

Ms. TAYLOR. It was multiple times a day.

Senator DURBIN. And his decision processes about political things. Were you part of the conversation most of the time?

Ms. TAYLOR. I mean, certainly. I was the Political Director. So if there was something on a political matter, you know, particularly on—you know, involvement with what the President would do—do or not do on behalf of a candidate, certainly I would be involved in that decision.

Senator DURBIN. And that's been the case for a number of years?

Ms. TAYLOR. I've worked for—I've worked for Mr. Rove for a little over 2 years, directly.

Senator DURBIN. OK.

Now, I understand there was something called a Judicial Selection Committee in the White House that made judicial and U.S. Attorney nomination recommendations to the President. Are you familiar with that type of committee?

Ms. TAYLOR. I knew that committee to exist.

Senator DURBIN. Did you ever sit in on any of those deliberations?

Ms. TAYLOR. I believe my answering that question would indicate, you know, part of the White House deliberations and who was included in what meetings, and that's an internal deliberation and so I don't think I can answer that question.

Senator DURBIN. You can't answer whether you even attended such a meeting?

Ms. TAYLOR. As I understand the letter that I have, I cannot.

Senator DURBIN. OK. I won't press that any further.

Let me ask you about a couple things. In the back of this whole debate about U.S. Attorneys seems to be looming a question over and over again about voter fraud and elections. And so I'd like to ask you, were you involved in the Bush-Cheney reelection effort in the last cycle?

Ms. TAYLOR. Yeah. I was a strategist for the President's reelection.

Senator DURBIN. OK.

And did Mr. Griffin work with you?

Ms. TAYLOR. I worked with Mr. Griffin. He worked for the Republican National Committee. But, yes, I worked with him.

Senator DURBIN. And Monica Goodling testified that Mr. Griffin's role in reference to that campaign involved "vote caging". Are you familiar with that term?

Ms. TAYLOR. I have become familiar with that term through the press article I read. I can't say I could give you a definition of vote caging.

Senator DURBIN. Well, what I've been told is that when mail is sent to registered voters marked "Do Not Forward" and then it's returned, that often those voters' credentials or capacity to vote is challenged. It happens particularly among minorities, such as African-Americans. So as I describe it, I think that description is adequate.

Ms. TAYLOR. Uh-huh.

Senator DURBIN. Are you familiar with that practice of challenging voter credentials?

Ms. TAYLOR. I—you know, obviously candidates in political parties and their staffs, going back long before any of us were in this room, on this earth, have been challenging votes. So, yes. I mean, that has occurred. Yeah. Yeah.

Senator DURBIN. OK.

But personally, were you involved in any of those so-called "vote caging" efforts?

Ms. TAYLOR. Absolutely not. I have no memory of that coming up.

Senator DURBIN. You weren't?

Ms. TAYLOR. And let me just say something, if I could, please. I know Tim Griffin. He has extraordinary character. And I know what I've read about him and I know what's being said about him, and I appreciate Senator Specter, who made a really important point about how sometimes people's assertions about one comment or one misplaced statement can follow somebody for life, and I think it is horrible, what is being said about Tim Griffin. He has incredible character and I don't believe he would ever do anything like that.

Senator DURBIN. I have not characterized him that way in the questions that I've asked you.

Ms. TAYLOR. I know, and I appreciate you giving me a point of privilege, I guess it is.

Senator DURBIN. You have it.

Senator SCHUMER. That one, anyway.

Ms. TAYLOR. I'm sorry?

Senator SCHUMER. That one, anyway.

Ms. TAYLOR. OK.

Senator DURBIN. Let me ask you, if I can. I find it interesting that when you responded to Senator Kohl about Mr. Biskupic, that you were fairly specific about conversations within the White House and whether certain people said certain things.

So do you believe that it is only in relation to the Cummins-Griffin appointment that you are governed by this executive privilege letter?

Ms. TAYLOR. I don't recall.

[Witness conferring with attorney.]

Ms. TAYLOR. It's—you know, again—you know, I didn't have any knowledge of that situation or recall any knowledge of that situation, and I answered it. Perhaps I—perhaps you're correct and that did fall under the President's assertion of executive privilege and I should have said nothing.

Senator DURBIN. All right. Thank you.

Ms. TAYLOR. All right.

Senator DURBIN. Thank you, Mr. Chairman. I yield back.

Chairman LEAHY. Thank you very much, Senator Durbin.

Senator Whitehouse?

Senator WHITEHOUSE. Hello, Ms. Taylor.

Ms. TAYLOR. Hi. How are you?

Senator WHITEHOUSE. I'm fine, thank you.

Just a quick fact question: is there anything in your employment agreement with the White House obliging you to honor executive privilege after your departure from employment with the White House?

Ms. TAYLOR. I—I don't recall that. I don't know. To answer your question, I will say, Senator, I was a Deputy Assistant to the President. I was a commissioned officer. I took an oath, and I take that oath to the President very seriously.

Senator WHITEHOUSE. For the record, may I have the answer to that question when you're able to research it and determine whether your employment agreement with the White House obliges you contractually to honor executive privilege after the departure from that office?

Ms. TAYLOR. I don't—I don't recall signing an employment agreement. I—I just don't recall. I may have. I don't know the answer to your question.

Senator WHITEHOUSE. Will you supplement the record so that you can inform yourself about that?

Ms. TAYLOR. We will—we will certainly attempt to.

Senator WHITEHOUSE. OK. I appreciate that.

Tim Griffin, I gather, was an opposition researcher for the Republican Party?

Ms. TAYLOR. Tim Griffin has served as a Director of Research for the Republican National Committee, yes. So he was the Director of Research.

Senator WHITEHOUSE. And that would include opposition research?

Ms. TAYLOR. That would include research on Republican candidates' opponents.

Senator WHITEHOUSE. Which is customarily referred to in the trade as "opposition research"?

Ms. TAYLOR. Yes.

Senator WHITEHOUSE. OK.

Did it give you any hesitation that someone who chose that particular career path would be in any way inhibited in setting aside the motivations that would cause someone to pursue that particular career and be a fully independent U.S. Attorney and be able to set those partisan motivations completely and totally aside?

Ms. TAYLOR. It gave me—no, none whatsoever. And I would say, to the contrary. I think the fact that this person ran a large research operation and has an incredible set of skills with respect to research would serve him incredibly well as a prosecutor.

Senator WHITEHOUSE. As a long-time observer of political life—

Ms. TAYLOR. Uh-huh.

Senator WHITEHOUSE.—is it your opinion that the firing of 10 percent, approximately, of the U.S. Attorney corps in mid-term is a customary practice of Presidents of the United States?

Ms. TAYLOR. My understanding is that, and it is, in fact, true, that U.S. Attorneys are political appointees to the President. They

serve at the pleasure of the President. They serve in the same capacity that I serve the President, at his pleasure.

And, you know—certainly I know, you know, there's been a lot of press on this issue. I understand President Clinton, I believe, removed all of the U.S. Attorneys but one when he came into office. So, Presidents have that prerogative. That is the way our government is set up.

Senator WHITEHOUSE. And to go back to my question, is it your opinion, based on your experience as a long-time observer of government, that a mid-term firing of nearly 10 percent of the U.S. Attorney corps is a customary practice of American Presidents?

Ms. TAYLOR. I don't—I don't recall what President Reagan and President Clinton did. I don't believe they did that, or perhaps they did and they did it in a way that was, you know, much more artful.

Senator WHITEHOUSE. The White House has acknowledged conducting political briefings on Republican electoral prospects in more than a dozen government agencies, which are ordinarily covered by legal restrictions on partisan political activity.

The Washington Post reported that you gave a briefing at the Environmental Protection Agency. Can you describe for us what the substance of that briefing was that you gave at the Environmental Protection Agency?

Ms. TAYLOR. I don't recall that briefing. I can tell you generally that, if I were to be speaking in front of colleagues and agencies, that I would do three things. I would, first, thank them for their service. All these people work for the President. They work hard. They endure personal sacrifices to do these jobs and I think it's important that members of the President's staff acknowledge it and thank them for their service.

Second, I would often talk to them about what the President was doing, where he would be going, what he would be talking about, what he was focused on in any given sort of issue area, and I would, you know, further talk about how they fit into that, whatever the issue.

Third, I often gave them what I would call sort of a political landscape overview. I have—one of the jobs as the President's Political Director is to be very knowledgeable on the political landscape of America.

Many of these people who work for the President, all of them political appointees, are in one way, shape, or form involved in politics and they have a deep interest in it. And so, because it is my requirement in order to be knowledgeable for my job, I often just would share that with people, what I thought, what I felt was going on. And so they were informative. We did them. We've done them as an administration. We—President Clinton's staff did them, as best I understand from news accounts. So I think this has gone on for a long time and it was intended to inform people.

Senator WHITEHOUSE. Would the political landscape briefings go into individual congressional races?

Ms. TAYLOR. I would oftentimes give sort of an update on what was going on in the country, and so if—if it were—if we were focused on, you know—people were focused on a certain set of races, I would oftentimes talk about those races.

And when I say "people", I mean the broad sort of intellectual political community, because people read, and they're interested, and they want to know, and they would oftentimes ask me, you know, to come speak and tell them what I thought.

Senator WHITEHOUSE. So, individual congressional races, individual candidates would be—

Ms. TAYLOR. Well, I can't—I don't think I would sort of focus on one specific. I would give a broad overview of, you know, what—what the two parties were doing, based as best as I could tell it, and what the impact on that, you know, would be on the President's ability to implement his policies.

Senator WHITEHOUSE. You can understand the concern here, is that the use of government facilities for briefings that targeted particular candidates in particular races—

Ms. TAYLOR. Well, I take issue with—I'm sorry. I apologize. I'm sorry. Maybe—Mr. Eggleston didn't think you were finished. Are you finished?

Senator WHITEHOUSE. In the light of that, are you telling me that that is not what took place in these briefings?

Ms. TAYLOR. These briefings were informative. They were meant to thank employees. They were meant to share with them what the President was doing and their role. And—and—and given my unique role within the White House, and given the fact that many of these people had worked in politics in one way, shape, or form and had an interest, I would oftentimes share my knowledge and my viewpoint about the political landscape of the country.

Senator WHITEHOUSE. And would that include the specification or targeting of particular candidates?

Ms. TAYLOR. Again, you're asking me if—I'm not—I'm not following your—your question and I don't—what are you—what, specifically, are you asking me?

Senator WHITEHOUSE. Did the names of particular candidates—

Ms. TAYLOR. Certainly if I was going into—you know, I would talk about the—you know, what was going on in the country. And so if—if there were 6, or 8, or 10, or 15, or—you know, places where the sort of broader political intelligentsia was focused, I would talk about those places.

Senator WHITEHOUSE. By name of candidate?

Ms. TAYLOR. I would talk about—well, if you're talking about the landscape, it's very hard to talk about the landscape if you don't talk about the people who are the stars in the show.

So I'm sure I mentioned candidates' names all the time, but I don't—you know, it's—it would be a question of sharing, you know, who they—what was going on, what people said was likely to occur, what I thought about that, if I agreed, if I disagreed, you know.

Senator WHITEHOUSE. The extent to which program or grant decisions should be influenced by your designation of these candidates as vulnerable?

Ms. TAYLOR. I'm not sure I understand what you're asking me. What is your—you have a question about grants?

Senator WHITEHOUSE. Yes. I mean, you're talking to people who have—

Ms. TAYLOR. Oh, I'm sorry. I'm sorry.

Senator WHITEHOUSE. You're talking to people who have—

Ms. TAYLOR. I misunderstood you. No. My political briefing—the purpose of those briefings was to inform people. It was not to direct people on how to engage their activities based on my opinions.

Senator WHITEHOUSE. I'm out of time. Thank you.

Ms. TAYLOR. Thank you, Senator.

Chairman LEAHY. Thank you.

Senator Cardin?

Senator CARDIN. Thank you very much.

Let me tell you my concern, which I think is the committee's concern. And that is that, on 1 day, eight U.S. Attorneys were fired. Most of these U.S. Attorneys were involved in sensitive political investigations in their State or in their jurisdiction that was unpopular with the local Republican political establishment.

It raises the question as to whether they were put on this list because they were doing things that were unpopular to the Republicans and, therefore, engaged the White House to fire these U.S. Attorneys.

In your letter through counsel to this committee, you have said that you have participated in no wrongdoings, that you will not exert personal privileges. So can—let me first ask, would it be participating in a wrongdoing if a U.S. Attorney was removed because he or she was involved in a political—in an investigation that was unpopular to the local political establishment?

Ms. TAYLOR. You're asking me my opinion?

Senator CARDIN. Yes.

Ms. TAYLOR. I believe that's the case.

Senator CARDIN. That would be a wrongdoing?

Ms. TAYLOR. If you—yes.

Senator CARDIN. Now, you've also indicated to Senator Schumer that you were the point person to receive communications from political players throughout the country.

Ms. TAYLOR. I was the President's Political Director and so I spoke often to people around the country. Yes.

Senator CARDIN. Now, you also indicated to Senator Schumer that you couldn't recall any specific communication from local political figures. Did I understand that correctly?

Ms. TAYLOR. That is—that is—that was my answer.

Senator CARDIN. Let me give you another chance at it. Did you receive telephone calls or other forms of communication in regards to the U.S. Attorneys that were fired?

Ms. TAYLOR. I don't recall. I don't recall getting communications about them.

Senator CARDIN. You don't recall if someone called you to complain about a U.S. Attorney?

Ms. TAYLOR. Senator, I am sure you can appreciate that somebody who was in my position who got—and I'm estimating here—roughly 20 phone calls a day, roughly 300 e-mails a day, each and every day, about a myriad of topics, any and everything you could probably—would not recall conversations or phone calls that came to her. Senator, I can't remember what I had for breakfast last week. I just don't recall any of those conversations.

Senator CARDIN. I assume what you had for breakfast last week has not been the subject of considerable national attention.

[Laughter.]

Ms. TAYLOR. Good God, I would hope not.

Senator CARDIN. And I assume that once this issue became such a national issue—

Ms. TAYLOR. Uh-huh.

Senator CARDIN.—you've had a chance to review your internal communications.

Ms. TAYLOR. Senator, I don't recall receiving any communications or phone calls from people outside the White House about these specific matters. I don't recall it. I don't recall any.

Senator CARDIN. Do you recall—and I'm trying not to invade your use of the Presidential privilege, although I would assume you would agree with me that if it involved serious wrongdoing, you, as a private citizen, can make some independent judgments here.

Ms. TAYLOR. You're asking me if I'm able to make independent judgments?

Senator CARDIN. Correct.

Ms. TAYLOR. Obviously I think all—

Senator CARDIN. If it involved serious wrongdoing.

Ms. TAYLOR. I think all human beings are able to make independent judgments.

Senator CARDIN. Concerning whether there was, in fact, serious wrongdoings involving political considerations—

Ms. TAYLOR. Oh.

Senator CARDIN.—and the firing of U.S. Attorneys.

Ms. TAYLOR. I believe—I believe that—absolutely not. I don't believe there were any wrongdoing done by anybody. You're asking me what I believe, and I don't believe that anybody in the White House did any wrongdoing. I don't believe that. That is not—

Senator CARDIN. And you base that conclusion on—

Ms. TAYLOR. You just asked me—I mean, you just asked me the question and I'm answering your question. And you asked me basically my opinion, and I'm telling you, I don't believe that anybody did any wrongdoing.

Senator CARDIN. Ms. Taylor, let me just point out, you seem to be selective in the use of the Presidential privilege. It seems like you're saying that, yes, I'm giving you all the information I can when it's self-serving to the White House, but not allowing us to have the information to make independent judgment.

Ms. TAYLOR. Well, I appreciate your frustration. I noted that we would likely be frustrated at times during this hearing today. I'm doing the best I can and I'm trying to differentiate between fact- and opinion- based questions and what Mr. Fielding laid out.

Senator CARDIN. But you—

Ms. TAYLOR. But you just asked me what I believed, and I'm telling you what I believe.

Senator CARDIN. That there was no wrongdoing done.

Ms. TAYLOR. Yes.

Senator CARDIN. Was there any conversations that took place in the White House in which you were party to in which the political considerations were brought out in regards to the firing of the U.S. Attorneys?

Ms. TAYLOR. Senator, your—your question would require me to talk about deliberations within the White House and, as I under-

stand the letter given to me by Mr. Fielding, that is not a question I can answer.

Senator CARDIN. But as I understand from your previous answer—you may want to check with your counsel on this—you indicated that you were—there was no wrongdoing done in the White House—

Ms. TAYLOR. You asked me—

Senator CARDIN.—by anyone you knew.

Ms. TAYLOR. Well, you asked me my opinion. And my opinion is, I don't believe that anybody did anything wrong or improper with respect to this issue.

Senator CARDIN. Were there political considerations, that is, political as to the politics of these eight U.S. Attorneys? Were they—do you have any knowledge of whether that was involved in the firing of these U.S. Attorneys?

Ms. TAYLOR. Again, I think you're asking me to talk about what I know or don't know, which is a White House deliberation. And as I understand Mr. Fielding's letter, I have been instructed not to talk about internal deliberations.

And so, again, I'm trying to be very literal in my interpretation of Mr. Fielding's letter. And I understand that we may disagree about that, but I'm doing my best to follow and respect the Senate and do my best to follow and respect the President whom I admire and worked for, and that is how I interpret your question. So, we just, I guess, disagree about whether I should answer it or not.

Senator CARDIN. Based upon your assertion that there was no wrongdoing done in regards to the U.S. Attorneys, was that based upon any internal or external communications or meetings in which you were involved with?

Ms. TAYLOR. Well, you know, I guess, Senator, I shouldn't have answered that question because I don't know how I could have that opinion. It didn't come uninformed, so I shouldn't have answered that question and I apologize.

Senator CARDIN. Thank you, Mr. Chairman.

Chairman LEAHY. We have a roll call vote on, so I'm going to take a 20-minute recess and then we will—we will come back. We will stand in recess for 20 minutes.

[Whereupon, at 11:41 a.m. the hearing was recessed.]

AFTER RECESS [12:09 p.m.]

Chairman LEAHY. OK. The vote has just finished. There are still some coming back.

I was looking over my notes during the break, Ms. Taylor, and I was really struck by one of your answers. I know the President said recently he referred to our government as "his government". He said "my government".

Most of us always assume it's a government of all of us, not just of one individual. It's almost a monarchy kind of question, or kind of answer that he gave, although it may explain a lot of things.

And then you said, "I took an oath to the President and I take that oath very seriously." Did you mean, perhaps, you took an oath to the Constitution?

Ms. TAYLOR. I—yes. Yeah. You're correct, I took an oath to the Constitution. But what—

Chairman LEAHY. Did you take a second oath to the President?

Ms. TAYLOR. I did not. What I should have—

Chairman LEAHY. So the answer was incorrect.

Ms. TAYLOR. The answer was incorrect.

Chairman LEAHY. Thank you.

Ms. TAYLOR. What I should have said is, I took an oath. I took that oath seriously. And I believe that taking that oath means that I need to respect, and do respect, my service to the President.

Chairman LEAHY. No. The oath says that you take an oath to uphold and protect the Constitution of the United States. That is your paramount duty.

Ms. TAYLOR. Uh-huh.

Chairman LEAHY. I know the President refers to the government as being "his government". It's not. It's a government of the people of America. Your oath is not to uphold the President, nor is mine to uphold the Senate. My oath, like your oath, is to uphold the Constitution.

Ms. TAYLOR. Uh-huh.

Chairman LEAHY. Now, since the 2004 election, did you speak with President Bush about replacing U.S. Attorneys?

Ms. TAYLOR. Again, I'm trying to—

Chairman LEAHY. I know what you're trying to do.

Ms. TAYLOR. Well, I know. And I appreciate your patience. But I'm trying to make a determination on deliberations versus what is a fact-based question. And so I guess you asked me a fact-based question. I did not speak to the President about removing U.S. Attorneys.

Chairman LEAHY. Did you attend any meeting with the President since the 2004 election in which the removal and replacement of U.S. Attorneys was discussed?

Ms. TAYLOR. I did not attend any meetings with the President where that matter was discussed.

Chairman LEAHY. Are you aware of any Presidential decision documents since the 2004 election in which President Bush decided to proceed with a replacement plan for U.S. Attorneys?

Ms. TAYLOR. I am not aware of a Presidential decision document.

Chairman LEAHY. And do you understand that your oath was to uphold the Constitution?

Ms. TAYLOR. Let the record reflect that you are correct and I was wrong. What I was trying to say was that—

Chairman LEAHY. I know what you were trying to—

Ms. TAYLOR.—I have great respect for my President.

Chairman LEAHY. And you said that in your opening statement.

Ms. TAYLOR. Yes.

Chairman LEAHY. And we understand that. And I would hope that anybody who worked at the White House—

Ms. TAYLOR. Yeah. Yeah.

Chairman LEAHY.—would feel that way about whoever was President. But I'd also hope that everybody understands that it's a government of laws and not of people.

Ms. TAYLOR. Uh-huh.

Chairman LEAHY. The Constitution is preeminent over all of us in this country.

Ms. TAYLOR. We agree on that.

Chairman LEAHY. Thank you.

Now, when did you first become aware of reports of Mr. Griffin's 2004 involvement as Chief of Communications for the Bush-Cheney campaign and a vote caging scheme targeting largely African-American voters for removal from voter rolls in Florida when he was in the campaign in 2004?

Ms. TAYLOR. After the election in 2004, Mr. Griffin called me, visited with me about—about it and how upset he was about, that somebody would make such an egregious claim against him. And so that's when I first learned that he had been accused of it.

Chairman LEAHY. Were you aware of a vote caging scheme targeting largely African-American voters in Florida?

Ms. TAYLOR. I was neither aware of it, and also don't believe that it occurred.

Chairman LEAHY. So you felt he had not been involved.

Ms. TAYLOR. I believe that he was not involved. That is what I believe.

Chairman LEAHY. And you believe, further, that there had never been a vote caging scheme in Florida?

Ms. TAYLOR. I believe, and am aware of nothing, and don't believe that anybody who worked in a senior capacity for the President—

Chairman LEAHY. Not my question.

Ms. TAYLOR.—would have engaged in any kind of activity—

Chairman LEAHY. Not my question,

Ms. TAYLOR. You're certainly knowledgeable enough to know that was not my question. Let me repeat it. Are you aware of any vote caging scheme targeting largely African-American voters in Florida?

Ms. TAYLOR. I'm not aware of any. I do not believe there was one, and I am confident—

Chairman LEAHY. Not my question. You're not aware of any such scheme?

Ms. TAYLOR. I was never—I am not aware of any such scheme.

Chairman LEAHY. OK.

I'm going to give you a copy of a document numbered OAG–1622. Are you familiar with this document?

Ms. TAYLOR. I'm sorry. If I could have it. Yes, I've seen this document before.

Chairman LEAHY. It's a copy, so people understand who can't see it, of a February 28, 2007 e-mail from Scott Jennings to K.R. at georgewbush.com, White House counsel Fred Fielding, Kevin Sullivan, Dana Merino, and Kyle Sampson, copy to you, with the subject line: "NM U.S. Attorney: Urgent Issue". Is that correct?

Ms. TAYLOR. Yes. I see the document. Yeah.

Chairman LEAHY. It says "Urgent Issue".

Ms. TAYLOR. Yeah. It says "Urgent Issue" in the document.

Chairman LEAHY. Is K.R. at georgewbush.com a Republican National Committee e-mail address to Karl Rove?

Ms. TAYLOR. I understand that to be the case, yes.

Chairman LEAHY. You understand, or it is?

Ms. TAYLOR. It is.

Chairman LEAHY. Thank you.

This e-mail describes a phone call your deputy, Mr. Jennings, received from Senator Domenici's Chief of Staff regarding David

Iglesias' statement that two members of Congress contacted him before the election to urge him to bring indictments before the election, and one hung up on him angrily out of frustration over his answer. Was the information received in this e-mail of February 28th of this year new to you?

Ms. TAYLOR. I have read the press accounts of this situation and so I guess—

Chairman LEAHY. Prior to seeing this e-mail.

Ms. TAYLOR. Well, I remember getting this e-mail, obviously, at the time after this issue had blown up. So—

Chairman LEAHY. When did you first become aware of these contacts with Mr. Iglesias?

Ms. TAYLOR. You're asking, by the members? Chairman Leahy. Yes.

Ms. TAYLOR. When I saw this e-mail.

Chairman LEAHY. And you'd not heard anything about it before then?

Ms. TAYLOR. To the best of my knowledge, when I saw this e-mail was the first time I was made aware of the contacts by the members.

Chairman LEAHY. And were you aware of the New Mexican Republican Party officials' complaints about Mr. Iglesias? Not the members, but Republican Party officials.

Ms. TAYLOR. I can say that I was generally aware that many individuals in New Mexico, for whatever reason, did not think highly of this individual. But I—

Chairman LEAHY. You were aware—again, Ms. Taylor—

Ms. TAYLOR. I'm sorry.

Chairman LEAHY. I'm sure we'll give you plenty of chance to followup if you'd like, but it would make life a lot easier if you would take the time to answer my questions as I ask them.

Ms. TAYLOR. I—

Chairman LEAHY. I should think that's an easy "yes" or "no".

Ms. TAYLOR. Well, I appreciate, Senator—I am mindful that I want to make sure that I have this right. I believe that I know that people were upset with him. I do not recall specific individuals, though, necessarily.

Chairman LEAHY. OK.

When, and how, did you first become aware of these complaints?

Ms. TAYLOR. I don't recall.

Chairman LEAHY. Do you know why Mr. Iglesias was asked to resign?

Ms. TAYLOR. I don't know. I know what I've read in the newspaper.

Chairman LEAHY. When did you first become aware of reasons for his—for his resignation?

Ms. TAYLOR. I believe that I would have to go into sort of a White House deliberation process to answer your question and I don't think that the—

Chairman LEAHY. Would it be safe to say by that answer it wasn't just from the news accounts?

Ms. TAYLOR. Again, you are asking me to talk about a White House deliberation and, as I'm trying to make the determination

between what is a fact-based question and what is a—what is a deliberation question, I'm doing the best that I can here.

Chairman LEAHY. We have two answers that appear to contradict each other, but I'm sure you'll have a chance to review the transcript and decide whether, indeed, they do. To me, they appear to.

When, and how, did you first learn of a packet of information Mr. Rove sent to Mr. Sampson related to voter fraud in Wisconsin prior to the 2006 elections? That's my last question, assuming you answer it.

Ms. TAYLOR. I—I'm not sure that I recall that being ever the—I don't recall that. I don't recall that he did that. Was that in the press?

Chairman LEAHY. I'm asking, did you ever learn of a packet of information Mr. Rove sent to Mr. Sampson related to voter fraud in Wisconsin prior to the 2006 elections?

Ms. TAYLOR. I don't recall knowing about that.

Chairman LEAHY. We'll come back to that.

Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman.

When my first round concluded, Ms. Taylor, we were on the subject as to the issue of intervention by White House officials on the termination of Mr. Cummins and the replacement with Mr. Griffin.

Ms. TAYLOR. Uh-huh.

Senator SPECTER. Without going into any of the issues that you have raised on executive privilege, the question has been raised, reported in the press, that White House counsel Harriet Miers "intervened" on behalf of Mr. Griffin. That's the way the newspaper stories characterized it. Are you in a position to say whether that was true or false?

Ms. TAYLOR. I believe that that would be subject—answering that question would be subject to Mr. Fielding's letter. It would reveal internal White House communications and I don't—I don't believe I can answer that.

Senator SPECTER. There were also questions raised as to whether Mr. Karl Rove was involved in the replacement of Mr. Cummins by Mr. Griffin. Can you shed any light on that question?

Ms. TAYLOR. You know, I—I guess what I—I think that certainly the same would apply to Mr. Rove in terms of internal deliberations. What I would say is, Tim worked with these people directly so it's fair to assume that these individuals had an opinion about Tim because they knew him.

What I don't think that I can do is go into White House deliberations about—about who, what, where, why. But I do believe that, you know, certainly it's fair to assume that those two would have a great deal of—of knowledge about Mr. Griffin and his—his background.

Senator SPECTER. Well, you were the Political Director, as you've already testified. Was there a political overtone to the replacement of Mr. Cummins by Mr. Griffin to try to carry out some political agenda as opposed to the public policies of the administration on the priority of Federal prosecutions?

Ms. TAYLOR. I don't believe that's the case at all. I believe Mr. Griffin was extraordinarily well qualified for that job. Mr. Griffin

had just returned from Iraq, where he had served our country in a forward-operating unit. It was an opportunity for him, as somebody who had been a prosecutor, to serve his country yet again. And, you know, again, I'm telling you what I believe to be the case, and that's my assessment of his situation.

Senator SPECTER. Ms. Taylor, with respect to the resignation of U.S. Attorney Carol Lam in San Diego, there had been questions raised—have been questions raised—as to whether the U.S. Attorney was hot on the trail of confederates of former Congressman Duke Cunningham, who is now serving an 8-year jail sentence. Are you in a position to shed any light on the truth or falsity of that suspicion?

Ms. TAYLOR. I—I guess all I can say about that is, I really don't know much about—about her or why she—other than what I've read in the press.

Senator SPECTER. You have been asked about U.S. Attorney Iglesias in New Mexico. Are you in a position to shed any light on whether he was replaced—asked to resign/replaced—because of his alleged failure to prosecute vote fraud cases?

Ms. TAYLOR. I—I don't believe that was the case. You know, I—

Senator SPECTER. What do you believe was the case?

Ms. TAYLOR. You know, my understanding is that—and again, much of my knowledge is based on what I have read in the press—is that there's a large case there where they didn't believe that he had prosecuted. He'd only brought one indictment when he could, or should, have brought many more indictments, potentially. And so it is not my belief that that was the case.

I—you know, again, I'm trying to walk a very fine line here and I'm probably answering questions that really fall within the guidelines of Mr. Fielding's letter, and I'm going to do my best not to do that.

Senator SPECTER. Ms. Taylor, aside from what you've read in the press, are you in a position to shed any light on the replacement of Mr. John McKay in the State of Washington?

Ms. TAYLOR. I—I don't—there are—I think my talking about these specific situations is clearly an internal or external deliberation. And whether I have knowledge or don't have knowledge, as is the case, I don't think that I can talk about that, Senator.

Senator SPECTER. All right.

I have a limited amount of time left and I want to observe the time. I would like you to submit in writing, to the extent you can, aside from what you've read in the newspapers—

Ms. TAYLOR. Uh-huh.

Senator SPECTER.—whether you have any knowledge, consistent with the limitations on your testimony, as to the replacement of Paul Charlton in Arizona, or Dan Bogden in Nevada, or Kevin Ryan in San Francisco, or Margaret Chiara in Michigan, or Todd Graves in Kansas City.

Ms. TAYLOR. I—

Senator SPECTER. Go ahead.

Ms. TAYLOR. I'm sorry. I didn't mean to interrupt you. I apologize.

Senator SPECTER. Go ahead.

Ms. TAYLOR. I'll confer with my attorney and we will certainly do our best to be helpful to the committee, while respecting Mr. Fielding's letter.

Senator SPECTER. Well, Ms. Taylor, I think your testimony has been helpful today, specifically as to Arkansas, because you knew Mr. Griffin so well, having served with him in the Office of Political Director, with his being your assistant, and you know first-hand his qualifications as a prosecutor and you have some personal knowledge as to the situation with Mr. Cummins, with his having stated an intention to resign as early as 2004.

When we asked you questions about what you've read in the newspapers, we know you're doing your best. Frankly, that's not very probative here. But when you know Mr. Griffin and you know the situation with Mr. Cummins, that is helpful.

I think this might serve as a prototype to try to get some information from other people in the White House who could testify without going into executive privilege, because I think this has been useful. Senator Schumer almost looked like he was nodding in agreement; I'm not quite sure about that.

Senator SCHUMER. I'm not quite sure either, Mr. Ranking Member.

Senator SPECTER. Well, if there's some doubt with Senator Schumer, that's an advance. That's real progress.

But what we've been trying to do, is find out the reasons. We started with the Attorney General. The Attorney General called me up before he testified and sought some advice.

I said, "I'm glad to give you advice, Al. This is not a 'gotcha' game. What we need to know, in specifics, is why each one of these individuals was asked to resign and we need to know if there's documentation on it, and we need to know if there's corroboration as to the reasons so we can evaluate it."

We've had, just, a lot of smoke about U.S. Attorney Lam being hot on the trail of Duke Cunningham's confederates. We had a lot of smoke on a lot of subjects.

After we had a very testy day when he testified a few months ago, he called me up the next day and said, "What should I do?" I said the same thing: "We don't want to play 'gotcha'. Your testimony yesterday hurt you a lot and hurt the Department of Justice a lot, and you're under a lot of concern that the Department is dysfunctional. So, come up and tell us. Tell us what happened."

I'm sure the President, if not watching C–SPAN 3, is aware of what you're doing and will have a report on it. I would urge him to use the help that you've been to us within the confines that he has set on you, which I think you've complied with, and try to get us the information so we can come to a conclusion. Because I think if we came a conclusion, we would shed some real light on whether the Attorney General should stay or go.

Senator SCHUMER. Thank you.

Senator SPECTER. Thank you, Mr. Chairman.

Senator SCHUMER. Thank you.

Senator SPECTER. Are you the Chairman?

Senator SCHUMER. No. Just all too fleetingly.

Senator SPECTER. You're acting Chairman?

Senator SCHUMER. Yes. Anyway, I thank my colleague for, as usual, his thoughtful comments. I, too, think the testimony has been helpful, but in a different kind of way.

I think it shows how this privilege assertion—not by you, Ms. Taylor, but by the White House—is overblown, how you've weaved in and out of it occasionally. You've answered questions that would probably fall within it, and then decided not to answer questions that might be without it.

It's very difficult, as I said, to do, and I know you're trying to do it. But there are times, I guess, when certain questions are easier to answer or harder to answer based on what happened rather than the privilege or not.

But I just want to go back and followup on where we left off when I finished where you did say you could answer questions about outside the executive branch communications. You couldn't recall any related to U.S. Attorneys. I'm just going to go through the list here and then have a few other questions.

So my questions to you are, with respect to each of the following U.S. Attorneys, did you ever hear any complaints from outside the executive branch? I'm not judging the validity of those complaints. I'm not even asking you what was said. I'm asking if you heard complaints from the outside, particularly from political figures: David Iglesias?

Ms. TAYLOR. Senator, again, as I interpret the President's—the President's counsel, Mr. Fielding's letter to me, I cannot discuss external communications.

Senator SCHUMER. But you had agreed earlier that you could answer that question and you said, in general, when I asked you the question, you said you could answer it, and then you said "I don't recall". I'm just going over specific names.

Ms. TAYLOR. OK. I—I—OK. I—I apologize.

Senator SCHUMER. Yes. Did you ever hear from any political people outside the White House, outside the executive branch, complaints about how David Iglesias conducted himself as U.S. Attorney?

Ms. TAYLOR. I don't recall any specific complaints. I have a general impression that there were people—many people—who did not think highly of him. I don't know specifically how—what that came—

Senator SCHUMER. OK.

Ms. TAYLOR. You know, whether that was people internally repeating, you know, their views. I don't recall if that was somebody calling me. I just—I don't recall any specific—

Senator SCHUMER. Any call.

Ms. TAYLOR. Yes.

Senator SCHUMER. OK.

Now, we know from e-mails and testimony that your deputy, Scott Jennings, arranged in 2006 for Justice Department officials to meet with two New Mexico attorneys active in Republican politics, Mickey Barnett and Pat Rodgers.

Barnett and Rodgers also told Matt Friedrich, the Principal Deputy of the DOJ Criminal Division, that David Iglesias was not pursuing a voter fraud prosecution quickly enough for their case, and Mr. Friedrich also recalls hearing from Monica Goodling that

Messrs. Barnett and Rodgers had gone over to the Justice Department that day from the White House, is what he said. He testified: "It was clear to me they did not want him to be U.S. Attorney."

Do you know whether this White House meeting happened?

Ms. TAYLOR. I have read the accounts that have occurred, so based on what other people say, I believe that his—that it did occur.

Senator SCHUMER. But do you have any—did you have personal knowledge of it occurring?

Ms. TAYLOR. I don't. The first time I learned of it was when it was raised in the press.

Senator SCHUMER. OK.

Were you present at it?

Ms. TAYLOR. I was not present at it.

Senator SCHUMER. OK.

And you don't know how many meetings there were in that regard.

Ms. TAYLOR. Uh-huh.

Senator SCHUMER. Nor did you have anything to do with facilitating a meeting, you or your office, between Mr. Barnett and Justice Department officials, is that correct?

Ms. TAYLOR. I don't recall ever facilitating a meeting.

Senator SCHUMER. OK.

Now, newspaper reports also say that New Mexico's Republican Party chairman, Alan Weh, complained to a political liaison of Karl Rove's in 2005 about David Iglesias and asked that Mr. Iglesias be removed. Mr. Rove later told Mr. Weh personally, "He's gone."

Did you have any communications in regards to this with Mr. Weh?

Ms. TAYLOR. I don't recall ever having communications with Mr. Weh about this issue.

Senator SCHUMER. Are you aware that Mr. Weh might have called someone else under your wing in the Department?

Ms. TAYLOR. I'm not aware of any phone calls that Mr. Weh made.

Senator SCHUMER. OK.

Did you know Mickey Barnett, Pat Rodgers, or Alan Weh at all?

Ms. TAYLOR. I believe I have met Mickey Barnett, and I believe that I have met Mr. Weh on a couple of occasions.

Senator SCHUMER. But nothing in relation to the U.S. Attorneys?

Ms. TAYLOR. I don't recall ever talking to either of them about that topic.

Senator SCHUMER. OK. OK.

But you did talk with them?

Ms. TAYLOR. Mr. Weh was the chairman of the New Mexico Party, so I would see him at Republican National Committee meetings.

Senator SCHUMER. OK. All right.

And I just want to just read the names—Senator Specter talked about some of them—and make sure you don't recall—

Ms. TAYLOR. OK.

Senator SCHUMER.—talking to any of the—any outside people, outside the White House, outside the executive branch who had complaint about Kevin Ryan. You don't recall?

Ms. TAYLOR. I don't recall.
Senator SCHUMER. John McKay?
Ms. TAYLOR. I don't recall.
Senator SCHUMER. Paul Charlton?
Ms. TAYLOR. I don't recall.
Senator SCHUMER. Carol Lam?
Ms. TAYLOR. I do not recall.
Senator SCHUMER. Daniel Bogden?
Ms. TAYLOR. I do not recall.
Senator SCHUMER. Margaret Chiara?
Ms. TAYLOR. I do not recall.
Senator SCHUMER. Todd Graves?
Ms. TAYLOR. I don't recall any.
Senator SCHUMER. Bud Cummins?
Ms. TAYLOR. I don't—and I don't mean to pause.
Senator SCHUMER. It's OK. You can pause.
Ms. TAYLOR. I just—I want to make sure that—I don't recall any complaints about him. I—I would say that I may recall, you know, unfortunate comments.
Senator SCHUMER. That's sort of—it's a fine line.
Ms. TAYLOR. Yeah. You know, again, I really am trying hard not to compound any embarrassment I may have caused this individual. But I—so, I don't recall any specific complaints about him.
Senator SCHUMER. You don't. OK.
And how about Steven Biskupic?
Ms. TAYLOR. I don't recall any complaints about him.
Senator SCHUMER. OK. Thank you. Thank you, Mr. Chairman. Thank you, again,
Ms. TAYLOR. I join Senator Specter in appreciating that you're trying to answer these questions, the difficulty of it. As I said, I think you sometimes stepped on one side of the line and then not wanted to step on the other side.
Ms. TAYLOR. Well, I—
Senator SCHUMER. But I know it's a difficult thing to do.
Ms. TAYLOR. Yeah.
Senator SCHUMER. And to me, it simply reflects the unwieldiness, incorrectness, breadth of the President's claim of privilege. But I thank you for being here.
Senator WHITEHOUSE. Hello again, Ms. Taylor.
Ms. TAYLOR. Hi.
Senator WHITEHOUSE. When you indicated that U.S. Attorneys may have been fired mid-term, I think your phrase was, "more artfully" in previous administrations, do you have information that that took place or were you simply asserting a hypothesis or a possibility?
Ms. TAYLOR. I was simply making a comment, you know, about—it was a hypothesis, you know.
Senator WHITEHOUSE. OK.
So you have no information that this was a customary practice of any former President.
Ms. TAYLOR. I don't have any information that it was customary. I'm not—I'm not sure whether it was or it wasn't.
Senator WHITEHOUSE. OK.

I'd like to ask you to look at the e-mail that you've already looked at before. It's 1814.

Ms. TAYLOR. I do have it.

Senator WHITEHOUSE. Yes.

Ms. TAYLOR. Yes.

Senator WHITEHOUSE. There are two sentences in it that I want to ask you about. The first, is the sentence or the clause "you forced him to do what he did."

Ms. TAYLOR. Yes.

Senator WHITEHOUSE. Do you see that?

Ms. TAYLOR. I do see that.

Senator WHITEHOUSE. Let me start by asking who "you" is in that sentence.

Ms. TAYLOR. "You" is generally the Department of Justice.

Senator WHITEHOUSE. And who is "him"?

Ms. TAYLOR. "Him" is Tim Griffin.

Senator WHITEHOUSE. And "he" is also Tim Griffin?

Ms. TAYLOR. Yeah. "You forced him," Tim Griffin, "to do what he did."

Senator WHITEHOUSE. OK.

What is it that he was forced to do that is referenced there?

Ms. TAYLOR. I believe that—well, my e-mail may not be technically correct. I believe that the—when Senator Pryor was informed that the White House would not be going forward with Mr. Griffin's name as the U.S. Attorney, that Mr. Griffin—Senator Pryor was aware of that information.

Then Tim was made aware of that information, and I believe that Tim rightly concluded that he—that he unfortunately had the opportunity to either announce that he would not seek the nomination or read about it in the newspaper the next day.

And the reason for my ire was simply because, you know, here we had a guy who had just returned from Iraq, he had just served as a Reservist in Mosul, of all places. He comes back, he moves home, he becomes the U.S. Attorney, and—you know, and then he had to endure this process. I was—I was furious about it and it's really an unfortunate set of circumstances.

Senator WHITEHOUSE. So the words "what he did" refers specifically to what?

Ms. TAYLOR. It refers to him announcing that he would not seek the U.S. Attorney slot, that he would not put his name forward to be nominated to be the U.S. Attorney.

Senator WHITEHOUSE. OK.

The next phrase that I'm interested in is at the bottom of that same little paragraph.

Ms. TAYLOR. Uh-huh.

Senator WHITEHOUSE. "It's why we got rid of him."

Ms. TAYLOR. Uh-huh.

Senator WHITEHOUSE. Let's start with the "we". Who is the "we" in there?

Ms. TAYLOR. The "we" is, collectively, the administration. Mr. Cummins had been let go and the administration let him go, so "we" is a collective term.

Senator WHITEHOUSE. OK.

Ms. TAYLOR. We both worked—both Kyle and I worked, obviously, in the administration.

Senator WHITEHOUSE. And how did "we" come to make that determination? What is the basis that connects "Bud is lazy" to "we got rid of him"?

Ms. TAYLOR. I believe that, again, Mr. Cummins was let go. It is not my goal or intention to confound any embarrassment that has been caused to him today. I feel badly about that.

I think this whole situation is incredibly unfortunate, given the fact that Mr. Cummins, who has served the President and served the government well, and is an honorable person, was put in a situation where he was planning on leaving and, had there simply just been better communication on everyone's part, that he would have done what he was planning on doing.

And we had a qualified exceptional candidate who was willing to serve, interested in serving, and that we weren't able to find a situation where we worked that process out and now neither of them is serving as the U.S. Attorney.

Senator WHITEHOUSE. Well, I'm not trying to pile on Mr. Cummins either. In fact, frankly, I think the way he's handled himself through this episode and since this episode has done him great credit. I think he has come across as very candid, very thoughtful, very game, very capable. I think he's come across great, frankly. I think it's been other people that have come across less well than him.

So my concern is less with compounding any harm to him than I am with trying to figure out what the thread is that connects the idea that he is lazy to the determination to get rid of him, and who was in that chain of contact. I mean, you obviously knew that we got rid of him. You obviously had the opinion that "Bud is lazy". I'm trying to connect the dots as to where that comes from. What's the decision train that leads to that conclusion?

Ms. TAYLOR. You are—that would clearly be—my discussing what I do or do not know would clearly be internal White House deliberations and I don't believe I'm at—in a place where I can answer that today.

Senator WHITEHOUSE. OK.

Just to make the point clear, we have in front of us an e-mail that says these things.

Ms. TAYLOR. I understand that.

Senator WHITEHOUSE. It is not protected by executive privilege, otherwise we wouldn't have it, presumably. And yet, I'm unable to discuss it with you because of this assertion of executive privilege.

Ms. TAYLOR. Uh-huh.

Senator WHITEHOUSE. I'm not challenging you on this, Ms. Taylor, because I don't think this is your assertion.

Ms. TAYLOR. Uh-huh.

Senator WHITEHOUSE. But I think it's yet another example of how ludicrous and extreme the assertion of executive privilege is in this case when you are left in this position right now where, looking at an e-mail, it's one that you wrote, I'm asking you about your own words, they're not privileged, and yet you can't explain them.

And again, this is not your fault. You've been put in this position. I'm making this point, really, rhetorically through this question, but I think it is yet another example of really the unbelievably awkward and preposterous situation the committee has been put in by the wildly broad assertion of the privilege here.

One last question, if I may, Mr. Chairman.

Chairman LEAHY. Of course.

Senator WHITEHOUSE. To your knowledge, was the President involved in any way in the decision to remove these U.S. Attorneys?

Ms. TAYLOR. I don't have any knowledge that he was.

Senator WHITEHOUSE. Thank you.

Senator SPECTER. I have no further questions, depending on any new avenues opened by the Chairman's next round.

Chairman LEAHY. It is a warning to the Chairman.

Well, let's go back to the—or let's go to the question of the Western District of Missouri. Both the courts and others have indicated there was an attempt by the prosecution by the U.S. Attorney's office to possibly influence an election there. Actions were taken in violation of the Department of Justice's own guidelines, the so-called Red Book for U.S. Attorneys so as not to influence elections, but yet steps were taken.

So let's take it bit by bit. When did you first learn that Todd Graves, the U.S. Attorney for the Western District of Missouri, was being asked to resign?

Ms. TAYLOR. My recollection of him resigning was when I read it in the newspaper. That's my recollection.

Chairman LEAHY. Were you aware that he'd been asked to resign?

Ms. TAYLOR. I don't recall being aware.

Chairman LEAHY. When did you first learn that Bradley Schlozman was being considered to replace him as interim U.S. Attorney for that district?

Ms. TAYLOR. To the best of—just—I'm sorry.

[Witness conferring with attorney.]

Chairman LEAHY. We have gotten used to you conferring with your attorney. That is why we let him sit there. Go ahead and confer. But I'm still going to want an answer to the question.

[Witness conferring with attorney.]

Ms. TAYLOR. Sorry. I don't recall when he became the U.S. Attorney. I think I recall, you know, sort of being made aware of it in press accounts. I don't—

Chairman LEAHY. Not really my question. My question was, when did you first learn that he was being considered as the—

Ms. TAYLOR. I don't—

Chairman LEAHY.—interim U.S. Attorney?

Ms. TAYLOR. I don't recall ever—I don't recall ever knowing.

Chairman LEAHY. Were you ever aware that he was going to be put in without coming to the Senate for confirmation?

Ms. TAYLOR. I don't recall being aware of that.

Chairman LEAHY. OK.

Let me give you a copy of a document numbered OAG–45. Can someone give that to Ms. Taylor, please? This is a copy of a December 4, 2006 e-mail exchange between Mr. Sampson and Deputy White House Counsel William Kelley, and it's copied to White

House Counsel Harriet Miers. Is that correct? Without going into what's in it, is that correct?

Ms. TAYLOR. Yeah, that's correct.

Chairman LEAHY. Now, in Mr. Kelley's e-mail he states, "We're a go for the U.S. Attorney plan. WH ledge—White House ledge, political and communications has signed off, and acknowledged we have to be committed to following through once the pressure comes." Is that what it says?

Ms. TAYLOR. That is, in fact, what it says.

Chairman LEAHY. Now, what step did you take to evaluate the plan for replacing multiple U.S. Attorneys before you signed off on it? Because it says that the "White House political" have signed off. You were the head of the White House political.

Ms. TAYLOR. I think my discussing internal deliberations is not appropriate under the guidelines of the letter that I received from Mr. Fielding.

Chairman LEAHY. Are you aware that Kyle Sampson testified that you were the head of the White House Political Operations at this time and you were the person that signed off on the plan?

Ms. TAYLOR. Did Mr. Sampson—did Mr. Sampson say that I signed off on the plan or did he just say that I was the head of the White House Office of Political Affairs?

Chairman LEAHY. He said you were the person who signed off on the plan.

Ms. TAYLOR. I don't recall him making that statement, Senator.

Chairman LEAHY. Did you sign off on the plan?

Ms. TAYLOR. Senator, my—my saying I did or didn't sign off on something—

Chairman LEAHY. Well, if Mr. Sampson, who testified under oath—if he said that you were the person who signed off on this plan, would that be a lie?

Ms. TAYLOR. Senator, the President's counsel, Mr. Fielding, has sent me a letter directing me not to discuss internal or—

Chairman LEAHY. So what you're saying is, even if we have things that have been discussed in open session, especially if the finger is pointed at you, you can hide behind this broad claim of executive privilege because of your oath to the President?

Ms. TAYLOR. Senator, I—I am not in the place to independently make a determination about the President's assertion and I am doing the best I can to answer those questions which I believe do not fall within Mr. Fielding's letter, and doing my—and answering—and not answering those that do fall in the letter.

Chairman LEAHY. Ms. Taylor, I think you're doing the best you can not to answer any legitimate questions here, and I think the White House is helping you continue that kind of a cover-up.

How was the plan for dismissal of multiple U.S. Attorneys shared with you for your sign-off?

Ms. TAYLOR. I—

[Witness conferring with attorney.]

Ms. TAYLOR. Again, I can't—you know, I cannot answer the question. That is—that falls within the guidelines of the letter that Mr. Fielding sent me. And I'm—again, and I appreciate your patience and I respect the position that you're—and the questions that you have and the oversight of this body, but I'm doing my best to try

to, again, follow the directive I've been given and be cooperative to you.

Chairman LEAHY. Let me ask you this.

Ms. TAYLOR. And I just believe that any discussion of—of deliberations about, you know, who signed off on what would clearly fall within those guidelines, Senator.

Chairman LEAHY. What about discussions with the Department of Justice? Did you have any discussions with them—

Ms. TAYLOR. They—

Chairman LEAHY.—or are you going to say that the Department of Justice is also under executive privilege?

Ms. TAYLOR. The—the letter that I have, Senator, expressly states "internal and external". And while I understand that "external" is a broad word, I can only read that to say that it is—"external" would include the Department of Justice.

Chairman LEAHY. Did you raise any objections about any of the U.S. Attorneys included on the list for replacement?

Ms. TAYLOR. I don't recall ever raising objections about them being on the list. I—no.

Chairman LEAHY. Did you object to any part of the plan?

Ms. TAYLOR. I don't recall ever objecting to any part of the plan.

Chairman LEAHY. Did you communicate with Karl Rove about replacing U.S. Attorneys?

Ms. TAYLOR. Senator, my communications with Karl Rove would be a clear deliberation and I—

Chairman LEAHY. Let me ask you this.

Ms. TAYLOR. So I don't think that it's—yeah.

Chairman LEAHY. Have you talked to any reporters about the reason for the dismissal of any U.S. Attorney or the replacements for the dismissed U.S. Attorneys?

Ms. TAYLOR. I don't—the—OK. The President's letter clearly says—I'm sorry. Mr. Fielding's letter clearly says "express communications by—with reporters" and so I don't believe I can discuss any conversations I may—

Chairman LEAHY. So if you were to discuss something with a reporter, some would assume to give the White House spin on this—

Ms. TAYLOR. Uh-huh.

Chairman LEAHY.—this is—even though it's discussed in public with the reporters—

Ms. TAYLOR. Yeah.

Chairman LEAHY.—this is privileged? Is this a little bit like Mr. Cheney marking secret talking points for his staff to give to the reporters?

Ms. TAYLOR. Senator, I'm not in a position to make an independent determination about the President's counsel, Mr. Fielding's, letter to me. I'm just—

Chairman LEAHY. So if you give a statement to the press for something done publicly, that we would assume as Political Director you'd want to make it in the light most positive to the White House, and even though that's done publicly and you're expecting them to follow your spin on what happened, when you're asked about it anywhere else, it's executive privilege? It's a very, very broad definition of executive privilege.

Ms. TAYLOR. My—my attorney asked to confer with me, if you would give us a moment, please.

[Witness conferring with attorney.]

Ms. TAYLOR. My attorney has informed me that he believes that I—that that question does not fall within Mr. Fielding's letter, so I apologize for not answering it.

Chairman LEAHY. I would—

Ms. TAYLOR. I don't recall having conversations with reporters about this. I don't recall it.

Chairman LEAHY. I don't know why you didn't just say that in the first place.

Ms. TAYLOR. Well, again, because I am trying to be consistent, because I recognize that the committee—it's not fair for me to answer the questions I want to answer and answer the questions I don't want to answer using this, so I'm trying to be consistent.

Chairman LEAHY. I understand that.

Ms. TAYLOR. And I perhaps have not done a great job of that, but I have—certainly think that I have tried and think that I have answered them to the best I can, based on what I know, based on the letter.

Chairman LEAHY. The decision will have to be made by others whether you answered the questions you wanted to and claimed executive privilege so you didn't have to answer the ones you didn't want to.

Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman.

I am concerned that there may be an effort to pursue a contempt citation based on what you testified here today. I said earlier in this proceeding that I thought you were acting properly in accepting the President's direction, since you worked for him in the executive branch.

Ms. TAYLOR. Uh-huh.

Senator SPECTER. And you might have been on safer legal ground if you'd said absolutely nothing so you don't get involved in any of the questions of waiver or if you hadn't tried to do your best—which I think you have tried to do your best—to answer what you think is outside of the ambit of the President's direction, although that's a very hard line to draw. A very hard line to draw. And I think that would be true for the most skilled of attorneys who are practitioners in executive privilege.

I'm going to ask you a few more questions to try to put the best posture from your point of view if somebody pursues this question for a potential contempt citation.

You testified earlier today, "while I may be unable to answer certain questions today, I will answer those questions if the courts rule that the committee's need for the information outweighs the President's assertion of executive privilege." That was your statement.

So my question to you is this: so even where questions that fall within the President's claim of executive privilege, are you willing to provide answers to the committee in the future if the courts find that the committee should get the information?

Ms. TAYLOR. Absolutely. I—absolutely. I would have to. I am under a subpoena.

Senator SPECTER. And alternatively, if the courts don't need to rule, that is, if the President and this committee agree upon a compromise, would you then answer all of the questions which were directed to you today?

Ms. TAYLOR. I—I would certainly follow the guidelines based on any compromise that was agreed upon between this branch and the executive branch, yes.

Senator SPECTER. Well, I'm talking about a compromise which led the President to withdraw a claim of executive privilege.

Ms. TAYLOR. Yes. Absolutely. Yes.

Senator SPECTER. So the question is, then, would you answer all the questions?

Ms. TAYLOR. Yes. Absolutely.

Senator SPECTER. OK.

So essentially and succinctly stated, you are willing to answer all of the questions directed to you today as soon as the separation of power issue is resolved, correct?

Ms. TAYLOR. Correct.

Senator SPECTER. OK.

So you really aren't refusing to answer anything today. You're agreeing to answer everything that isn't subject to the executive privilege claim. Correct?

Ms. TAYLOR. Correct.

Senator SPECTER. OK.

As to matters that are within the privilege claim, you aren't refusing to answer those either. It sounds like you are postponing your answers until there is either a compromise between the President and this committee or a court ruling as to whether executive privilege applies. Correct?

Ms. TAYLOR. That's correct.

Senator SPECTER. OK. I think that does as much for the record as you can. You've got a couple of ex-prosecutors here,

Ms. TAYLOR. Senator Leahy was the D.A. of Burlington and I was the D.A. of Philadelphia.

Ms. TAYLOR. Uh-huh.

Senator SPECTER. We met at a D.A.'s convention 100 years ago. [Laughter.]

And have been friends ever since.

I now have a question from Senator Leahy, directed to me. The question is: is counsel leading the witness? The answer to his nonleading question is, yes, I am leading the witness. It's perfectly appropriate.

I think you've done a good job here today. I think we've found out some things. I again renew my request to the President to help Senator Leahy, me, and others find a way to resolve this impasse. You are between a rock and hard place. There's no way you can come out a winner.

And I don't think any U.S. Attorney anywhere, as the appointee of the President, is going to bring a criminal contempt citation. But if this committee asks for one, there will be a big cloud over you, a big smear that will last the rest of your life. People don't understand. You use the words "criminal allegation", "criminal charge" and it sticks. So, I hope we can come to terms here without subjecting you to any more travail.

Thank you, Ms. Taylor.

Ms. TAYLOR. Thank you, Senator.

Senator SPECTER. Thank you, Mr. Eggleston.

Thank you, Senator Leahy.

Chairman LEAHY. Thank you.

Senator Specter—I hope you'll listen to what he said. He's trying to protect you from a contempt citation. That's a decision yet to be made. But a decision will be made one way or the other by this committee.

You said that this has been frustrating, and you're right. But it's been just as frustrating for those of us who have been asking the questions as you in answering it.

Now, we understand your personal loyalty to President Bush, and I appreciate you correcting that your oath was not to the President, but to the Constitution. But you also have legal obligations to honor your own to tell the truth, the whole truth.

Failure to produce documents, and no recalls; those are very difficult for me to accept as Chairman of this committee. So we're going to be sending you some written followup questions and you're going to be given the opportunity to review the transcript of your answers and you can make or explain any further corrections you wish to make.

I'm not—as I said at the outset, it was not a game of "gotcha". You'll have the transcript. You'll have a chance to look through it. If you find that an answer you gave was not accurate, you have time—a limited time, but time—to correct that or to amplify it.

I do note your answer that you did not discuss these matters with the President, and to the best of your knowledge he was not involved. It's going to make some nervous at the White House, because it seriously undercuts his claim of executive privilege if he was not involved.

And, of course, the President has made those statements publicly. He said that these were decisions he did not make. Actually, other senior officials at the Justice Department said that under oath; your testimony today under oath bolsters that impression.

That really shows, again, that the White House counsel's broad instruction is not only unprecedented, but it's unsound. I say that because it is unsound and it is unprecedented, as I said. It does not protect you from a contempt citation.

The broad invocation of the notion of executive privilege to obstruct Congress from learning the truth leads one to believe it's part of a cover-up. So I ask, again: what is the White House so intent in hiding? The President didn't make these decisions.

Well, then who did, and why did they? Was it Mr. Rove? Was it, as some of us feel, to corrupt law enforcement for partisan advantage, which would bother me far more than political machinations if it's corrupting law enforcement. So we'll continue our efforts. We'll keep trying.

Thank you, Mr. Eggleston, for being here. And I guess other attorneys from your office are here. Mr. Eggleston, am I correct?

Mr. EGGLESTON. Yes, sir.

Chairman LEAHY. And we stand in recess.

[Whereupon, at 1:05 p.m. the hearing was concluded.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

DEBEVOISE & PLIMPTON LLP

555 13th Street, N.W.
Washington, D.C. 20004
Tel 202 383 8000
www.debevoise.com

W. Neil Eggleston
Partner
Tel 202 383 8140
Fax 202 383 8118
wneggleston@debevoise.com

August 31, 2007

BY FEDERAL EXPRESS

The Honorable Patrick J. Leahy
Chairman
U.S. Senate
Committee on the Judiciary
Washington, D.C. 20510-6275

Re: Sara M. Taylor

Dear Sir:

Enclosed are Ms. Taylor's responses to the written questions posed by members of the Committee following the July 11, 2007 hearing.

You will note that in response to certain of the written questions, Ms. Taylor has referenced the President's direction to her that she not respond if the answers would be covered by the executive privilege. As Ms. Taylor made clear at the hearing, if she is released from the President's direction, she would fully and completely answer those questions.

Very truly yours,

W. Neil Eggleston

Enclosure

cc: The Honorable Arlen Specter

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Questions for Sara Taylor
Committee on the Judiciary
Joseph R. Biden, Jr.
July 18, 2007

On November 20,2006 you co-authored a memorandum (the "Memorandum") to Doug Simon, the Office of National Drug Control Policy ("ONDCP")'s White House Liaison. In that document, you provided a list of Republican candidates and over 30 corresponding events that you suggested Director Walters participate in throughout 2006. The list of candidates is a who's who of vulnerable Republican Congressmen seeking reelection: you summarized 29 events with Republicans up for reelection that year; not one event was scheduled with a Democrat or Independent. This conduct bears directly on this Committee's oversight investigation into what appears to be a pattern by the White House of directing federal officials to prioritize politics over departmental duties.

- What communications, oral or written, did you have with any other White House staff related to asking Senate-confirmed officials at ONDCP to attend events with Republican candidates? Please detail the times, dates, and names of those involved, and provide all documents related to these communications.
    - Answer: I do not recall having communications about ONDCP officials.
- Did you select the events listed in the Memorandum?
    - Answer: I don't recall
- If so, who, if anybody, assisted you?
    - Answer: The WH surrogate scheduler managed surrogate activities on behalf of the White House to the Cabinet.
- If not, who developed the list?
    - Answer: I don't recall selecting any specific events, but I recall generally advising Cabinet Secretaries and Directors from time to time on their travel.
- What factors or considerations were used in developing the list in the Memorandum?
    - Answer: Many factors are taken into consideration when making recommendations to Director Walters or members of the President's Cabinet. Common factors include anticipated crowd size, media market, likelihood of press coverage, and availability of competent staff to assist with potential events.
- In your mind, what was the purpose of the suggested visits to these events?

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- Answer: We generally worked to garner press coverage on behalf of the President and the Director, recognizing their efforts to combat drug use.

- Was there a separate memorandum suggesting that high level ONDCP officials visit Democratic or Independent candidates?

  - Answer: I'm not aware of one.

- If so, why were documents addressing the implementation of federal drug policy divided along partisan lines? If not, why did you only choose Republican candidates for these visits?

  - Answer: I don't believe that the Director did only events with Republican Officials. In fact, at many of the events you reference, I understand from research done by the House Oversight Committee that many prominent Democrats also participated.

- Did you ever suggest that any ONDCP official attend an event with Democrats or Independents? If so, please provide any communications or documents regarding those suggestions.

  - Answer: Not that I recall.

- In 2006, did any high level ONDCP official ever attend any similar event with Democrats or Republicans? If so, please provide a list of all such events, including the date, location, and title of the event, and all federal elected officials present.

  - Answer: I understand ONDCP staff did several events with Democrats, but I have no documentation to that effect.

- Do you believe the events and activities suggested in the Memorandum were consistent with federal law's prohibition of Senate-confirmed ONDCP officials from political campaigning? See 21 U.S.C. tj 1703. ("Prohibition on political campaigning. Any officer or employee of the Office who is appointed to that position by the President . . . may not participate in Federal election campaign activities.")

  - Answer: Director Walters participated in official activities and was not, to the best of my knowledge, advocating the election or defeat of a candidate.

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Sara Taylor Questions for the Record from
Senator Charles Schumer
July 18, 2007

1. Evidence before the Committee shows that, in order to keep Tim Griffin as the U.S. Attorney for the Eastern District of Arkansas, at least some officials in the executive branch considered using the Attorney General's interim appointment power to circumvent the Senate's confirmation process. Indeed, Kyle Sampson specifically confirmed that this proposal was considered. Mr. Sampson also told the Committee that the Attorney General eventually rejected this strategy, but he said that you were "not happy" with the Attorney General's decision.

   - Did you, in fact, support the use of the Attorney General's interim appointment power to avoid the process of Senate confirmation for Mr. Griffin? If so, why?

     - Answer: I had thought Tim would go through the confirmation process. .

2. Our investigation has shown that various voter fraud issues were raised with the White House and the Department of Justice by outside parties, including allegations that certain U.S. Attorneys were not vigorous enough in pursuing those voter fraud cases.

   - Did you personally receive complaints about how vigorously certain U.S. Attorneys were prosecuting voter fraud in their districts? To your knowledge did anyone else in the White House receive such complaints?

     - Answer: I don't recall receiving such complaints.

   - If so, who made those complaints?

   - About whom were those complaints made?

   - What were the nature of those complaints?

   - What action, if any, was taken on those complaints?

3. In the document numbered OAG 1812, which appears to be an email exchange between you and Kyle Sampson, you wrote: "I normally don't like attacking our friends, but since Bud Cummins is talking to everyone - why don't we tell the deal on him?"

   - What exactly was "the deal" on Bud Cummins?

     - Answer: To the best of my recollection, "the deal" was my understanding that Mr. Cummins had previously expressed his intention to leave the US Attorney's office.

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4. In the document numbered OAG 18 14, which appears to be an email you sent to Kyle Sampson on February 16, 2007, you wrote: "Why would McNulty say this? This has been so poorly handled on the part of DOJ."

   - What precisely did you believe was "so poorly handled"?

     - Answer: I thought that the DOJ had not adequately communicated with the U.S. Attorneys or with the press.

   - Was there anything in the reports of Mr. McNulty's statements about the involvement of Harriet Miers in the promotion of Tim Griffin that you understood to be inaccurate?

     - Answer: Without intruding into areas covered by executive privilege, I can say that Ms. Miers would have been in a position to observe the excellent work of Mr. Griffin in the White House.

   - When you wrote these emails, were you upset that Paul McNulty truthfully disclosed that Harriet Miers was involved in the promotion of Tim Griffin?

     - Answer: No.

5. What role, if any, did Karl Rove play in suggesting, supporting, or advocating the appointment of Tim Griffin as U.S. Attorney in Arkansas?

   - Answer: Without intruding into areas covered by executive privilege, I can say that Mr. Rove would have been in a position to observe the excellent work of Mr. Griffin in the White House.

6. Apart from Mr. Griffin, did you ever play a role in suggesting, supporting, or advocating the appointment of any candidate for a U.S. Attorney position? Did Karl Rove? Did Scott Jennings? Did anyone else in the political office of the White House?

   - Answer: Without getting into areas covered by executive privilege, I can say that the Office of Political Affairs would from time to time receive calls supporting candidates for numerous positions, including U.S. Attorneys.

7. What was your personal and professional relationship with Monica Goodling while you were employed at the White House?

   - Answer: I believe I met Ms. Goodling once, and we spoke on the phone a few times.

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8. Did you ever become aware that Ms. Goodling was taking into consideration inappropriate partisan, political, or ideological factors in the hiring of persons into non-political positions at the Department of Justice? If so, when and under what circumstances?

    - Answer: I don't recall ever being made aware of her actions.

9. Did you have a personal relationship or acquaintance with any of the U.S. Attorneys who were asked to resign last year? Prior to their dismissals, did you form an opinion about their performance or loyalty to the Administration? If so, please explain the basis of your opinion.

    - Answer: I may have met one or more of them, but I did not have a personal relationship with any of them. With regard to the second part of this question, I believe it is covered by the President's assertion of executive privilege.

10. Apart from Mr. Griffin, did you have a personal relationship or acquaintance with any of the people were considered as replacements for the dismissed U.S. Attorneys?

    - Answer: Not that I know of.

11. You testified that you believed that people were upset with David Iglesias, but you did not "recall specific individuals" who had expressed such complaints. Are you able to refresh your memory, and if so, can you recall any such individuals now?

    - Answer: I don't recall specific individuals.

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Questions for Sara Taylor
Submitted by Chairman Patrick Leahy
July 18,2007

1. As White House Political Director, what role did you have in the selection of nominees to be U.S. Attorneys? What about the selection of acting or interim U. S. Attorneys?

    - Answer: I understand this question to fall under the President's assertion of executive privilege.

2. When and how did you first become aware of any plan to dismiss the U.S. Attorneys who had previously been appointed by President Bush?

    - Answer: I understand this question to fall under the President's assertion of executive privilege.

3. At what time did you become aware of the specific names being considered for dismissal and the reasons for those U.S. Attorneys being considered for your firing?

    - Answer: I understand this question to fall under the President's assertion of executive privilege.

4. What was the process for identifying U.S. Attorneys for dismissal? What considerations factored into that process?

    - Answer: I understand this question to fall under the President's assertion of executive privilege.

5. How did Mr. Griffin come to be considered for the position of U.S. Attorney for the Eastern District of Arkansas? How did he come to be named by the Attorney General the interim Attorney General for the Eastern District of Arkansas?

    - Answer: I understand this question to fall under the President's assertion of executive privilege.

6. In a December 4, 2006, email from Deputy White House Counsel William Kelley to Kyle Sampson, the Attorney General's Chief of Staff, copied to White House Counsel Harriet Miers, Mr. Kelly states: "We're a go for the US Atty plan. WH leg, political, and communications have signed off and acknowledged that we have to be committed to following through once the pressure comes."

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Mr. Sampson testified that you were the head of the White House political operation at this time and the person who signed off on the plan.

What steps did you take to evaluate the plan for replacing multiple U.S. attorneys before you signed off on it?

- Answer: It is not my understanding that Mr. Sampson testified that I signed off on the plan. It is my understanding that he only testified to the fact that I was the head of the Office of Political Affairs. I do not recall seeing the plan before its implementation.

How was the plan for dismissal of multiple U.S. Attorneys shared with you for your sign-off! With whom at the White House or the Department did you have discussions about the plan before signing off on it?

- Answer: I do not recall seeing the plan before its implementation.

What were your criteria for considering whether or not to sign off on the plan? Did you raise objections about any of the U.S. Attorneys included in the list for replacement or to any part of the plan?

- Answer: I do not recall seeing the plan before its implementation.

7. What contacts did you have with any officials at the Department of Justice regarding the prosecution of voter fraud in any district?

   - Answer: I do not recall having contacts with DOJ officials about voter fraud issues.

8. A number of recent reports suggest that White House staff, including you, have provided what a White House spokesman calls "informational briefings to appointees throughout the federal government about the political landscape." In a June 14, 2007, letter to Chairman Waxman of the House Committee on Oversight and Government Reform, the Department of Justice disclosed that Department officials have attended at least thirteen briefings by White House officials since 200 1. These may have included political briefings regarding elections and candidates. According to this letter, before the 2006 midterm elections you hosted at least one of these briefings and gave the briefing at least one other.

   A. How many of these "informational briefings" did you attend involving appointees or employees at the United States Department of Justice? Please provide dates and who was in attendance. Also note whether you provided information at the briefing.

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- Answer: I do not recall doing an informational briefing at the Department of Justice. I don't recall doing one for DOJ employees at the EEOB. I participated in lots of meetings with agency personnel on a wide variety of subjects, but I don't recall if DOJ personnel were ever in attendance when I gave a political update in the EEOB.

B. What was the purpose of these "informational briefings"?

- Answer: The purpose of these briefings generally was three-fold: to say thank you to the employees for the hard work that they did to promote the President's policies; to talk about the President's policies and how the agency's work fits into his agenda; and to give an update on the political landscape of the country and how it affected our ability to help the President achieve his policy goals.

C. What information was shared with Department appointees or employees at these briefings? Did you or other White House officials share polling data? Did you or other White House officials discuss congressional elections, reelection campaigns, or the electoral prospects of Republican and Democratic candidates.

- Answer: I do not recall giving one of these briefings at the Department of Justice.

D. Did you or any White House official give direction, recommendations, or suggestions to Department appointees or employees at these briefings? What was that direction?

- Answer: I do not recall giving one of these briefings at the Department of Justice.

9. According to a November 20,2006, memo you wrote to the Office of National Drug Control Policy (ONDCP), at your suggestion, ONDCP Director John Waters and his deputies traveled at taxpayer expense to at least 20 events with vulnerable Republican members of Congress in competitive districts in the months prior to the 2006 elections. You recommended 3 1 specific events that he and his deputies should attend. Several of these trips were coordinated with the announcement of federal grants to the states or districts of these Republican members. In another email, from ONDCP White House Liaison Douglas Simon to Director Walters and his staff, Mr. Simon describes a meeting with Karl Rove after the 2006 election in which he commended ONDCP and three cabinet departments - Commerce, Transportation, and Agriculture - for "going above and beyond the call of duty" in making "surrogate appearances" at locations the e-mail described as "the god awful places we sent them." Other documents demonstrate the White House may have directed political travel also before the 2003 and 2004 elections.

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A. To your knowledge, what federal resources or federal agencies, including the ONDCP, were used to help Republican candidates in the 2002,2004,and 2006 elections? How were they used?

- Answer: I'm not aware of federal resources being used to advocate the election or defeat of any candidates in those elections.

B. What role did you or other White House officials play in recommending, directing, or suggesting the use of travel or other federal resources or agencies to help Republican candidates for office?

- Answer: I have no recollection of recommending the use of federal resources to advocate the election or defeat of any candidates.

C. What criteria were used by your or other White House officials in recommending, directing, or suggesting use of travel or other federal resources by federal agencies?

- Answer: Many factors were used to determine travel suggestions made to agency officials. Some include the importance of an issue within a specific media market, whether an event was likely to be well attended, whether it was likely to be well staffed, whether there was likely to be plenty of press coverage, whether it was in an area through which the official was already traveling, etc.

10. The Department produced document OAG18 14 to the Committee, which includes an email from you forwarding a February 16,2007, New York Times article to Mr. Sampson that described the involvement of White House officials in the decision to remove Mr. Cummins and replace him with Mr. Griffin. According to this article, the involvement of White House Counsel Harriet Miers was divulged to the Senate Judiciary Committee in a briefing on the dismissals by Deputy Attorney General Paul McNulty. You wrote to Mr. Sampson, "Why would McNulty say this? This has been so poorly handled on the part of DOJ."

A. Was the information provided by Mr. McNulty to the Senate Judiciary Committee inaccurate?

- Answer: It is clear Mr. McNulty and I had different understandings about the reasons for Mr. Griffin's appointment.

B. What did you feel had been "poorly handled on the part of DOJ" ?

- Answer: I thought that the DOJ had not adequately communicated with the U.S. Attorneys or with the press.

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11. In your hearing on July 11, you were asked about a February 16,2007, email in which you wrote, "Tim was put in a horrible position, hung to dry w/ no heads up. You forced him to do what he did; this is not good for his long-term career. Bud runs a campaign and McNulty refuses to say Bud is lazy-which is why we got rid of him in the first place."

    You apologized in the hearing for referring to Mr. Cummins as lazy. Was the testimony Mr. McNulty to the Judiciary Committee correct that Mr. Cummins was removed to make room for Mr. Griffin? If not, what was the reason for Mr. Cummins dismissal? Who made the decision?

    - Answer: It was my understanding that Mr. Cummins had already expressed his intention to leave the position.

    The Department produced to the Committee a document numbered OAG18 12, containing a copy of a February 7,2007 email exchange between you and Kyle Sampson.

    A. One of these emails is one in which you forwarded to Mr. Sampson a USA Today article regarding the dismissal of Bud Cummins as U.S. Attorney for the Eastern District of Arkansas entitled, "Prosecutor fired so ex-Rove aide could get his job." You wrote to Mr. Sampson, "I normally don't like attacking our friends, but since Bud Cummins is talking to everyone why don't we tell the deal on him?" What was "the deal" on Bud Cummins you were advocating be made public?

    - Answer: To the best of my recollection, "the deal" was my understanding that Mr. Cummins had previously expressed his intention to leave the US Attorney's office.

    B. Your email suggests that the real reasons for Mr. Cummins dismissal were not public. Were the reasons for Mr. Cummins' dismissal given by Deputy Attorney General Paul McNulty in his testimony to the Senate Judiciary Committee-that he was removed to give Mr. Griffin an opportunity-untrue? If so, what steps did you take to correct that testimony or make sure that it was being corrected?

    - Answer: It is clear Mr. McNulty and I had different understandings about the reasons for Mr. Griffin's appointment.

    C. Did you or, to your knowledge, anyone make public "the deal" on Bud Cummins you raise in this email?

    - Answer: In the July 11th hearing, I stated that my understanding was that Mr. Cummins had already announced his plans to leave the U.S. Attorney's office.

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D. Two weeks after you sent this email suggesting going public about the reasons for Mr. Cummins' dismissal, Mike Elston, Chief of Staff to the Deputy Attorney General, had a phone conversation with Mr. Cummins in which he told Mr. Cummins that if the dismissed U.S. Attorneys did not remain quiet about the firings, the Administration would "pull their gloves off and offer public criticism" of them. Are you aware of any discussion by anyone at the White House or the Department about possible action if the U.S. Attorneys spoke publicly about the reasons for their dismissal?

- Answer: I don't recall any conversations as described in your question above.

13. The Department produced to the Committee a document numbered OAG18 10, containing a copy of a January 25,2007, email exchange between you, Kyle Sampson, then the Attorney General's Chief of Staff, and William Kelley, the Deputy White House Counsel.

A. In his email to you and Mr. Kelley attaching the Department's proposed response to a letter from Senator Pryor regarding the possible nomination of Tim Griffin to be U.S. Attorney for the Eastern District of Arkansas, Mr. Sampson wrote that he wanted you to "have the benefit of reviewing before we send our response later today." Did you review it?

- Answer: I may have reviewed it, but I don't recall doing so.

B. You said in response to Mr. Sampson that you were "concerned we imply that we'll pull down Griffin's nomination should Pryor object." Why were you concerned?

- Answer: I did not want to give the impression at the time that we would not back Mr. Griffin's confirmation as U.S. Attorney.

C. Mr. Sampson replied to your concern that he would call you. Did he? What did you discuss with him following this email?

- Answer: I understand this question to fall under the President's assertion of executive privilege.

14. What was your opinion of the plan being discussed by Kyle Sampson and others to use the Attorney General's authority under the Patriot Act reauthorization, now rescinded, to appoint Tim Griffin interim U.S. Attorney for the Eastern District of Arkansas indefinitely without sending his nomination to the Senate for confirmation? Why did you believe it was appropriate to bypass the homestate Senators in Arkansas that opposed Mr. Griffin's nomination?

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- Answer: It was my belief and hope that Mr. Griffin would be nominated and confirmed by the Senate.

15. How often did you communicate with Kyle Sampson, the Chief of Staff to the Attorney General, about replacing United States Attorneys? What specifically do you recall about your communications with Mr. Sampson on this topic? Did you discuss the performance" of U.S. Attorneys or the reasons for their dismissal? Did you discuss dissatisfaction or complaints about U.S. Attorneys?

    - Answer: I understand this question to fall under the President's assertion of executive privilege.

16. How often did you communicate with Monica Goodling about replacing U.S. Attorneys? With whom at the Department of Justice did you communicate about replacing U. S. attorneys? Did you communicate about replacing U. S. attorneys with anyone who was not an official in the Department of Justice or an official in the White House? Who?

    - Answer: I do not recall any communications with Ms. Goodling on this subject prior to the removal of the U.S. Attorneys.

17. How often did you communicate with others at the White House about replacing U.S. Attorneys? With whom did you discuss the dismissals before they took place? With whom did you discuss the "performance" of U.S. Attorneys or the reasons for their replacements? Did you discuss dissatisfaction or complaints about U.S. Attorneys?

    - Answer: I understand this question to fall under the President's assertion of executive privilege.

18. With whom at the Department or the White House did you communicate about responses to Congressional inquiries about the dismissals of multiple U.S. Attorneys after the implementation of the plan in December 2006, including the testimony of the Attorney General and other Department officials about the dismissals? What other White House officials were involved in those discussions and when?

    - Answer: I understand this question to fall under the President's assertion of executive privilege.

19. Several months ago, the White House announced that millions of e-mails may have been lost from the Republican National Committee and could not rule out the possibility that e-mails from Karl Rove and other political operatives in the White House relevant to this Committee's investigation into political influence into the firing and replacement of United States Attorneys had been lost. We have since learned that hundreds of thousands of these emails-including over 66,000 of yours-have been recovered.

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A. When did the Administration first become aware that e-mail records relevant to this Committee's investigation were not easily retrievable, were erased or otherwise deleted and not retained and what efforts have been taken?

- Answer: I don't know.

B. Since that time, what has been done to secure the relevant services, equipment, software, elements, data, and documents stored in paper or electronic form from all e-mail systems, personal computers, workstations, PDAs, Blackberries, backup systems, or other electronic storage devices?

- Answer: I'm not aware of what has been done in response to your question.

C. Did anybody at the White House monitor or audit your use of the RNC email account as opposed to your governmental White House account to determine whether you were properly following the laws requiring the preservation of White House records to ensure a public record of official government business? How often?

- Answer: Not that I'm aware of.

D. What guidelines were you issued regarding the preservation of Presidential records and the use of this non-governmental RNC email address? Who issued these guidelines?

- Answer: I recall being informed of the Presidential Records Act by the White House Counsel's Office, but I don't recall when.

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SUBMISSIONS FOR THE RECORD

STATEMENT OF SEN. EDWARD M. KENNEDY

Every President has a legitimate interest in obtaining unfiltered advice from the people who work for him. That interest, however, does not trump all other interests. The limits of executive privilege are not well-defined, but as the Supreme Court made clear in U.S. v. Nixon in 1974, the privilege is not absolute, and must yield when the need for information is sufficiently great.

President Bush has now asserted an expansive and absolute privilege. He has flatly refused to produce documents and has ordered current employees and former employees as well not to testify before Congress. He has pulled down all the shades at the White House. No information gets out. That's not the way our constitutional system should work.

This Committee has examined the firing of U.S. Attorneys diligently and responsibly. The firings are especially important because they raise the real possibility that our system of justice has been corrupted by partisan politics. Our investigation has uncovered multiple abuses, including the injection of partisan and ideological considerations into the hiring of career attorneys and the manipulation of our voting laws for partisan programs.

But one thing we have not been able to discover is why these U.S. Attorneys were fired. Under examination, the performance-based explanations offered by the Department of Justice have dissolved. No senior official at the Department of Justice has explained credibly why these U.S. Attorneys were fired. In fact, the most credible explanation in several cases is that they refused to bend the law to serve partisan purposes and lost their jobs because of it.

The trail clearly leads to the White House and Congress is right to follow that trail. The impartial administration of justice has been called into question, and lifting that cloud should be a high priority.

The clashing interests we now face have traditionally been resolved by negotiation between the Executive and Legislative Branches. The lack of clear law in this area simply reflects the fact that past leaders have traditionally understood that cooperation between branches is essential, and that both branches are served best by accommodating the legitimate needs of each of them.

35800.161

Unfortunately, President Bush has taken a rigid stand from the start and has refused to budge an inch. He seems content to fight in court, hoping to run out the clock. He has offered only to let White House officials talk in closed session, without an oath, and without a transcript, but with the assurance that the witness will not be called again. Those terms are a travesty. The Committee can't totally give up its authority to pursue the investigation.

We need serious negotiations to enable Congress and the American people to learn the facts about this scandal, while preserving the core needs of the presidency. If we cannot find a way to work this out, we are headed to court. The Committee cannot back away from this important investigation without the information it needs.

35800.162

Opening Statement of Senator Patrick Leahy
Chairman, Senate Judiciary Committee
Hearing on "Preserving Prosecutorial Independence: Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys? – Part VI"

July 11, 2007

Today, the Committee welcomes Sara Taylor, until recently the White House Political Director. She is accompanied by her attorney Neil Eggleston, whom we have permitted to be seated next to her at the witness table during the hearing to provide her with his advice and counsel.

In April, Senator Specter and I wrote to Ms. Taylor asking for her cooperation with the Committee's investigation but we did not hear back from her. Since then, she has left the White House and we have scheduled this hearing to learn more about the role White House political operatives played in the unprecedented firings of a number of U.S. Attorneys who had been appointed by this President. I had a chance to meet Ms. Taylor just before the hearing. I thank her for appearing today and share with her my hope that she will cooperate with us by testifying to the best of her knowledge and information. The choice is hers.

I feel strongly that law enforcement should be above politics and that effective law enforcement in which the American people can have confidence requires its independence from partisan political activities. That is what appears to have been compromised in this purge and by the signal it sent to federal prosecutors around the country.

There is clear evidence that Ms. Taylor, a top aide to Karl Rove, was among the staffers who played a key role in these firings and in the Administration's response to cover up the reasons behind them when questions first arose. The White House continues to cover up the facts and reasons for these firings. Ms. Taylor's lawyer informed us last week that she would like to cooperate with our investigation and I hope that she will. The White House lawyers have resorted to an unprecedented, blanket assertion of "executive privilege" and are seeking to interfere with the obligations of Ms. Taylor to testify and to prevent other witnesses and the Republican National Committee from providing information requested by this Committee and the House Judiciary Committee.

Of course this belated blanket claim of executive privilege belies the initial reaction of the White House and of the President himself that minimized his involvement and the involvement of Karl Rove in these matters. This follows the pattern we saw that culminated in the conviction of Mr. Libby for obstruction of justice, perjury and lying in another matter.

What is the White House trying to hide? Why would it interfere in Ms. Taylor's testifying if, as her lawyer says, she wishes to cooperate?

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We have learned from the selective documents we obtained from the Department of Justice that Ms. Taylor was involved in the discussions and planning that led to the removal of Bud Cummins and bypassing the Senate confirmation process to install Tim Griffin, another former aide to Mr. Karl Rove, as U.S. Attorney in the Eastern District of Arkansas. We know from these documents that Ms. Taylor was part of a group that discussed using the Attorney General's expanded authority under the Patriot Act Reauthorization to appoint Mr. Griffin as interim U.S. Attorney indefinitely, doing an end-run around the Senate's constitutional advice and consent responsibility. We know from documents and testimony that Ms. Taylor played a role in approving the plan for firing multiple U.S. Attorneys on December 7, 2006. We know she was involved in subsequent discussions regarding the congressional testimony of Department officials and the Administration's response to the growing scandal surrounding the firings. So why is the White House trying to block this Committee from hearing from Ms. Taylor directly?

We also understand that tens of thousands of emails from RNC accounts used by White House political operatives have been identified and turned over to the White House but, despite our best efforts, not produced to the congressional investigating committees. What are they hiding in these emails?

From the outset of this scandal the President has spoken about the firing of U.S. attorneys as if it were a matter handled and decided by the Attorney General and something Mr. Gonzales would have to explain to Congress and the American people. The President was hands off and arms' length. He indicated to the American people that he had to ask others whether anything improper was done and relied on a review by White House lawyers for his assertion that nothing was.

Are we now to understand from the White House claims of executive privilege that these were decisions made by the President? That is a direct contradiction of the President's earlier statements that he was not responsible for this scandal, for the firing of such well-regarded and well-performing U.S. attorneys for partisan political purposes and to affect elections?

When we had the Attorney General testify under oath, he did not know who added U.S. attorneys to the list of those to be fired or the reasons they were added. Indeed, the bottom line of the sworn testimony from the Attorney General, the Deputy Attorney General, the Attorney General's former Chief of Staff, the White House liaison and other senior Justice Department officials was that they were not responsible. Senator Specter said recently that two of the questions at hand are, who ordered the firings and why? We need answers to these questions -- who did make these decisions? Was it, in fact, the political operatives at the White House? Was it an attempt to affect elections? What role did Ms. Taylor and others in Karl Rove's White House political office play?

Even this White House cannot dispute the evidence we have gathered to date showing that White House officials were heavily involved in these firings and in the Justice Department's response to congressional inquiries about them.

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The White House continues to try to have it both ways, but at the end of the day it cannot. It cannot block Congress from obtaining the relevant evidence and credibly assert that nothing improper occurred. What is the White House hiding? Was the President involved and were his earlier statements to the American people therefore misleading? Or is this simply an effort by the White House legal team to protect White House political operatives whose partisan efforts have been uncovered in a new set of White House horrors?

For months, I have been giving the White House every opportunity to work with us voluntarily to provide the information we have sought. This week, the White House ignored an opportunity to meet its burden of explaining its blanket privilege claims. Specifically, what is it the White House is so intent on hiding that they cannot even identify the documents, the dates, the authors and recipients that they claim are privileged? Would we see the early and consistent involvement of Ms. Taylor and other high-ranking White House political operatives in what should be independent and neutral law enforcement decisions? Ms. Taylor's honest testimony could help us begin to answer these questions. It is apparent that this White House is contemptuous of the Congress and feels that it does not have to explain itself to anyone -- not to the people's representatives in Congress, nor to the American people. I urge Ms. Taylor not to follow the White House down this path.

This is a serious matter with serious consequences for the administration of justice. This is about improper political influence of our justice system – it is about the White House manipulating the Justice Department into its own political arm. It is about manipulating our justice system to pursue a partisan political agenda. It is about pressuring prosecutors to bring cases of voter fraud to try to influence elections – of sending a partisan operative like Bradley Schlozman to Missouri to file charges on the eve of an election in violation of Justice Department guidelines. It is about the unprecedented and improper reach of politics into the Department's professional ranks – such as the admission by the Department's White House Liaison Monica Goodling that she improperly screened career employees for political loyalty and wielded undue political influence over key law enforcement decisions and policies. It is about political operatives pressuring prosecutors to bring partisan cases and seeking retribution against those who refuse to bend to their political will -- such as the example of New Mexico U.S. Attorney David Iglesias, who was fired a few weeks after Karl Rove complained to the Attorney General about the lack of purported "voter fraud" enforcement cases in Mr. Iglesias' jurisdiction. It is about high-ranking officials misleading Congress and the American people about this political manipulation of justice.

Along the way, this subversion of the justice system has included lying, misleading and stonewalling the Congress in our attempts to find out what happened. This Administration has instituted an abusive policy of secrecy aimed at protecting themselves from embarrassment and accountability. Apparently the President and Vice President feel they, and their staff, are above the law. In America no one is above the law.

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Untoward White House interference with federal law enforcement is a serious matter. It corrupts federal law enforcement, threatens our elections and has seriously undercut the American people's confidence in the independence and evenhandedness of law enforcement.

Congress will continue to pursue the truth behind this matter because it is our constitutional responsibility -- and it is the right thing to do. I hope Ms. Taylor chooses to reject the White House's insistence that she abet their stonewalling and, instead, works with us so that we can get to the bottom of what has gone on and gone wrong.

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Opening Statement of Sara M. Taylor
Before the Senate Judiciary Committee
July 11, 2007

Mr. Chairman, Senator Specter, and Members of the Senate Judiciary Committee:

My name is Sara Taylor. Until seven weeks ago, I served as a Deputy Assistant to the President and the Director of the Office of Political Affairs at the White House. Over the last eight years I've worked in different capacities for President Bush. I know the President to be a good and decent man. I am privileged to have had the opportunity to serve him, and I admire his unflinching devotion always to do what he believes is right for our country. The professional opportunities President Bush gave me have and will continue to have a profound impact on my life. I am grateful for the confidence he has shown in me.

I am here today to testify, pursuant to subpoena, before this Committee as a willing and cooperative private citizen. I must recognize, however, that the areas you would like to question me about today arise out of my service to the President in the White House. I have received a letter from the Counsel to the President informing me that the President has directed me not to testify "concerning White House consideration, deliberations, or communications, whether internal or external, relating to the possible dismissal or appointment of United States Attorneys, including consideration of possible responses to congressional and media inquiries on the United States Attorneys matters." I have attached a copy of Mr. Fielding's letter to me to this statement, as well as the letter that my counsel wrote to the Chairman and Ranking Member of this Committee and to the Counsel to the President on July 7, 2007. The President has made the determination that the disclosure of this information would interfere with the operation of the executive branch. I intend to follow the President's instruction. I do not have the ability independently to assess or question the President's determination.

The current dispute between the Executive and Congressional branches of our government is much bigger than me or my testimony here today. In light of the President's direction, I will answer faithfully those questions that are appropriate for a private citizen to answer while also doing my best to respect the President's directive that his Staff's communications be privileged. To the extent that I am not able to answer questions because of the President's directions, I commit to abide by a judicial determination that may flow from a subpoena enforcement action against the White House. While I may be unable to answer certain questions today, I will answer those questions if the courts rule that this Committee's need for the information outweighs the President's assertion of executive privilege.

I look forward to answering those questions not covered by the President's assertion of executive privilege. I understand that during this hearing we may not agree on whether answers to particular questions fall within the prohibitions of Mr. Fieldings's letter. This may be frustrating to both you and to me. I would ask the committee not to infer than an invocation of Mr. Fielding's letter signals knowledge on my part. Within the constraints of Mr. Fielding's letter, I will do my best to respond to your questions.

Thank you for your understanding.

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THE WHITE HOUSE

WASHINGTON

July 9, 2007

Dear Mr. Eggleston:

As you are aware, on June 13, 2007, the Senate Judiciary Committee issued a subpoena to your client, Sara M. Taylor, seeking her appearance, on July 11, 2007, for testimony concerning the dismissal and replacement of United States Attorneys.

Consistent with the advice provided by the Acting Attorney General in his letter to the President of June 27, 2007, the President has decided to assert Executive Privilege with respect to the testimony sought from Ms. Taylor concerning White House consideration, deliberations, or communications, whether internal or external, relating to the possible dismissal or appointment of United States Attorneys, including consideration of possible responses to congressional and media inquiries on the United States Attorneys matter. Accordingly, I respectfully request that you inform Ms. Taylor that the President has directed her not to provide this testimony.

In my letter of June 28, 2007, I informed you that the President had asserted Executive Privilege as to any documents that Ms. Taylor possessed that would be responsive to the subpoena for documents issued to her on June 13, 2007, by the Senate Judiciary Committee. The President continues to assert Executive Privilege over any such documents and continues to direct Ms. Taylor not to produce such documents.

Please contact me if you have any questions or would like to discuss these issues.

Sincerely,

Fred F. Fielding
Counsel to the President

W. Neil Eggleston, Esq.
Debevoise and Plimpton LLP
555 13th Street, NW
Washington, DC 20004

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DEBEVOISE & PLIMPTON LLP

555 13th Street, N.W.
Washington, D.C. 20004
Tel 202 383 8000
www.debevoise.com

W. Neil Eggleston
Partner
Tel 202 383 8140
Fax 202 383 8118
wneggleston@debevoise.com

July 7, 2007

VIA E-MAIL

The Honorable Patrick J. Leahy
Chairman
U.S. Senate
Committee on the Judiciary
Washington, D.C. 20510-6275

The Honorable Fred F. Fielding
Counsel to the President
The White House
Washington, D.C. 20004

The Honorable Arlen Specter
U.S. Senate
711 Hart Building
Washington, D.C. 20510

Re: Sara M. Taylor

Dear Sirs:

I write to you as counsel for Sara Taylor. Ms. Taylor has received a subpoena from the Senate Judiciary Committee directing her to appear and give testimony on July 11, 2007. Ms. Taylor expects to receive a letter from Mr. Fielding on behalf of the President directing her not to comply with the Senate's subpoena. These contrary directions undoubtedly create a monumental clash between the executive and legislative branches of government. This clash may ultimately be resolved by the judicial branch.

Until six weeks ago, Ms. Taylor was Director of the Office of Political Affairs in the White House. She began working on the Bush Presidential Campaign in 1999, at age 24. After the President's election, she accepted a position at the White House. She is now 32 years old, having worked most of her adult life for President Bush. She is unquestionably loyal and committed to the President and his agenda. At the same time,

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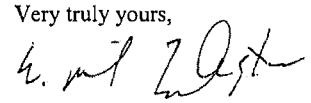
she recognizes the burden on any citizen to respect the Senate's processes and to be responsive to its subpoenas.

Absent the direction from the White House, Ms. Taylor would testify without hesitation before the Senate Judiciary Committee. She has participated in no wrongdoing. She will assert no personal privileges.

In our view, it is unfair to Ms. Taylor that this constitutional struggle might be played out with her as the object of an unseemly tug of war. She faces two untenable choices. She can follow the President's direction and face the possibility of a contempt sanction by the Senate, with enforcement through the criminal courts, an action that regardless of outcome, will follow her for life. Or, she can attempt to work out an accommodation with the Senate, which will put her at odds with the President, a person whom she admires and for whom she has worked tirelessly for years.

If the executive and legislative branches of government are unable to reach agreement, we urge the Senate not to use Ms. Taylor as the focus of the constitutional struggle. We recognize that there are larger issues at stake here. Nevertheless, the White House, not Ms. Taylor, controls the assertion of the executive privilege. If there is to be a clash, we urge the Senate to direct its sanction against the White House, not against a former staffer. If a court is to resolve this dispute, Ms. Taylor commits to abide by whatever decision the courts may reach on the application of the executive privilege in this matter.

Very truly yours,



W. Neil Eggleston

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PRESERVING PROSECUTORIAL INDEPENDENCE: IS THE DEPARTMENT OF JUSTICE POLITICIZING THE HIRING AND FIRING OF U.S. ATTORNEYS?—PART VII

THURSDAY, AUGUST 2, 2007

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC

The Committee met, pursuant to notice, at 10:10 a.m., in room 226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Kennedy, Schumer, Durbin, Cardin, Whitehouse, Specter, and Hatch.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Good morning. Today the committee welcomes Scott Jennings, who is a Special Assistant to the President. He is Deputy Director of Political Affairs. He is accompanied by his attorney, Mark Paoletta, whom the committee has permitted to be seated with Mr. Jennings at the witness table to provide him with counsel.

Mr. Jennings, through his attorney, has informed the committee he will refuse to answer questions falling within the President's blanket claim of executive privilege. As I have told Mr. Jennings earlier this morning, I consider that blanket claim to be unsubstantiated.

I thank Mr. Jennings for appearing today. I told him that I hoped that he would cooperate and testify to the best of his knowledge and information. I reiterate that hope; of course, the choice is his.

His appearance here today, though, does contract with the failure to appear by Karl Rove, who was also served a subpoena to produce documents and testify today. Mr. Jennings' appearance shows that the White House's newly minted claim of immunity for White House employees is a sham. It also a sham that this White House continues to act as though it is above the law. That, of course, is wrong.

The subpoenas authorized by this committee in connection with this investigation into the mass firings of U.S. Attorneys and the corrosion of Federal law enforcement by White House political appointees deserve respect and compliance.

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For many months, I have sought the voluntary cooperation of the White House with our investigation. Even though I have sought voluntary cooperation, that has been turned down. The President's counsel have conditioned any limited availability of information on their demand that whatever the White House provides initially must end the matter. Instead, the Judiciary Committee must agree to stop its pursuit of the truth.

They demand that the information they chose to provide be shared with a limited number of Members of Congress, basically on their agenda, behind closed doors, not under oath, and with no record of what the responses were.

It was also made very clear that, no matter what came out of those meetings at the end of the matter, we have to agree there will be no followup. No Member of Congress, Republican or Democratic, would agree to such a thing. This matter is too important to the public's trust in Federal law enforcement to be left to a self-serving, one-time-only secret interview from which there is no followup.

The White House is willing to provide some information under these secret conditions, but then pressed to do so in a manner that would allow for follow-up, this information suddenly became privileged and withheld from Congress. I ask, how can that be?

How can communications with the Justice Department, the Republican National Committee, and others outside of the White House be subject to executive privilege claims? How can White House employees like Karl Rove speak publicly about these matters 1 day in a political forum, but declare that he cannot in any way be accountable to the American people and the duly elected representatives in Congress on the same matter?

Karl Rove, who refused to comply with Senate subpoenas, spoke publicly in sessions at Troy University in Alabama and at the Clinton School of Public Service in Arkansas about the U.S. Attorney firings when the scandal first became public.

In March he spoke about the reasons that were then being given for the firings of individual U.S. Attorneys, of course, reasons that now have been shown to be inaccurate, after-the-fact fabrications. He does not appear when he is summoned before Congress to finally tell the truth.

He refuses to tell this committee, with legislative oversight and advice-and-consent responsibility for the Department of Justice and the U.S. Attorneys about his role in targeting well-respected U.S. Attorneys for firing and in seeking to cover up his role and that of his staff in the scandal.

As in the Scooter Libby matter, this White House starts by saying one thing, and when caught in a lie it changes its talking points, all the while holding itself above the law.

When the firing scandal became public in January, of course the White House said it was not involved. When the then-Deputy Attorney General revealed in testimony in February something of the White House's role in the targeting of Bud Cummins for firing in Arkansas, that incensed the White House political operatives.

Mr. Rove's top aide, Sara Taylor, appeared before this committee last month, but hid behind a White House claim of executive privilege. I hope Mr. Jennings will not repeat that error, but will testify

truthfully about what he did, what he knows, and what, in fact, happened.

To date, the White House refuses even to specify that the documents being withheld pursuant to its claim. Could it be that there mere listing of the documents and the dates are off, and recipients will confirm the intimate involvement of political operatives at the White House?

Sadly, our efforts to follow the evidence where it leads has been met with Nixonian stonewalling. We are quickly reaching the point where we are given the claim of executive privilege. The lawful question is, what did the President know, and when did he know it? By his claim of executive privilege, is President Bush now taking responsibility for the firing of such well-regarded and well-performing U.S. Attorneys?

To date, that has not been the President's position. The Attorney General's former Chief of Staff, the former Political Director at the White House, and the Attorney General himself have testified under oath that they did not talk to the President about these firings. That is one reason why the White House blanket claim of executive privilege rings so hollow.

The White House cannot have it both ways, even though they continue to try to. It cannot block Congress from obtaining the relevant evidence, and at the same time credibly assert that nothing improper occurred. It cannot claim executive privilege based on the President's involvement and need for candid advice, but then simultaneously contend, well, he was not involved, that this was done at the Justice Department.

The blanket claim appears to me to be a misdirected effort by the White House legal team to protect White House political operatives whose partisan schemes are being discovered in a new set of White House horrors rivaling those of the Nixon White House and Watergate era.

There is actually a cloud over this White House and a gathering storm. Federal prosecutors observe that such a cloud hangs over the Vice President in the Libby case. A similar cloud now envelops Mr. Rove and his partisan political team at the White House as well.

In the course of sentencing Mr. Libby to 30 months in prison, Judge Walton rightly observed that public servants owe a duty to the American people. That duty includes a very basic one of telling the truth.

I believe that duty also includes not corrupting law enforcement for partisan political gain. Congress will continue to pursue the truth behind this matter. It is our constitutional responsibility to do so. But it is also the right thing to do.

I continue to hope the White House will stop its stonewalling and accept my offer. Actually, the offer made by Senator Specter is somewhat different, but still, offers to negotiate a workable solution to the committee's oversight needs so we can effectively get to the bottom of what has gone wrong.

[The prepared statement of Senator Leahy appears as a submission for the record.]

Senator Specter?

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman.

I pick up on your last statement about working something out with the White House and coming to an accommodation so that we do not look at 2 years of protracted litigation for the courts to decide whether the President is correct on his exercise of executive privilege or whether the Senate is correct in its oversight inquiries.

This investigation needs to be completed because I believe that when the committee finishes this investigation and files a report, that we may well see the end of the tenure of Attorney General Gonzales. This is connected with some very critical matters which are confronting the Congress today, and that involves the request by the Director of National Intelligence to have a modification of the Foreign Intelligence Surveillance Act because of his concerns, and the concerns expressed by the President in his last week's Saturday broadcast, about a very imminent threat to the United States from terrorists today.

The Congress cannot adjourn, in my opinion, without providing that legislative change. But one of the factors which is involved is that the proposed legislation gives additional powers to the Attorney General, which is, candidly, very difficult to do.

A revised draft by the White House would give him, jointly with the Director of National Intelligence—which may be a stop-gap, I think it preferable not to have the Attorney General involved. But I would not stand in the way of this critical legislation being enacted, even under those limited circumstances.

But we have an Attorney General who responded yesterday by saying, on the issue as to whether there was disagreement on the terrorist surveillance program, that "I have tried to provide frank answers." I do not believe that is so.

When he said that in his letter, that he may have created confusion, it is more than that: it is misleading. When the Attorney General repeatedly said that there was no disagreement within the administration on the program, as disclosed by the President, he was telling only a part of the facts, really playing a cat-and-mouse game with congressional oversight.

I do not believe that there is a perjury prosecution in this matter, and I think it worthwhile to quote very briefly from the Supreme Court opinion in Bronston v. United States in 1973: "The perjury statute is not to be loosely construed, nor the statute invoked, simply because a wily witness succeeds in derailing the questioner, so long as the witness speaks the literal truth, even where the answers were not guileless, but were shrewdly calculated to evade."

Well, I think that describes Attorney General Gonzales, where you have a wily witness who has evaded the information which this Senate oversight committee was entitled to. Now, just because it is not perjury does not mean it is the way the highest-ranking legal officer in the United States ought to respond to a Senate inquiry, but I think that we really need to use every effort, picking up on your last statement, Mr. Chairman, to find a way through.

I said some time ago that I am prepared to give up the oath. There are potential penalties under U.S. Code, Title 18, Section 1001. It does not have to be both Houses. It can be a group from

each, the House and the Senate, bipartisan. It does not have to be public. I'd prefer it public. That's the way the government functions. But I would agree to a closed session.

I think a transcript is minimal, but I would even be prepared to give that up. I do agree with the Chairman that we cannot give up our responsibility to pursue the matter beyond whatever may occur. I think, Mr. Chairman, that if you and Chairman Conyers and I sat down beyond Mr. Fielding and asked the President for a meeting, that we could work it out. We have had disagreements where we have sat down with the President and worked it out.

I think, if you, Chairman Conyers, and I, Senator Durbin, and Senator Cardin were in a room with these witnesses, we could find out a great deal of information. I certainly think that's what we ought to do. I think we need to finish this investigation and find a way to end the tenure of Attorney General Gonzales so that we are not distracted by these issues and that we can really move ahead.

The Department of Justice has enormous responsibilities in so many lines, first and foremost investigating terrorism, and it is not happening. I talked to Mr. Jennings yesterday. I appreciated his coming by to see me with counsel. But I know that he is not going to testify today, and he is between a rock and a hard place. He has to obey what the President is telling him to do. But we just have to find a way to work it out, Mr. Chairman.

Chairman LEAHY. In that regard, if I thought that there was any willingness to work it out instead of a stonewalling, I would feel a lot better about this. I would point out that—

Senator SPECTER. Well, Mr. Chairman, why not, let's you and me and Chairman Conyers ask him for a meeting.

Chairman LEAHY. Let's you and I talk about this afterwards.

Senator SPECTER. I'd be glad to talk about it afterwards. I'd be glad to talk about it now.

Chairman LEAHY. Obviously. You know, the things that we have heard from the White House, first when we asked for the e-mails from the RNC, they said, well, we'd be happy to give those, but they've all been erased. When I suggested, well, you don't erase e-mails, they went on to say that they had no idea what I was talking about, because of course you can erase e-mails, and you do erase e-mails. Well, it turned out they hadn't erased e-mails. They had all the e-mails. I said, fine. Isn't that nice? I was right, you were wrong. We have the e-mails. They said, well, we're still not going to give them to you. There's been just this total lack of cooperation that's ongoing.

I know that they're hoping it will drag on for a year, year and a half. I think contempt citations will go long before then. But I'll be glad to talk to you about your suggestion, but I'm not going to do a behind-closed-doors, no-transcript thing where they determine what the agenda is going to be and there will be no followup. I mean, this treats the Congress as though we were members of White House, and neither you nor I would ever accept that of any White House, Democratic or Republican.

Jeffrey Scott Jennings has been a Special Assistant to the President and Deputy Director of Political Affairs at the White House since 2005. He previously managed President Bush's campaign in

New Mexico in 2004, President Bush's Kentucky campaign in 2000. He has been a spokesman and Senior Political Advisor to the Republican Party in Kentucky, a Press Secretary to Republican officials there, and managed a number of State-wide campaigns for Republican candidates.

He received a B.A. from the University of Louisville. The rules of the committee call for him to have submitted a written statement by 10 a.m. yesterday. That was not submitted on time, but I will include the statement that we did receive, out of fairness to you, in the record, or from your lawyer. We'll allow you a few minutes. But would you please stand and raise your right hand?

Senator CARDIN. Mr. Chairman, before we begin, could I just ask a question? Karl Rove is supposed to be here, and he's determined not to be here?

Chairman LEAHY. Mr. Rove was supposed to be here and he basically has taken what I consider a bogus claim of executive privilege and has failed to show. We will treat that at another meeting.

[Whereupon, the witness was duly sworn.]

Chairman LEAHY. Please be seated.

Do you wish to give a brief summary of your statement?

STATEMENT OF J. SCOTT JENNINGS, DEPUTY DIRECTOR, OFFICE OF POLITICAL AFFAIRS, THE WHITE HOUSE, WASHINGTON, D.C.

Mr. JENNINGS. Thank you, Senator, I do. And I apologize for having a statement turned in a bit late yesterday.

Chairman Leahy, Senator Specter, other members of the Senate Judiciary Committee, my name is Scott Jennings. I am accompanied by my personal attorney, Mark Paoletta of Dickstein Shapiro, and Emmett Flood, who is Special Counsel to the President. Emmett is representing me in my official capacity.

Since October of 2005, I have served as Special Assistant to the President and Deputy Director of the Office of Political Affairs at the White House, a position that I currently hold. It has been an honor to serve my country and the President, for whom I have great respect, and I will forever be grateful for this opportunity.

As I sit here today—

Chairman LEAHY. Excuse me. Mr. Jennings, are you now reading the statement that we said you would not read, or what are you doing?

Mr. JENNINGS. No, sir. I—

Chairman LEAHY. Just a summary?

Mr. JENNINGS. Yes, sir.

Chairman LEAHY. OK. Go ahead.

Mr. JENNINGS. It's rather short. Thank you.

As I sit here today, I find myself, at the age of 29, caught in the middle of a constitutional struggle between two branches of government, quite literally between, as Senator Specter said, a rock and a hard place. On the one hand, I am appearing before this committee pursuant to subpoena that compels me to answer questions concerning the dismissal and replacement of U.S. Attorneys.

On the other hand, I have received a letter from the White House counsel asserting the President's claim of executive privilege over the very subject matter of the committee's subpoena. The

White House's Counsel's letter, which I have attached to my written testimony, directs me not to testify or produce documents concerning White House consideration, deliberations, or communications, whether internal or external, relating to the possible dismissal or appointment of U.S. Attorneys, including consideration of possible responses to congressional and media inquiries on the U.S. Attorneys matter.

Please understand, Senators, that I have the utmost respect for this committee, and a contempt citation is not something that I take lightly. To the contrary. If a court ultimately determines that Congress' need for the information outweighs the President's assertion of executive privilege, I would welcome the opportunity to answer your questions on the U.S. Attorneys matter. Until that time, however, I am compelled to abide by the President's directive, particularly given my status as a current White House employee.

In light of these considerations, as well as a desire to be as consistent as possible and avoid even the appearance of selectively answering questions, I will be unable at this time to answer any questions concerning White House consideration, deliberations, or communications related to the U.S. Attorneys matter, regardless of whether specific documents or conversations may already have been discussed publicly by others. To do otherwise would directly violate the President's order.

I recognize that this decision may not sit well with some members of this committee. For that, I am truly sorry. Please know that it is every bit as frustrating for me as it is for you. But given the larger constitutional issues at stake, I am simply not in a position to defy the President's claim of privilege. I hope that you can appreciate the difficulty of my situation. It makes Odysseus' voyage between Scilla and Charybdis seem like a pleasure cruise.

In conclusion, I will attempt today to answer your questions to the best of my ability within the parameters of the President's directive. However, to the extent that there are questions that I am unable to answer, I would like to reiterate, I am willing to abide by the ultimate resolution of this issue. I commit to you that I will answer such questions at a later date if the White House and the committee reach an agreement that permits me to do so, or if a court rules that the committee is entitled to the information.

Thank you, sir.

Chairman LEAHY. Mr. Jennings, we will disagree on one thing. I believe you and others at the White House who have refused to answer questions could answer questions if you wanted to.

Now, a recent report by the House Committee on Government Oversight Reform documents extensive use by White House officials and non-governmental Republican National Committee e-mail accounts for official purposes, such as communicating with Federal agencies about Federal appointments and policies. You're aware of that, are you not?

Mr. JENNINGS. Yes, sir.

Chairman LEAHY. I give you a copy of a document numbered OAG–112–113. This is a June 20, 2006 e-mail exchange between you and Monica Goodling. Are you familiar with that document?

Mr. JENNINGS. I've seen this document.

Chairman LEAHY. And that's what it is, an e-mail exchange between you and Monica Goodling?

Mr. JENNINGS. It is an e-mail.

Chairman LEAHY. Mr. Jennings, I'm not here to play games. I'm trying to be fair with you. Is this an e-mail exchange between you and Monica Goodling?

Mr. JENNINGS. Yes, sir.

Chairman LEAHY. Thank you.

Now, the second-to-last e-mail in the string is an e-mail to Ms. Goodling from an e-mail address, sjennings@gwb43.com. Is that your Republican National Committee e-mail address?

Mr. JENNINGS. It was an e-mail address, and that particular e-mail address was ascribed to me in the past. It's no longer my Republican National Committee e-mail address.

Chairman LEAHY. Do you have a Republican National Committee e-mail address now?

Mr. JENNINGS. Yes, sir.

Chairman LEAHY. And what is that?

Mr. JENNINGS. It is jsj@gwb43.com.

Chairman LEAHY. Why do you no longer have the other one?

Mr. JENNINGS. Sir, after the e-mail address that is on this page was published in various places on the Internet and other places, I received a significant amount of junk, spam, and otherwise what might be considered as "hate" e-mail. And so for those reasons it was becoming overloaded, and we determined to change it so I wouldn't have to deal with that.

Chairman LEAHY. OK. At the bottom of the e-mail you have a signature. It says "J.Scott Jennings, Special Assistant to the President, Deputy Political Director, The White House," e-mail address listing your signature with your official White House title as sjennings@gwb43.com. Is that correct?

Mr. JENNINGS. Yes, sir.

Chairman LEAHY. How frequently did you use this e-mail address?

Mr. JENNINGS. It—I believe I've seen published accounts that have several thousand e-mails on an active server at the RNC, so it's fair to say that I used it daily.

Chairman LEAHY. And would the thousands it referred to, would you think those are correct?

Mr. JENNINGS. Yes, sir. I have no reason to believe it's not.

Chairman LEAHY. The report said that they had received over 35,000 e-mails in which you are a part. Does that seem out of line?

Mr. JENNINGS. I think that the number is probably accurate. I think that if you look at it in context, much of the e-mail that I received was of a bulk nature, press clippings, news releases, and other junk e-mail. So I think that while it's a little inflated, I have no reason to believe the number is not accurate.

Chairman LEAHY. Why did you send these e-mails setting up a conference call regarding Tim Griffin, later installed by the Attorney General as an Interim U.S. Attorney to replace Bud Cummins in the Eastern District of Arkansas? Why did you send them from your RNC mail account?

Mr. JENNINGS. Senator, pursuant to the President's assertion of executive privilege over consideration, deliberations or communica-

tions related to the U.S. Attorneys matter, I must respectfully decline to answer your questions at this time.

Chairman LEAHY. That's sort of a new way of taking the Fifth. But let me ask you this. You're—this is not—I'm not asking you about something where you communicated with the President. This is a Republican National Committee e-mail. I'm asking you why—not what you said or anything, but why did you use this?

Mr. JENNINGS. May I have a moment, Senator, to confer?

Chairman LEAHY. Of course. Confer with your attorney.

[Pause].

Mr. JENNINGS. I understand your question, Senator. I apologize. I want to answer it. I think it might be helpful to—

Chairman LEAHY. I thought you might. Go ahead.

Mr. JENNINGS. Yes, sir. I think it might be helpful to give a little context about the use of the e-mail accounts. I have—I came to the White House, as you said, in 2005. When I came, I was given two e-mail account, as you know, and devices such as a BlackBerry and a laptop that were connected to my RNC e-mail account, and only one device, a computer desktop, connected to my official account. So over the course of time, it became efficient and crucial for me to be able to respond to communications in a 24/7 manner.

Chairman LEAHY. Here, we're talking about official business regarding Tim Griffin, later installed by the Attorney General as Interim U.S. Attorney replacing another U.S. Attorney. Why would you use a Republican National Committee account rather than your official account? Wouldn't this be official business?

Mr. JENNINGS. Senator, I understand your question. I would also like to say that it's my understanding that, out of an abundance of caution and to avoid possible Hatch Act violations, that's why we were issued these accounts. And over the course of time—

Chairman LEAHY. Do you feel this was a Hatch Act violation, setting up this kind of a meeting?

Mr. JENNINGS. No, sir.

Chairman LEAHY. Then why did you use it?

Mr. JENNINGS. As I said, Senator, I would like to give some context about the e-mail accounts. Over the course of time, the use of the Republican National Committee e-mail account became a matter of convenience and efficiency because I had access to it 24 hours a day, 7 days a week, unlike my other e-mail account. And so—

Chairman LEAHY. Were there other—were there other occasions in which you used an RNC e-mail account in connection with the development of plans to replace U.S. Attorneys or the implementation of these plans, or even the explanation of these plans?

Mr. JENNINGS. Can you repeat the question, sir?

Chairman LEAHY. Were there other occasions in which you used an RNC e-mail account in connection with the development of plans to replace U.S. Attorneys?

Mr. JENNINGS. Senator, I used my RNC account for many matters, including that.

Chairman LEAHY. Since the 2004 election, did you speak with President Bush about replacing U.S. Attorneys?

Mr. JENNINGS. Senator, pursuant to the President's assertion of executive privilege, I must respectfully decline to answer your question at this time.

Chairman LEAHY. I'm not asking you what was said. Did you speak with him about these at all?

Mr. JENNINGS. Senator, I understand. I've been—

Chairman LEAHY. Did you attend any meeting with the President since the 2004 election in which the removal and replacement of U.S. Attorneys was discussed?

Mr. JENNINGS. Senator, pursuant to the President's assertion of executive privilege, I must respectfully decline to answer your question at this time.

Chairman LEAHY. Are you aware of any Presidential decision documents since the 2004 election in which President Bush decided to proceed with the replacement plan for U.S. Attorneys?

Mr. JENNINGS. Senator, pursuant to the President's assertion of executive privilege, I must respectfully decline to answer at this time.

Chairman LEAHY. As Special Assistant to the President and Deputy Director of Political Affairs, what role do you have in the selection of nominees to be U.S. Attorneys?

Mr. JENNINGS. Senator, I will decline to answer that question pursuant to the President's assertion of executive privilege.

Chairman LEAHY. Whoa. Whoa. Whoa. Wait a minute. I'm just asking you what role you have in the selection of nominees to be U.S. Attorneys. I'm just talking about what you do. Now, I mean, let's not be too contentious in this committee. I'm just asking you, what role do you have in the selection of nominees to be U.S. Attorneys? You work at the White House. You're paid for by taxpayers. You work for the American people. I'm just asking you what kind of work you do.

Mr. JENNINGS. Sir, I understand. And based on my understanding of the letter I have from Mr. Fielding, this falls under the President's assertion of executive privilege, and therefore I must respectfully decline to answer at this time.

Chairman LEAHY. Sounds to me like the American taxpayers are paying you to stonewall.

My time is up. I will yield to Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Jennings, if the Senate and the President are able to come to an accommodation as to the range of our inquiry, would you be willing to appear and testify fully before this committee if there is no instruction by the President for you to refrain from testifying?

Mr. JENNINGS. Yes, Senator. If an accommodation is reached, I will welcome that opportunity.

Senator SPECTER. When you are deciding what e-mail account to use, there are certain requirements that governmental records be maintained and there are also requirements to not use Federal equipment for political purposes. Is that correct?

Mr. JENNINGS. Yes, sir.

Senator SPECTER. And what you have to do is make a judgment as to whether it is essentially political or whether it is essentially governmental in a judgment as to what e-mail equipment you use?

Mr. JENNINGS. Yes. A judgment has to be made, and often a judgment has to be made in the midst of very chaotic days.

Senator SPECTER. In the midst of very chaotic situations?

Mr. JENNINGS. Days. You know, with multiple incoming e-mails on both accounts and dealing with matters, it is—sometimes it's snap decisions that have to be made.

Senator SPECTER. Are you representing to this committee that you're a busy man?

Mr. JENNINGS. Sir, I would not represent to this committee that I am busier than anyone on this committee, but I am busy.

Senator SPECTER. Now answer my question.

Mr. JENNINGS. Yes, sir. I am busy.

Senator SPECTER. OK.

And in general, what standards do you use in a judgment as to which e-mail account you ought to use?

Mr. JENNINGS. May I have a moment, Senator? Thank you.

Senator SPECTER. I thought that was a pretty easy question, Mr. Jennings.

[Pause]

Mr. JENNINGS. Right. I think, Senator, I'd like to explain how the e-mail account became sort of a default e-mail account on occasion. Having access to it—you know, they—they describe us, in the Executive Office of the President, on occasion as being 24/7 employees. And I frequently need access to communications 24 hours a day, 7 days a week.

And when I arrived and only found myself with access to one of the e-mail accounts for, you know, 24/7, it, over the course of time, became a default e-mail account. People knew they could reach me at any time, not just when I happened to be sitting at my desk, which some days is infrequent. So it became a default e-mail account and we used it a lot, and I would submit that we were using it out of the interest of being efficient and responsive in our job duties.

Senator SPECTER. Mr. Jennings, approximately how much time have you spent in the last week on the issue of your appearance before this committee?

Mr. JENNINGS. I've spent several hours with my counsel.

Senator SPECTER. Have you spent time on the matter other than with your counsel?

Mr. JENNINGS. Do you mean with other individuals, or—

Senator SPECTER. Well, I'm trying to get an idea as to how distracting this matter is from your regular duties.

Mr. JENNINGS. I would describe it as—

Senator SPECTER. Describe that in your own way, the amount of time you spend. Are you worried about this matter?

Mr. JENNINGS. Yes, sir. I—I am concerned about this matter. I think my wife—

Senator SPECTER. When you came to see me yesterday you looked like you were very concerned about it: you brought three lawyers with you.

Mr. JENNINGS. Yeah. Yeah. My wife is concerned, my lawyers are concerned, my parents are concerned. It's fair to say, concern has been introduced into my life here. Very concerned.

Senator SPECTER. Have you talked about it extensively with your parents?

Mr. JENNINGS. I've communicated with my parents on it. They've asked me questions about, you know, what is happening. I've tried to—you know—

Senator SPECTER. Are they worried that you've done something wrong?

Mr. JENNINGS. I don't think I would describe it as being worried that I've done something wrong. I think we're all—

Senator SPECTER. Or they're worried that people might think you've done something wrong?

Mr. JENNINGS. I think that's correct. Yes, Senator.

Senator SPECTER. Has anybody talked to you about a criminal contempt citation?

Mr. JENNINGS. I've had discussions on it.

Senator SPECTER. Do you think that if there's a criminal contempt citation brought against you, that somebody might think there's reason to believe you've done something that's criminal?

Mr. JENNINGS. I think that's a fair assessment. Yes, sir.

Senator SPECTER. And you'd prefer not to have that happen?

Mr. JENNINGS. Yes, sir.

Senator SPECTER. And how about the other people in the White House whom you work with. To what extent has this investigation been distracting to them?

Mr. JENNINGS. I wouldn't want to speak for them, Senator. But I can only assume, if they've experienced the same level of distraction, that they would describe it as being distracting.

Senator SPECTER. Well, aside from what you assume, what have you observed?

Mr. JENNINGS. Well, I've observed the White House Counsel's Office certainly working on it, and so they're certainly, I think, distracted with these sorts of issues. But it's their—obviously it's their job to deal with them.

Senator SPECTER. Does it appear that there are people in the White House today working on legislation which would provide an expansion for the Foreign Intelligence Surveillance Act to enable our intelligence agencies to gather information which is transmitted overseas from one caller to a recipient overseas?

Mr. JENNINGS. I'm aware of it. Yes, sir.

Senator SPECTER. Are you aware that there is a heightened sense of security need and a concern that Al Qaeda may be threatening the United States again at this time with a high-level alert?

Mr. JENNINGS. Yes, sir.

Senator SPECTER. And people in the White House are working on that?

Mr. JENNINGS. I am aware of it. Yes, sir.

Senator SPECTER. And could they better spend their time worrying about that than about your potential criminal citation?

Mr. JENNINGS. I think, yes, any time spent working on protecting America from an attack from Al Qaeda is much better spent on that than on my—that on my criminal contempt citation.

Senator SPECTER. Well, then I'm not going to take up all my time. I'm going to let you go early.

Thank you, Mr. Chairman.

Chairman LEAHY. Of course, they could very easily just say "answer the questions" and it would take a lot less time than continuing to stonewall.

Going by the order of appearance, it's Senator Durbin.

Senator DURBIN. Thank you very much, Mr. Chairman, and thank you, Mr. Jennings, for being here today.

When I read your political resume, I see a very young man, 21, 22 years old, first involved in a Presidential campaign in Kentucky, then moving up through the ranks through a number of campaigns. At the ripe age of 29, you've had a lot of political experience under your belt and have reached really kind of the height of the game to be in the White House in this political capacity, and I salute you for that, as I did

Ms. TAYLOR.

Our political parties are sustained by young, energetic, idealistic people like you who work for people who have been around a lot longer. I first met Karl Rove 37 years ago and he was about your age when you got started. I have known his political ascent, and he is now at the highest levels.

And what I struggle with every time Karl Rove feeds another one of these young staffers into the Judiciary Committee is the obvious question: where is Karl Rove? Why is he hiding? Why does he throw a young staffer like you into the line of fire while he hides behind the White House curtains?

I just have to ask you, what is your day-to-day relationship with Karl Rove and the White House?

Mr. JENNINGS. My duties in the White House as Special Assistant, report up to the Deputy Assistant to the President and political director, and ultimately we both report up to Mr. Rove, who is Assistant to the President and Deputy Chief of Staff and Senior Advisor.

Senator DURBIN. So how frequently during the course of a day or a week would you have conversations or e-mails with Karl Rove?

Mr. JENNINGS. Daily.

Senator DURBIN. On a daily basis?

Mr. JENNINGS. Yes, sir.

Senator DURBIN. More than once a day?

Mr. JENNINGS. Yes, sir.

Senator DURBIN. So would you say it's a close working relationship?

Mr. JENNINGS. Yes, sir.

Senator DURBIN. All right.

Let me ask you a couple things. First, did you read Sara Taylor's testimony before this committee?

Mr. JENNINGS. I watched it, and then read a follow-up. Yes, sir.

Senator DURBIN. Do you know that Senator Leahy asked her the same questions that he asked of you? Specifically, Senator Leahy asked her if she'd spoken to the President about removing U.S. Attorneys and she answered, "I did not speak to the President about removing U.S. Attorneys."

Chairman Leahy then asked her if she attended any meeting with the President since the 2004 election in which the removal and replacement of U.S. Attorneys was discussed. Ms. Taylor an-

swered, "I did not attend any meetings with the President where that matter was discussed."

I'm struggling to understand how she could read the same Fielding memo that you and your attorneys have read and respond to those questions, and you would refuse to respond. Can you explain to me what the difference is in the questions asked by Chairman Leahy?

Mr. JENNINGS. I know that Ms. Taylor answered the questions. I read the transcript. And I respect her decision. And I also know that several members of the committee criticized her for, in an interview, cherry picking or selectively answering questions during the hearing.

In fact, I noted that when Ms. Taylor initially refused to answer a question, Senator Specter stated, "I think your declining to answer the last series of questions from the Chairman was correct under the direction from the White House counsel.

I do believe, when you were asked whether you had a conversation with the President, that even though it does not go to the issue of content of the conversation, that it comes under the interdiction of White House counsel, which I agree that you are compelled to follow at this stage, having been an employee."

Sara is a former employee. I am a current employee. I simply do not intend to disobey a directive from the President.

Senator DURBIN. Well, Sara Taylor was much more forthcoming and I thought, frankly, that at the end of the day, people respected her for it. She went as far as she could go without going into the substance of conversations to at least acknowledge whether or not conversations had taken place or meetings had taken place, and I think that's the nature of Chairman Leahy's question.

Let me ask you specifically about New Mexico. In the 2004 election, you were working for the President's re-election campaign in the State of New Mexico. Is that correct?

Mr. JENNINGS. Yes, sir.

Senator DURBIN. And were you in contact, in that capacity, with Monica Goodling at the Department of Justice?

Mr. JENNINGS. No, not that I recall.

Senator DURBIN. Did you ever meet with David Iglesias, the U.S. Attorney in New Mexico during that campaign?

Mr. JENNINGS. Not that I recall.

Senator DURBIN. Were you aware of any conversations by Members of Congress or members of the White House staff with Mr. Iglesias about the conduct of his office in New Mexico?

Mr. JENNINGS. Could you repeat the question? I'm sorry.

Senator DURBIN. Are you aware of any contacts by Members of Congress or members of the White House with Mr. Iglesias about his conduct as U.S. Attorney in the State of New Mexico during that period?

Mr. JENNINGS. May I have a moment to confer? Thank you.

[Pause].

Mr. JENNINGS. Senator, may I ask, as you asking me in my capacity as a staff member on the Bush-Cheney campaign if I was aware? No, I'm not aware of any conversations that were taking place.

Senator DURBIN. Did you ever send an e-mail to Monica Goodling relative to the situation in New Mexico involving the U.S. Attorney?

Mr. JENNINGS. Are you asking me, specifically in 2004?

Senator DURBIN. Subsequent to that or during—let's first ask, during the 2004 campaign.

Mr. JENNINGS. I don't have any recollection of doing that, no.

Senator DURBIN. All right.

Did you have any e-mail conversations or exchanges with Monica Goodling about New Mexico politics after that campaign?

Mr. JENNINGS. Senator, pursuant to the President's assertion I must respectfully decline to answer that question at this time.

Senator DURBIN. I want to make it clear that I'm not asking you about the U.S. Attorney's Office, now. I'm asking whether you had contact with Monica Goodling relative to the State of New Mexico after the 2004 election.

Mr. JENNINGS. Give me just one moment. Thank you.

[Pause].

Mr. JENNINGS. I don't recall any. I'll answer your question, Senator. Thank you for the time. I don't recall any specific conversations that we had. We—we may have discussed New Mexico politics, but I—I don't have any recollection of anything specific at this time.

Senator DURBIN. I have a copy of an e-mail between you and Monica Goodling, and I don't want this to be a surprise. I don't know if we have a copy to share with you. I think this was disclosed by the Justice Department.

Mr. JENNINGS. OK.

Senator DURBIN. And it's relative to an e-mail exchange in June of 2006 between Monica Goodling and yourself. Do you remember that exchange?

Mr. JENNINGS. Can I—can I see a copy of it, Senator?

[Pause].

Chairman LEAHY. I think this is the document you've already been handed.

Mr. JENNINGS. Oh.

Senator DURBIN. I want to make sure that you get a chance to read it. I don't want this—

Mr. JENNINGS. Oh. Yes, sir.

Senator DURBIN. Are you familiar with it?

Mr. JENNINGS. Yes, sir.

Senator DURBIN. Can you explain the nature of that exchange between you and Monica Goodling?

Mr. JENNINGS. Senator, I think, pursuant to the President's assertion of executive privilege, I have to respectfully decline to answer your question at this time.

Senator DURBIN. Well, I just want to say for the record that this is an exchange and it's—the subject matter from Monica Goodling to you is in relation to a U.S. Attorney's meeting, and it relates to the State of New Mexico. And though you won't respond to it, you have produced a document which certainly raises a question about the relationship between you and Monica Goodling, who worked at—if I'm not mistaken, she was the liaison to the White House Liaison from the Department of Justice. Is that correct?

Mr. JENNINGS. Yes, sir.

Senator DURBIN. All right.

I'd like to ask you—it looks like I'm over my time now. Thank you very much, Mr. Jennings.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much, Senator.

Senator Hatch?

Senator HATCH. Well, thank you, Mr. Chairman.

Mr. Jennings, under the current circumstances I'm not sure what it means to welcome you to the Senate Judiciary Committee, but you should not be in the position you're in today, between a rock and a hard place, as you described it in your statement.

You made it clear that you're willing to talk about these issues under the right circumstances. The President has offered you, offered Karl Rove under certain circumstances, which is more than I think the President should have done.

I believe you, Mr. Jennings, and I wish these circumstances had been allowed to exist so you could do just that and we would all know just exactly what we want to know. The Senate should not be in this position. We're in this position involving a clash between congressional subpoena and executive privilege because my Democratic colleagues have put us in this position.

They chose from the beginning to ignore the separation of powers that gives authority to remove U.S. Attorneys to the President. It's a plenary power. The President has the right to remove them for whatever reason. And although this was poorly handled, and I think everybody can agree with that, including the White House, the fact of the matter is, the President does not have to state reasons. They can be for any reasons, including political reasons.

They chose to insist that the President's reasons for exercising the President's own authority must somehow satisfy Democratic Senators. They chose to insist that the executive branch's internal communication and decisionmaking about exercising the executive branch's own authority is somehow a legitimate subject of congressional oversight, and that's what this is about.

They chose to make demands that they knew the executive branch would resist, demands my Democratic colleagues would resist just as fully if the roles were reversed. They chose to ask questions they know witnesses cannot answer, and then they yell about a cover-up.

They chose to cast mistakes or mishandling first as inconsistencies, then as improprieties, and then even as illegalities, which nobody's been able to show in all of the thousands of documents that have been given up here, all of the seven or more hearings we've held here, the hearings over in the House.

They chose to drag this process on for nearly 9 months, now pulling it from the political into the legal arena. They chose to do all of that, and those choices are why we are in this position today, and why you are in this position today.

Now, I personally wish they had made other choices. I wish that they had followed another course. I think we would be way ahead of the game had we done so, and we know exactly what people have said. Now, it would be incorrect to say that my Democratic colleagues have absolutely nothing to show for their efforts.

Congress said that allowing the U.S. Attorney alone to appoint interim U.S. Attorneys could avoid Senate confirmation, so we replaced that mechanism with allowing the U.S. Attorney and a District Court judge to appoint interim U.S. Attorneys, which equally can avoid Senate confirmation.

But in addition to that legislative triumph, there is the trashing of reputations and undermining of careers of hardworking career or public servants and the misleading of the American public about the proper relationship between the legislative and executive branches. And, of course, there is the enormous and growing expense of this fishing expedition.

Every time that net comes up empty, and it has always come up empty, my Democratic colleagues say they just know, deep within their souls, in their bosom, that the fish are there. They just need one more cast of the net, they just need a bigger net, they just need to go deeper into the political ocean or a step higher on the political food chain.

Is it any wonder that the American people's disapproval of our job performance has gone steadily higher as this fairy tale has continued, from 52 percent in January and February, 56 percent in March and April, 60 percent in May and June, and 65 percent today. In fact, some think that we—some polls actually show that we are in less disfavor than the President of the United States, who is consistently being, you know, criticized for being low in the polls. Now that, to me, is not a very good record of accomplishment.

So Mr. Jennings, I do not want to add to your untenable discomfort by asking questions, at least under the current circumstances, I know you cannot answer. I just wanted to come here today to thank you for your service to the President of the United States, and the American people as well. I want to thank you for your sincere desire to cooperate with this committee under the right circumstances.

My Democratic colleagues have chosen not to let those circumstances exist. I have suggested that we should have done what the President offered a long time ago. Yes, it's not under oath. It's not in front of the public at large. It's not a perfect way of doing it, but it certainly would get us to the bottom of whatever questions they want to ask from top advisors in the White House who cannot be permitted to come and—

Chairman LEAHY. Would the Senator yield on that? Was he aware that in the offer they said they would set the agenda? They would also limit what questions could be asked. So, we would be getting not to the bottom of it at all.

Senator HATCH. I personally believe, once that happens, once that is started, you'd be able to ask any questions you want to. Now, there undoubtedly are still certain rights that we have all fought for on this committee.

Now, let me just say, it was just a short while ago when we had—when something occurred on this committee that was abysmal. We had a staffer on the then Majority—I was Chairman—who somehow or other got into the personal communications between Senators and their staffers. Not necessarily top staffers, but let's limit it to top staffers, which is what seems to be involved here, the President's top staffers.

And it was a terrible situation. I immediately announced it, exposed it. We immediately shut down the servers. We immediately got people in to resolve it. And let me just finish, because my time is up. It went so far as to have the U.S. Attorney have the FBI investigate.

They wanted to get the servers and to go through the whole process and get those memoranda that were, in my opinion, wrongfully taken. And, of course, our colleagues on the other side—and I don't blame them for this. I agree with them and protected them on this—did not want their internal, private memoranda disclosed to the public, or disclosed to the court, or disclosed to the U.S. Attorney, or disclosed to the FBI and that was the end of the investigation.

Now, that's what's involved here. I think we all have to understand that the President has certain rights, that there are certain executive privileges that do exist, especially so that the President can preserve the right of his office to not be exposed to improper interrogations of his top advisors, any more than we in the Senate would like our private memoranda exposed as well.

Well, I've used up too much of my time. Thank you very much, Mr. Chairman.

Chairman LEAHY. No. But I'm sure that Mr. Jennings appreciated having you on his side all the way through this.

Senator HATCH. He deserves having me on his side.

Chairman LEAHY. No. The American people deserve to have him tell the truth, and the whole truth, and nothing but the truth.

Senator HATCH. And he has.

Chairman LEAHY. Senator Kennedy?

Senator KENNEDY. Thank you, Mr. Chairman. Welcome, Mr. Jennings.

A common theme throughout the hearings has been the corruption of professional standards through partisan behavior. It's clear the administration has really pursued the partisan interests at the expense of professionalism to an unprecedented degree.

To prevent this kind of—type of behavior, Congress long ago enacted the Hatch Act which prohibited Federal employees from using their official authority or influence for the purpose of interfering with, or affecting the result of, an election.

According to the press reports, the Office of Special Counsel found a sufficient amount of evidence to investigate possible White House violations of the Hatch Act, and part of this investigation involves the presentation you gave at GSA Headquarters, with the permission of the head of GSA, when she asked the attendees how they could help our candidates. May 16, Doan was notified that she had violated the Hatch Act. Six GSA employees have provided information about your GSA presentation.

So could you tell us how many such political briefings have you conducted for executive agencies and Federal employees during your service in the White House?

Mr. JENNINGS. Senator, I don't know an exact number, but I think it's roughly 10, or a few more perhaps.

Senator KENNEDY. Can you provide us the information where they—

Mr. JENNINGS. Yes, sir.

Senator KENNEDY. Did you conduct two briefings at USAID last fall?

Mr. JENNINGS. I remember conducting one briefing at USAID last fall.

Senator KENNEDY. OK. And what was the purpose of the briefing?

Mr. JENNINGS. The purpose of the political briefing was to thank political appointees for their service. It's a morale-boosting tool, and they're informative to them.

Senator KENNEDY. Do you create the substance of these briefings, you, yourself? Do you create all of the material?

Mr. JENNINGS. Senator, may I have a moment to confer? Thank you.

[Pause].

Mr. JENNINGS. The content of the briefing, Senator, is not typically produced by me. No, sir.

Senator KENNEDY. Can you tell us who else is involved in those projects?

Mr. JENNINGS. The White House Political Director is typically involved in those projects.

Senator KENNEDY. Who, in particular?

Mr. JENNINGS. During my service, Ms. Sara Taylor.

Senator KENNEDY. Anyone else?

Mr. JENNINGS. There may be other staffers at the White House involved in the back-and-forth discussions.

Senator KENNEDY. Mr. Rove involved in any of those meetings?

Mr. JENNINGS. I don't have any specific recollecting of seeing Mr. Rove, but I'm not sure I can answer your question based on what I currently know.

Senator KENNEDY. Were you aware of the Hatch Act prohibitions against political activity?

Mr. JENNINGS. Yes, sir. I'm aware of the Hatch Act.

Senator KENNEDY. Did you ever question whether this type of briefing violated the Act's prohibitions?

Mr. JENNINGS. It's my understanding that this kind of briefing has been occurring for several years and across many administrations, and that many people had decided it does not violate the Hatch Act.

Senator KENNEDY. Well, you asked—did you ask someone for guidance then whether this violated the Hatch Act or did not? Do you know?

Mr. JENNINGS. I didn't specifically ask someone whether—

Senator KENNEDY. Did anybody tell you it didn't? Did anybody tell you you could do it?

Mr. JENNINGS. May I have a moment?

Senator KENNEDY. Sure.

[Pause].

Senator KENNEDY. Mr. Chairman, I'd ask that this time not be charged against me.

Chairman LEAHY. I am—Senators have suggested—I've done this for both Republicans and Democrats when Mr. Jennings is consulting. We've told him he can consult with his attorney, but that time—we're giving additional time to the Senators so that that time will not—

Senator KENNEDY. I don't intend to take any significant time, Mr. Chairman.

What was your answer?

Mr. JENNINGS. Senator, regarding the briefings themselves, it's my understanding that in many cases they are cleared by the White House counsel and I think that's—my understanding is it's a regular practice.

Senator KENNEDY. Well, part of the investigation into this involves a presentation you gave at GSA Headquarters with the permission of the head of GSA when she asked the attendees "how they could help our candidates". How they could help our candidates. What's your—what do you feel? Do you feel that that is any—how we help our political candidates. Do you think that goes over the line?

Mr. JENNINGS. I think that there is a—as I understand it, the Office of Special Counsel has submitted a report to the President based on his investigation. There is a pending Presidential decision. I'm not sure it would be appropriate for me to comment on a pending Presidential decision based on his investigation.

Senator KENNEDY. Well, what do you—you don't—this kind of activity is outside of the executive privilege that Mr. Fielding has sent, this kind of activity, so you ought to be able to respond to these questions.

Mr. JENNINGS. OK. Can you—can you give me just one moment? I apologize.

Senator KENNEDY. OK.

[Pause].

Mr. JENNINGS. Senator, perhaps it would be helpful for me to tell you what I told the Special Counsel when he investigated this matter earlier this year, which is, I simply don't recall Ms. Doan making the comment she is alleged to have made at the time. I know others testified that they did. I simply didn't recall it.

Senator KENNEDY. All right.

Well, let me ask you, did you advise attendees in how to elect Republican candidates and advance Republican issues?

Mr. JENNINGS. No, sir.

Senator KENNEDY. And did you discuss specific candidates?

Mr. JENNINGS. Specific candidates may have been discussed in the context of forecasting the political landscape of the next cycle.

Senator KENNEDY. And you discussed congressional districts?

Mr. JENNINGS. Some congressional districts may have been discussed. Yes, sir.

Senator KENNEDY. And you don't know whether those candidates you discussed were Republicans?

Mr. JENNINGS. I know that both Republicans and Democrats may have come up in the meeting.

Senator KENNEDY. As the Deputy Director, did you ever seek clearance for these briefings?

Mr. JENNINGS. As the Deputy Director, I knew that the Director had come up with a process to seek clearance for the briefings.

Senator KENNEDY. Have you had similar exchanges at other briefings in Federal buildings?

Mr. JENNINGS. Similar exchanges?

Senator KENNEDY. Yes. Briefings in Federal buildings. I guess—I think earlier in the response you said you had, you thought, 10 or 12 of the different briefings. Did they take place all in Federal buildings?

Mr. JENNINGS. Some took place in agency buildings and some took place in the Executive Office Building.

Senator KENNEDY. Did you, as a former—and I'll just wind up, Mr. Chairman. You've been—as a former State campaign manager for President Bush and a number of Republican candidates, did you ever feel your briefings would help Republican candidates?

Mr. JENNINGS. I felt my briefings would help boost the morale of appointees and serve to thank them for their service to the President, and give them information about the political landscape and what they were—in which they were trying to enact the President's agenda.

Senator KENNEDY. What real purpose, other than overt political activity, could these briefings possibly have served?

Mr. JENNINGS. Senator, I consider these briefings—and I know others do as well—to be great morale boosters for political appointees who are out toiling in the vineyards and doing good public service on behalf of the President's agenda. And I know we consider them to be good morale boosters, good ways to thank people and to show them that the White House really did appreciate their service as Presidential administration appointees.

Senator KENNEDY. And the Hatch Act—Hatch Act. You don't—you never felt that you were over the line in terms of violating the Hatch Act?

Mr. JENNINGS. No, sir. In fact, we took great strides to make sure we weren't, including reminding appointees during the middle of some of these briefings that if they ever felt like they were going to be involved in anything political, to check with their agency's counsel to make sure they did what was appropriate.

Senator KENNEDY. But you didn't feel you had to check with your counsel?

Mr. JENNINGS. I've gotten repeated briefings on the Hatch Act from White House counsel.

Senator KENNEDY. And they told you your kind of briefings were OK?

Mr. JENNINGS. I don't recall in those briefings that these specific meetings you're questioning me about were covered in those briefings that I referenced.

Senator KENNEDY. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Kennedy.

Senator Cardin?

Senator CARDIN. Thank you very much, Mr. Chairman.

Mr. Jennings, let me just expand a little bit why there's so much frustration in this committee. I agree with Senator Leahy and Senator Specter about the need to move this investigation forward and bring it to conclusion.

But let me try to put this in context so that there's a better understanding. There was an unprecedented firing of U.S. Attorneys without a change in administration. In just about every case, the U.S. Attorney was involved in a criminal investigation or refused

a criminal investigation which was unpopular with the local Republican political establishment.

The clear signal was that the firing was to either influence those investigations or a clear signal to other U.S. Attorneys, if they wanted to continue in office, that they had better pay attention to the local Republican political, partisan environment, which of course is totally wrong in the independence of U.S. Attorneys conducting criminal investigations.

We've had the opportunity to question people at Department of Justice and we have gotten conflict—to be generous, conflicting—reports, but in most cases they point somewhat to the White House for involvement. That is why it is important for us to have the information from the White House in order to try to draw conclusions as to whether inappropriate political influence is exerted over the Department of Justice to implement the criminal investigation.

Now, I put that in context because the questions that have been asked to you are to try to get to the bottom of that. And I disagree with the claim of Presidential privilege, and I understand your position in trying to adhere to the wishes of your employer.

So let me try to ask some questions and I will specifically exclude from this question—although I'd like to have the answers to it—information concerning the U.S. Attorney firings, but to try to get at your role in the White House and how matters that involve political considerations were handled by you.

There's at least some indication that local political concerns, you filtered through the White House and tried to respond to set up appointments for people or to have those concerns at least understood by those in the executive branch. So let me exclude the Department of Justice complaints concerning U.S. Attorneys, because that's not what I'm asking.

Did you receive complaints, or concerns, or interests from local political establishments dealing with Federal agencies in which the caller or person who communicated with you desired for you to communicate that to some agency or to set up certain appointments?

Mr. JENNINGS. I think it's fair to say that I—I received telephone calls from people complaining about a number of things. You know, it's the White House Office of Political Affairs. One of our roles is to, you know, deal with the public, especially outside, out in the States. And so we had frequent communications and I—I can say I've heard complaints about matters large and small.

Senator CARDIN. Did you get requests to set up appointments with individuals within certain agencies?

Mr. JENNINGS. I had some—some requests, yes.

Senator CARDIN. And would you then followup and call, I guess, a political appointee or some other person within the agency to set up meetings?

Mr. JENNINGS. Typically I would deal with the White House Liaison and just simply ask them, you know, is there an appropriate way that this can be handled, can you give us guidance, can you give this person guidance on what they're trying to find out. So I would say not—not typically all the time. The White House Liaison was the point of contact for trying to figure out the appropriate thing to do.

Senator CARDIN. I'm not interested in you giving me specific names, but could you give me specific examples?

Mr. JENNINGS. Sure. I recall getting a question once from a political contact in a State who had some issue regarding housing. And he thought maybe the right person he needed to speak with could be at the HUD, and so I called the White House Liaison there and said, can you help point this gentleman in the right direction, find the appropriate meeting for him to have, or at least give him guidance on—on how he might be able to get his questions answered.

Senator CARDIN. Were you the point person in the political office in the White House that handled these types of requests?

Mr. JENNINGS. I would get calls. But there are several staffers in the political affairs office who handle, you know—in other words, I'm—there's more than just one person working there and I think—you know, multiple people would get requests of—of a similar nature.

Senator CARDIN. Again, excluding the U.S. Attorney firing issue, did you get inquiries concerning Department of Justice?

Mr. JENNINGS. Senator, I don't have any specific recollection of any. But, you know, I—I would get contacts about things that aren't U.S. Attorneys. So, you know, like a U.S. Marshall, perhaps, or a—you know, a judge, or—you know, other—other similar positions.

There's—you know, there's also other politically appointed personnel at the Department of Justice. People make recommendations for certain things. So, you know, I don't know if they all would be characterized as complaints, but—but—but—

Senator CARDIN. I'm not necessarily limiting this to complaints.

Mr. JENNINGS. OK.

Senator CARDIN. People who had interest, they wanted to get things—a message across, they wanted an opportunity to get their position heard within the Department of Justice. Again, excluding the U.S. Attorneys for the firing.

Mr. JENNINGS. Yeah. I wouldn't say that all the people were asking for meetings. In fact, that—that rarely, in my experience, happened.

Senator CARDIN. And who would you contact at Department of Justice?

Mr. JENNINGS. Typically we would contact the White House Liaison, as we would any other agency.

Senator CARDIN. And that person?

Mr. JENNINGS. Well, during my tenure, my belief is there have been two. One, of course, was Monica Goodling, who you all know, and previous to her, if I'm not mistaken, the White House Liaison was a young lady named Jan Williams.

Senator CARDIN. Now, did you have contact with both of them? Again, I'll leave out the U.S. Attorney firing issue. Did you have contacts with both of them in your role?

Mr. JENNINGS. Yes. Yes.

Senator CARDIN. And it would involve concerns expressed by—or requests—concerns—requests from individuals who felt that they should have an opportunity to have their point of view heard?

Mr. JENNINGS. Yes. Although, to add some context to your question, I would say that a vast majority of the contacts that you

might be referencing were people simply saying things like, hey, I know a great young lawyer who is interested in public service, can you recommend them for a political appointment, or similar personnel-type recommendations.

Senator CARDIN. Let me ask one further question, if I might, Mr. Chairman.

What procedures, if any, did you have in place to make sure that it would not be an inappropriate political interference with an agency violating the Hatch Act or just an inappropriate contact? Did you have a policy in place? Was there something written or was this left to your individual judgment?

Mr. JENNINGS. Well, regarding—let me speak to personnel recommendations, because that's the place where I think that I had the most contact, frankly. And I—you know, I never thought that making a personnel recommendation—here's a guy who wants to serve or a girl who wants to serve, you know, they're a qualified lawyer, can you consider them, I certainly didn't see any issues with that.

We were doing that with every agency in conjunction with our colleagues at Presidential Personnel. So, you know, I never felt the need, I—I suppose, for any guidance about simply making or passing on a personnel recommendation.

Senator CARDIN. Including a complaint against someone in the agency?

Mr. JENNINGS. Again, I'm struggling to come up with—I mean, I know the issue you're moving around the outside of here, and—but just in general, I don't recall a lot of complaint, frankly, where we had to pass it on in the way you're asking me, I think. Now—

Senator CARDIN. But you would. You would pass it along if you—the ones that—there weren't many, but you said you would.

Mr. JENNINGS. Sure. And what I would add to that is, we would pass things along for appropriate action. In other words, I think part of the filter here would be, I say this person has this complaint, or this issue, or this recommendation, or this question, and they say, OK. And I say, can you appropriately find a right way to route it?

Senator CARDIN. I guess my question is, a call is coming from the White House to an agency head or a congressional relations person, or White House relations person, coordination person. Was there any filter in place to make sure that they understood or to protect against undue political influence from your contact?

Mr. JENNINGS. I never attempted to put any undue political influence in a contact. And again, I would reiterate that what we always would ask for would be an appropriate routing of the question or whatever was being asked.

Senator CARDIN. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator Schumer?

Senator SCHUMER. Thank you. Thank you, Mr. Chairman.

Thank you, Mr. Jennings, for coming. I'd like to go back to the New Mexico attorney meetings. And first I want to establish here, it was clear at Sara Taylor's hearing that communications that you would have with people outside the executive branch were not priv-

ileged. There's no basis for privilege in that regard. Am I correct about that?

Mr. JENNINGS. Senator, it's my understanding the President has asserted privilege over both internal and external communications.

Senator SCHUMER. Well, but if the purpose is to protect what people say to the President or his underlings, what does that have to do with it? Do you see any legal argument for that?

Mr. JENNINGS. Senator, I have no standing to challenge the President's assertion of executive privilege in this case.

Senator SCHUMER. It's clearly just stonewalling. But let me ask you some questions here for the record, because I think there's no basis for the assertion of privilege here, and we'll proceed further.

We know from e-mails and testimony that you arranged for Justice Department officials to meet with New Mexico attorneys active in Republican politics. These were: Mickey Barnett—that's in the memo that was talked about by Senators Leahy and Durbin—there was Pat Rogers, and there's another possible individual. That meeting took place after a White House meeting, we've been told, so first let me ask you about the White House meeting with New Mexico Republican officials.

What can you tell us about this White House meeting in 2006? Were you present?

Mr. JENNINGS. Senator, may I have a moment? Thank you.

[Pause].

Chairman LEAHY. The record can note, the witness is discussing this with both White House counsel and his counsel.

[Pause].

Chairman LEAHY. And the time during which he is discussing with White House counsel and his counsel will not be charged against the Senator from New York.

Senator SCHUMER. Go ahead. Sorry.

Mr. JENNINGS. Yes, sir. Senator, thank you for the time. I had—I recall—to the best of my recollection—it's been several months ago—I recall having breakfast with Mickey and Pat while they were in town on other business.

Senator SCHUMER. Uh-huh. So you did have breakfast with them. OK.

And was that at the White House?

Mr. JENNINGS. I believe it was. Yes, Senator.

Senator SCHUMER. And was there anyone else present other than Mickey, Pat, and yourself?

Mr. JENNINGS. I don't recall anyone being present.

Senator SCHUMER. OK.

Were there any other such meetings, and if so, with whom, on what other dates?

Mr. JENNINGS. Such meetings? I'm sorry.

Senator SCHUMER. With Mickey Barnett, Pat Rogers, and other White House officials.

Mr. JENNINGS. Oh. I don't—I don't have any recollection of any. But—but I—you know, I should say that—you know, as I'm aware—

Senator SCHUMER. Are you aware of any?

Mr. JENNINGS. I don't—I don't have any recollection of any. But I should say that I have—you know, I worked in New Mexico so

I knew Mickey and Pat. It wasn't unusual for us to have, you know, social interaction.

Senator SCHUMER. Right. But this wasn't just a social meeting, right? This was related to this memo.

Mr. JENNINGS. Senator, I—let me have one moment, Senator. Thank you.

Senator SCHUMER. Please take your time.

Chairman LEAHY. These committee meetings are open to the public and many people come here to watch these hearings. I expect everyone here to be respectful of the witness, the committee, and other members of the public. I mention this because I don't want to hear any outbursts or audible comments from people in the audience. If there are, I will have the Capital Police restore order.

I just want to make sure every understands that. I don't care which side of the issue you're on. So we'll have order in this hearing room. The witness has a right to be heard. The Senators have the right to ask questions. We will conduct this hearing in that fashion so long as I'm Chairman, just so everybody understands.

Mr. JENNINGS. Senator, thank you. You know, to be candid, I don't recall this coming up. It was a—as I recalled it, it was a social breakfast. In fact, I think it was the first time I had had the chance to take, you know, my friends to the White House mess for breakfast and it was more social in nature.

Senator SCHUMER. All right. OK.

And whose idea was it to have the meeting? Did they call you?

Mr. JENNINGS. The meeting with me at the mess?

Senator SCHUMER. Uh-huh.

Mr. JENNINGS. No. I—I think they had informed me they were coming to town and I had the idea that I would take them to breakfast.

Senator SCHUMER. Got you.

Any of your superiors aware that you were having such a meeting?

Mr. JENNINGS. I don't—I don't recall. But—

Senator SCHUMER. And then what was—did they bring up at the meeting their dissatisfaction with Mr. Iglesias?

Mr. JENNINGS. I don't have any specific recollection of it coming up.

Senator SCHUMER. They never said they didn't want him to stay, they never talked about him?

Mr. JENNINGS. Again, I—it was a social breakfast. I don't remember any conversations, really, about business in general. I just remember it being a social breakfast and me saying, this is the White House mess, it's run by the Navy, et cetera, et cetera.

Senator SCHUMER. OK.

Then why did you then set up a meeting with Monica Goodling for them?

Mr. JENNINGS. Senator, I believe, pursuant to the President's assertion of privilege, I respectfully decline to answer that question at this time.

Senator SCHUMER. OK.

Can you explain or your counsel explain to me why all these other questions are not privileged and this one is?

Mr. PAOLETTA. Senator, it's been a very tough morning. Scott is trying to navigate between the President's claim as a current White House and the subject of the—responding to questions pursuant to the subpoena. I think we're trying to navigate on a question-by-question basis, quite frankly.

Senator SCHUMER. Yes. But you can't just answer the ones you want to answer and not answer the ones you don't want to answer. What is the rationale, the legal rationale, of answering all the others and not this one?

Mr. PAOLETTA. Sure. Because I think it's got—

Senator SCHUMER. The level of privilege is about the same.

Mr. PAOLETTA. Yes, sir. I think Scott's recollection as pertains to that meeting, that breakfast meeting, had nothing whatsoever to do with the U.S. Attorney matter, and it's with an outside person.

Senator SCHUMER. Right.

Mr. PAOLETTA. Not within the White House. And we have the White House counsel official here, Emmett Flood, if you care to have the White House's take on it.

Senator SCHUMER. But right after—OK. Look, right after the meeting or about the same time as the meeting, a memo was sent to go to Monica Goodling.

Mr. PAOLETTA. And sir, I think, from the—

Senator SCHUMER. It said that they—that Mickey Barnett's name is mentioned and it says if it's sensitive—that Monica ought to see her and it's sensitive, and it just doesn't square with the testimony before, or seems not to square. I mean, we can't get to the bottom of it if Mr. Jennings can't answer. Why would a purely—after a purely social meeting would there then be a memo sent to Monica Goodling on a sensitive matter asking her to see Mr. Barnett?

Mr. PAOLETTA. Sir, all I can do is read the President's—Mr. Fielding's letter reflecting the President's invocation of executive privilege and look at the contents of this e-mail, which is—

Senator SCHUMER. Right. Let me ask the question just once more, and I want you to think carefully, Mr. Jennings.

It is your testimony you have no recollection of Mr. Barnett ever complaining about Mr. Iglesias at that breakfast or at any other time?

Mr. JENNINGS. Senator, I think that question falls in the external deliberation category covered by Mr. Fielding's letter asserting executive privilege.

Senator SCHUMER. A minute ago you answered the question. It's the same question.

Mr. JENNINGS. You—you—Senator, I would submit, you asked me specifically a moment ago about the breakfast, and in this case you asked me the breakfast and any other time.

Senator SCHUMER. How is one privileged and one not? It depends on, if you're having eggs it's privileged and if you're having Corn Flakes, it's not? I mean, I don't get it.

Mr. JENNINGS. Senator, I'm doing the best I can. And believe me, this is likely as frustrating for me as it is for you. But I'm doing the best I can.

Chairman LEAHY. No, trust me, it is not.

[Laughter.]

Senator SCHUMER. OK.

Did you know that Mr. Barnett wanted to get rid of Mr. Iglesias?

Mr. JENNINGS. Senator, I think, pursuant to the President's assertion of privilege, I must decline to answer your question at this time.

Senator SCHUMER. Mr. Chairman, my time is expired. I just see no rationale for the jumping on one side of the line and the other. It depends—it seems to me it depends on the difficulty of the question, not the amount of privilege.

Chairman LEAHY. If it's any consolation, I agree with you. There was time, as we mentioned, appropriately, Mr. Jennings was conferring with the White House counsel, conferring with his counsel which ate into your time. Did you wish to ask another question?

Senator SCHUMER. Yes. Thank you, Mr. Chairman.

Chairman LEAHY. Then we will go to Senator Whitehouse.

Senator SCHUMER. According to Matt Friedrich, who is the Principal Deputy of the DOJ Criminal Division, and that's who these gentlemen met with, Messrs. Barnett and Rogers complained that David Iglesias in New Mexico was not pursuing a voter fraud prosecution quickly enough for their case—for their taste. Friedrich also testified "it was clear to me that they did not want him to be the U.S. Attorney."

Now, can you confirm that, after this White House meeting, you set up a meeting for Messrs. Barnett and Rogers at DOJ? Can you confirm that?

Mr. JENNINGS. Senator, pursuant to the President assertion of executive privilege, I must respectfully decline to answer that question.

Senator SCHUMER. Sir, we have an e-mail that says you did.

Mr. JENNINGS. I understand.

Senator SCHUMER. How—can you—I mean, again, we are getting to be in Never-Never Land here. The memo is not privileged, but your confirming what we have all read in the memo is privileged?

Mr. JENNINGS. Senator, may I have one moment?

Senator SCHUMER. Yes.

Mr. JENNINGS. Thank you.

[Pause].

Mr. JENNINGS. Senator, I—the President's directive does not permit me to discuss it at this time.

Senator SCHUMER. OK.

Can you confirm that you wrote this e-mail?

Mr. JENNINGS. Yes.

Senator SCHUMER. OK.

Mr. Chairman, again, I just want to express my frustration with—it's patently, you know, without any verifiable claim, that once there is a memo that says something, that the witness can't confirm it. If the memo is privileged, then you can't confirm it. If the memo is not privileged, then you can. I think it shows what is going on here and the lack of desire of the White House to testify and to hide behind a false wall of privilege.

Thank you, Mr. Chairman.

Chairman LEAHY. I might note parenthetically, we've had—unfortunately, I understand we've had at least one major witness who has come up here with very selective memory. Now we seem to have selective use of a privilege. But that's a determination, Mr.

Jennings, you have to make. As I told you and your attorney before, that's something you're going to have to decide. The committee will have to make its decision how to respond to that.

Senator Whitehouse?

Senator WHITEHOUSE. Thank you, Mr. Chairman.

First, I would just like to take a moment to respond to the comparison that the very distinguished Senator from Utah drew a moment ago between—I wasn't here at the time, but I believe that there was an episode in which congressional staff got access to Senate private e-mail, and obviously there was considerable hue and cry about that.

I don't see that as comparable to this situation. In the same vein that a firefighter doesn't just get to walk in your house and wander around, if there's smoke pouring out the windows then there's a different status and the firefighters do get to go into your house.

In my estimation, the unauthorized and purposeless—from a governmental point of view—access that a congressional staffer inadvertently got to send an e-mail is comparable in no respect to the business of the United States being done pursuant to our legislative charter by this committee with respect to a department where I think it's very clear that the smoke is, indeed, pouring out of the windows. So I just wanted to make that clear.

For the witness, I just have one question. In your assertion of executive privilege today, did you seek advice of counsel and are you acting on advice of counsel or are you responding purely as an employee to the directive of the White House?

Mr. JENNINGS. Senator, I have discussed it with my counsel, and I am also an employee of the White House and intend to follow the President's directive the best I—the best I can.

Senator WHITEHOUSE. So you have endeavored to make an independent determination, on advice of counsel, as to the merits of the executive privilege you are asserting here?

Mr. JENNINGS. Senator, I'm not sure that I am here today to set—

Senator WHITEHOUSE. Whoever has that cell phone that is that important. please step outside to take your cell phone calls. We would not want to interfere with your getting a cell phone call. If you're going to have to get one in here, step outside and take it and go to the back of the line.

Go ahead.

Mr. JENNINGS. Thank you, Senator. Senator, I don't think I am—it would be fair to say I am here to assess the merits of the President's assertion of privilege versus the congressional counterbalance, but I am here as a current White House employee who is doing his level best to follow a directive from the President. And I would also say to you, sir, that the White House counsel is here and I think would probably be more than willing to speak with you about the assertion of privilege if you want to discuss the merits of it.

Senator WHITEHOUSE. I'm not here for a discussion on the merits through you. I just wanted to know from you what the basis was under which you were asserting or honoring the privilege.

And what I understand is, you are asserting or honoring the privilege on the basis of the instruction that you receive from the

White House and not on the basis of an independent determination that you have made on the advice of your counsel that this does in fact apply, and that this is in fact a proper assertion of the privilege. You didn't take that step, you just followed what the White House directed?

Mr. JENNINGS. Yes. I think that's a fair statement.

Senator WHITEHOUSE. OK. Thank you.

I yield back my time, Mr. Chairman.

Chairman LEAHY. Thank you very much.

Did you bring any documents with you here today?

Mr. JENNINGS. No, sir.

Chairman LEAHY. And what happened to the documents you were compelled to provide based on the committee's subpoena?

Mr. JENNINGS. Senator, any documents that I had were turned over to my counsel, and he reviewed the documents and determined that at least some of them may fall under the President's directive. It's my understanding he provided those back to the White House counsel and they have asserted—the President has asserted executive privilege over them.

Chairman LEAHY. What about the other documents?

Mr. JENNINGS. We turned all the documents over to the White House counsel.

Chairman LEAHY. And so is it their position then that they're all covered by executive privilege?

Mr. JENNINGS. Senator, I think—

Chairman LEAHY. You may want to think about the answer to that. Is it your position they're all covered by executive privilege?

Mr. JENNINGS. Sure. If you'd give me just a moment. Thank you, Senator.

[Pause].

Mr. JENNINGS. Senator, the subpoena asked for documents responsive to the U.S. Attorneys matter. Those documents that my counsel deemed responsive were turned over to the White House counsel, and they have, pursuant to the President's assertion, not delivered them today.

Chairman LEAHY. And you're not going to provide any of the documents you were subpoenaed for?

Mr. JENNINGS. Senator, pursuant to the President's assertion of executive privilege, I have to respectfully decline to provide those documents at this time.

Chairman LEAHY. You testified earlier that you used your Republican National Committee BlackBerry out of convenience, 24/7, the very hard work that you have. Does the White House ever issue BlackBerries to their staff who have, also, strenuous hours?

Mr. JENNINGS. I think some staffers were issued official BlackBerries. I was not and so I—

Chairman LEAHY. Did you ask for one?

Mr. JENNINGS. Yes, sir.

Chairman LEAHY. And what were you told?

Mr. JENNINGS. This was very early in my employment. I was not yet the Deputy Director. I was still an Associate Director. And the President was doing a lot of travel in my region. I managed the southern States. And I was receiving a lot of e-mail on my official

account and I requested at that moment, and I was told that it wasn't the custom to give Political Affairs staffers those devices.

Chairman LEAHY. Did you subsequently after ask for one?

Mr. JENNINGS. After the matters that have been discussed came to light, we have since then been issued official devices.

Chairman LEAHY. So you have one now?

Mr. JENNINGS. Yes, sir.

Chairman LEAHY. Let me give you a document here number OAG–1622, a copy of a February 28, 2007 e-mail from you to kr@georgewbush.com, White House counsel Fred Fielding, Kevin Sullivan, Dana Perino, and Kyle Sampson. Are you familiar with that document?

Mr. JENNINGS. Yes, Mr. Chairman.

Chairman LEAHY. Does this have the subject line "NM USATTY: Urgent Issue", correct?

Mr. JENNINGS. Yes, sir.

Chairman LEAHY. That would be New Mexico U.S. Attorney: Urgent Issue. Is that what it means?

Mr. JENNINGS. Yes, sir.

Chairman LEAHY. And is kr@georgew.bush.com an RNC e-mail address for Karl Rove?

Mr. JENNINGS. I believe that that domain is managed by the RNC.

Chairman LEAHY. Somehow that wasn't my question. Is kr@georgewbush.com—

Mr. JENNINGS. I'm sorry, Senator. Yes.

Chairman LEAHY.—an RNC e-mail address for Karl Rove?

Mr. JENNINGS. Yes, sir. As I understand it, it is. Yes.

Chairman LEAHY. I don't want you to get into the mistake that the White House made, or the statement they made trying to mislead this committee when they said all those e-mails were erased, and of course they were not, which some of us, at least, felt was part of the stonewalling.

Now, this e-mail describes the phone call you received from Senator Domenici's chief of staff regarding David Iglesias' statement that two Members of Congress contacted him before the election to urge him to bring indictments before the election, and one hung up on him angrily out of frustration over his answers. Is that correct?

Mr. JENNINGS. Senator, I think discussion of this document is covered by the President's assertion of executive privilege and I must respectfully decline to answer at this time.

Chairman LEAHY. We'll put the document in the record. Was the information you received in this e-mail on February 28th of this year new to you?

Mr. JENNINGS. Senator, I'm going to have to decline to answer that question pursuant to the President's assertion.

Chairman LEAHY. It's interesting. Even if we do get documents, we're told you can't talk about the documents. This is—did you ever read Catch–22 when you were younger?

Mr. JENNINGS. I'm familiar with the phrase.

Chairman LEAHY. Did you read the book?

Mr. JENNINGS. I did not. I have not.

Chairman LEAHY. You might want to go back and read it. It's very interesting. It seems to be part of your training manual.

When did you first become aware of these contacts with Mr. Iglesias?

Mr. JENNINGS. Senator, I'm going to have to decline to answer that question based on the President's assertion.

Chairman LEAHY. Were you aware of New Mexico Republican Party officials' complaints about Mr. Iglesias?

Mr. JENNINGS. Senator, I'll have to decline to answer that question based on the President's assertion.

Chairman LEAHY. You can't even say whether you were aware of these? I'm not asking you anything you discussed with the President or the President discussed with you. Were you aware of New Mexico Republican Party officials' complaints about Mr. Iglesias?

Mr. JENNINGS. Senator, the President's assertion, as I read it in Mr. Fielding's letter, includes both internal and external communications.

Chairman LEAHY. Let me ask you this. Have you ever read anything in the newspapers since about those complaints?

Mr. JENNINGS. I have read articles, yes.

Chairman LEAHY. Do you know why he was asked to resign—why Mr. Iglesias was asked to resign?

Mr. JENNINGS. Senator, I'll have to decline to answer that pursuant to the President's assertion.

Chairman LEAHY. OK.

Now, would you take a look at OAG–26, an August 18, 2006 e-mail exchange between you, Monica Goodling, and Kyle Sampson, with the subject line: "Conference call RE: Tim Griffin". Is that what it is?

Mr. JENNINGS. Yes, sir.

Chairman LEAHY. Did you have this conference call regarding Tim Griffin?

Mr. JENNINGS. Senator, I think that question is covered pursuant to the President's assertion of executive privilege.

Chairman LEAHY. I just wanted to make sure.

The document was produced to the committee by the Department of Justice. It contains an e-mail exchange involving you and a Department of Justice official. Not somebody in the White House, but you and a Department of Justice official. They made it available to us. And you're going to refuse to answer that question based on a Presidential claim of privilege?

Mr. JENNINGS. Senator, I am not in a position to challenge the President's assertion, based on what we see in the letter from Mr. Fielding.

Chairman LEAHY. I'm asking you about this particular item. You're claiming a privilege on that?

Mr. JENNINGS. Yes. Pursuant to the President's assertion, I'll have to decline to answer at this time.

Chairman LEAHY. One of the e-mails in this document that was provided by us and which is part of the record, and will be made part of the record again, the followup e-mail Ms. Goodling sent to Mr. Sampson recounting a conversation she had with you the previous week.

She wrote, and there's a lot of shorthand things, but what she says is, "We have a Senator problem. So while White House is intent on nominating, Scott"—which would be you—"thinks we may

have a confirmation issue." And Mr. Sampson testified in an e-mail that "Scott," and this e-mail is referenced to you. What was this confirmation issue?

Mr. JENNINGS. Senator, I have to decline to answer that question at this time pursuant to the President's claim of executive privilege.

Chairman LEAHY. I suggested you read Catch–22. You're too young to remember the Watergate era. You may want to go back and read some of the historical accounts of that.

Senator Specter?

Senator SPECTER. I think we've gone about as far as we can go, Mr. Chairman.

Chairman LEAHY. We have other questions we will submit for the record. I would ask you to return as quickly as you can if there are those you will answer. Of course, if there are those that you will not, notify that, too.

Chairman LEAHY. As with all witnesses, you will have a chance to look at your—the transcript of your answers to see if there are things on there that you may want to change.

We were supposed to go to an executive meeting immediately after this, but we're going to have a vote in just a few minutes. I know what it's like trying to get people back. We've also got to rearrange this room to do that. So we will begin that executive markup at 2.

[Whereupon, at 11:49 a.m. the committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Questions for J. Scott Jennings
Committee on the Judiciary
Joseph R. Biden, Jr.
August 8, 2007

On November 20, 2006 White House Political Director Sara Taylor co-authored a memorandum (the "Memorandum") to Doug Simon, the Office of National Drug Control Policy ("ONDCP")'s White House Liaison. In that document, Ms. Taylor provided a list of Republican candidates and over 30 corresponding events that Ms. Taylor suggested Director Walters participate in throughout 2006. The list of candidates is a who's who of vulnerable Republican Congressmen seeking reelection: Ms. Taylor summarized 29 events with Republicans up for reelection that year; not one event was scheduled with a Democrat or Independent. This conduct bears directly on this Committee's oversight investigation into what appears to be a pattern by the White House of directing federal officials to prioritize politics over departmental duties.

- Did you ever see the Memorandum or any copy thereof? Or, did you otherwise know of its existence?

  I do not specifically recall seeing the November 20, 2006, ONDCP Memorandum until it was mentioned in the press and released by a Committee of Congress within the past several weeks. Although I was generally aware of the existence of memoranda concerning requests by Members of Congress for visits from various federal government officials, I do not specifically recall seeing this Memorandum.

- What communications, oral or written, did you have with any White House or ONDCP staff related to asking Senate-confirmed officials (or officials whose nomination was pending) at ONDCP to attend events with Republican candidates? Please detail the times, dates, and names of those involved, and provide all documents related to these communications.

  I do not specifically recall any communications, oral or written, with any White House or ONDCP staff related to asking Senate-confirmed officials (or officials whose nomination was pending) at ONDCP to attend events with Republican candidates.

- Did you help select the events listed in the Memorandum or were you in any way involved in the preparation of the Memorandum?

  I do not specifically recall helping to select the events listed in the memorandum. I do not specifically recall being involved in the preparation of this Memorandum.

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- If so, who, if anybody, assisted you? And, what factors or considerations were used in developing the list in the Memorandum?

  I do not specifically recall participating in the development of the list in the Memorandum.

  - If not, who developed the list in the Memorandum?

    To the best of my knowledge, the list in the Memorandum was developed by officials in the Office of Political Affairs, including the Director of Political Affairs.

- Are you aware of any other memoranda suggesting that high level ONDCP officials visit Democratic or Independent candidates? If so, please the contents describe in detail.

  I am not aware of any other memoranda suggesting that high-level ONDCP officials visit Democratic or Independent candidates, but I am also not aware of any Democratic or Independent candidates making such a request through OPA.

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Written Questions for Scott Jennings
Submitted by Chairman Patrick Leahy
August 9, 2007

1. When and how did you first become aware of any plan to replace the U.S. Attorneys who had previously been appointed by President Bush?

   Pursuant to the August 2, 2007, letter from the White House Counsel directing me not to answer any questions, or produce any documents, concerning White House consideration, deliberations, or communications, whether internal and external, related to the U.S. Attorneys matter based upon the President's assertion of executive privilege, I must respectfully decline to answer this question at this time.

2. At what time did you become aware of the specific names being considered for dismissal and the reasons for those U.S. Attorneys being considered for your firing?

   Pursuant to the August 2, 2007, letter from the White House Counsel directing me not to answer any questions, or produce any documents, concerning White House consideration, deliberations, or communications, whether internal and external, related to the U.S. Attorneys matter based upon the President's assertion of executive privilege, I must respectfully decline to answer this question at this time.

3. What was the process for identifying U.S. Attorneys for replacement? What considerations factored into that process? Did you raise objections about any of the U.S. Attorneys included in the list for replacement or about any part of the plan?

   Pursuant to the August 2, 2007, letter from the White House Counsel directing me not to answer any questions, or produce any documents, concerning White House consideration, deliberations, or communications, whether internal and external, related to the U.S. Attorneys matter based upon the President's assertion of executive privilege, I must respectfully decline to answer these questions at this time.

4. According to documents released by the Department of Justice and the testimony of the Attorney General's former Chief of Staff, the White House's Political Office in which you worked signed off on the plan for dismissing U.S. Attorneys. Did you review or evaluate the plan for replacing multiple U.S. attorneys before your boss Sara Taylor signed off on it?

   Pursuant to the August 2, 2007, letter from the White House Counsel directing me not to answer any questions, or produce any documents, concerning White House consideration, deliberations, or communications, whether internal and external, related to the U.S. Attorneys matter based upon the President's assertion of executive privilege, I must respectfully decline to answer this question at this time.

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5. Did you communicate with Karl Rove about replacing United States Attorneys? When? How? How many times? What specifically do you recall about your communications with Karl Rove on this topic? Did you discuss the "performance" of U.S. Attorneys? Did you discuss dissatisfaction or complaints about U.S. Attorneys?

Pursuant to the August 2, 2007, letter from the White House Counsel directing me not to answer any questions, or produce any documents, concerning White House consideration, deliberations, or communications, whether internal and external, related to the U.S. Attorneys matter based upon the President's assertion of executive privilege, I must respectfully decline to answer these questions at this time.

6. According to documents and Monica Goodling's testimony before the House Judiciary Committee, there was a meeting at the White House on March 5, 2007, the day several of the fired prosecutors testified before the House and Senate Judiciary Committees, to discuss all aspects of the U.S. Attorneys issue, including the reasons for the firings and the Administration's response to claims that they were done for improper reasons.

   A. Did you attend this meeting?

   B. What was discussed at this meeting?

   C. Did Karl Rove attend this meeting? What did he say?

Pursuant to the August 2, 2007, letter from the White House Counsel directing me not to answer any questions, or produce any White House documents, concerning consideration, deliberations, or communications, whether internal and external, related to the U.S. Attorneys matter based upon the President's assertion of executive privilege, I must respectfully decline to answer these questions at this time.

7. How often did you communicate with Kyle Sampson, the Chief of Staff to the Attorney General, about replacing United States Attorneys? What specifically do you recall about your communications with Mr. Sampson on this topic? Did you discuss the "performance" of U.S. Attorneys or the reasons for their dismissal? Did you discuss dissatisfaction or complaints about U.S. Attorneys?

Pursuant to the August 2, 2007, letter from the White House Counsel directing me not to answer any questions, or produce any documents, concerning White House consideration, deliberations, or communications, whether internal and external, related to the U.S. Attorneys matter based upon the President's assertion of executive privilege, I must respectfully decline to answer these questions at this time.

8. Did you communicate with Monica Goodling about replacing U.S. Attorneys? With whom at the Department of Justice did you communicate about replacing U.S.

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attorneys? Did you communicate about replacing U.S. attorneys with anyone who was not an official in the Department of Justice or an official in the White House? Who?

Pursuant to the August 2, 2007, letter from the White House Counsel directing me not to answer any questions, or produce any documents, concerning White House consideration, deliberations, or communications, whether internal and external, related to the U.S. Attorneys matter based upon the President's assertion of executive privilege, I must respectfully decline to answer these questions at this time.

9. How often did you communicate with others at the White House about replacing U.S. Attorneys? With whom did you discuss the dismissals before they took place? With whom did you discuss the "performance" of U.S. Attorneys or the reasons for their replacements? Did you discuss dissatisfaction or complaints about U.S. Attorneys?

Pursuant to the August 2, 2007, letter from the White House Counsel directing me not to answer any questions, or produce any documents, concerning White House consideration, deliberations, or communications, whether internal and external, related to the U.S. Attorneys matter based upon the President's assertion of executive privilege, I must respectfully decline to answer these questions at this time.

10. What contacts did you have with any officials at the Department of Justice regarding the prosecution of voter fraud in any district?

I do not specifically recall having any contacts with Department of Justice officials regarding prosecution of voter fraud in any district.

11. With whom at the Department of Justice or the White House did you communicate about responses to Congressional inquiries about the dismissals of multiple U.S. Attorneys after the implementation of the plan in December 2006, including the testimony of the Attorney General and other Department officials about the dismissals? What other White House officials were involved in those discussions and when?

Pursuant to the August 2, 2007, letter from the White House Counsel directing me not to answer any questions, or produce any documents, concerning White House consideration, deliberations, or communications, whether internal and external, related to the U.S. Attorneys matter based upon the President's assertion of executive privilege, I must respectfully decline to answer these questions at this time.

12. What was your opinion of the plan being discussed by Kyle Sampson and others to use the Attorney General's authority under the Patriot Act reauthorization, now rescinded, to appoint Tim Griffin interim U.S. Attorney for the Eastern District of Arkansas indefinitely without sending his nomination to the Senate for confirmation?

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Why did you believe it was appropriate to bypass the home state Senators in Arkansas who opposed Mr. Griffin's nomination?

Pursuant to the August 2, 2007, letter from the White House Counsel directing me not to answer any questions, or produce any documents, concerning White House consideration, deliberations, or communications, whether internal and external, related to the U.S. Attorneys matter based upon the President's assertion of executive privilege, I must respectfully decline to answer these questions at this time.

13. Several months ago, the White House announced that millions of e-mails may have been lost from the Republican National Committee and could not rule out the possibility that e-mails from Karl Rove and other political operatives in the White House relevant to this Committee's investigation into political influence on the firing and replacement of United States Attorneys had been lost. We have since learned that hundreds of thousands of these e-mails—including over 35,000 of yours—have been recovered.

A. When did the Administration first become aware that e-mail records relevant to this Committee's investigation were not easily retrievable, were erased, or were otherwise deleted and not retained, and what efforts have been taken?

I do not know when officials in the Administration first became aware that some RNC e-mail records were not easily retrievable, were erased, or were otherwise deleted and not retained, but I believe that I became aware sometime in March 2007 that there was a concern that some RNC e-mails were not easily retrievable, were erased, or were otherwise deleted and not retained.

B. Since that time, what has been done to secure the relevant services, equipment, software, elements, data, and documents stored in paper or electronic form from all e-mail systems, personal computers, workstations, PDAs, Blackberries, backup systems, or other electronic storage devices?

I do not know all of the efforts that have been undertaken by the Administration in this regard. My RNC-issued laptop and BlackBerry device were provided to independent electronic forensic experts, who were retained to help retrieve records from these devices. It is my understanding that e-mails that are sent or received from my RNC account are now being preserved for review and appropriate handling. I have been directed by the White House Counsel's Office to not discard any material relating to the U.S. Attorney matter, and I have diligently followed that directive. Finally, I was provided a BlackBerry device linked to my White House e-mail account on or about April 2007.

C. Did anybody at the White House monitor or audit your use of the RNC e-mail account as opposed to your governmental White House account to determine

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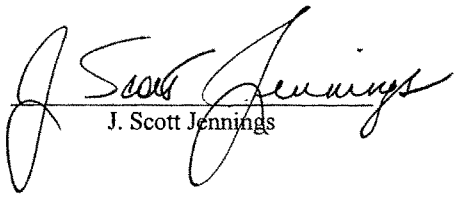
whether you were properly following the laws requiring the preservation of White House records to ensure a public record of official government business? When, and how often?

I am not aware of whether any official at the White House monitored or audited my use of the RNC e-mail account.

D. What guidelines were you issued regarding the preservation of Presidential records and the use of this non-governmental RNC e-mail address? Who issued these guidelines?

I was provided a copy of the White House Staff Manual that contained a memorandum from the White House Counsel's Office regarding preservation of presidential records.

I was provided a revised policy on e-mail use from the White House Counsel's Office in April 2007.



J. Scott Jennings

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SUBMISSIONS FOR THE RECORD

TESTIMONY OF J. SCOTT JENNINGS

HEARING BEFORE THE SENATE JUDICIARY COMMITTEE
"PRESERVING PROSECUTORIAL INDEPENDENCE: IS THE DEPARTMENT OF JUSTICE POLITICIZING THE HIRING AND FIRING OF U.S. ATTORNEYS? – PART VII"

Thursday, August 2, 2007

Chairman Leahy, Senator Specter, and other members of the Senate Judiciary Committee, my name is Scott Jennings. I am accompanied by my personal attorney, Mark Paoletta of Dickstein Shapiro, and Emmet Flood, Special Counsel to the President.

Since October 2005, I have served as Special Assistant to the President and Deputy Director of the Office of Political Affairs at the White House, a position that I currently hold. It has been an honor to serve my country and a President for whom I have great respect, and I will be forever grateful for this opportunity.

As I sit here today, I find myself, at the age of 29, caught in the middle of a constitutional struggle between two branches of our government – quite literally between a rock and a hard place. On the one hand, I am appearing before this Committee pursuant to a subpoena that compels me to answer questions concerning the dismissal and replacement of U.S. Attorneys. On the other hand, I have received a letter from the White House Counsel asserting the President's

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claim of executive privilege over the very subject matter of the Committee's subpoena. The White House Counsel's letter, which I have attached to my written testimony, directs me not to testify or produce documents concerning White House consideration, deliberations, or communications, whether internal or external, relating to the possible dismissal or appointment of United States Attorneys, including consideration of possible responses to congressional and media inquiries on the United States Attorneys matter.

Please understand that I have the utmost respect for this Committee, and a contempt citation is not something that I take lightly – to the contrary. If a court ultimately determines that Congress' need for the information outweighs the President's assertion of executive privilege, I would welcome the opportunity to answer your questions on the U.S. Attorneys matter. Until that time, however, I am compelled to abide by the President's directive, particularly given my status as a current White House employee.

In light of these considerations, as well as a desire to be as consistent as possible and avoid even the appearance of selectively answering questions, I will be unable at this time to answer any questions concerning White House consideration, deliberations, or communications related to the U.S. Attorneys matter, regardless

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of whether specific documents or conversations may already have been discussed publicly by others. To do otherwise would directly violate the President's order.

I recognize that this decision may not sit well with some members of this Committee, and for that I am truly sorry. Please know that it is every bit as frustrating for me as it is for you, but given the larger constitutional issues at stake, I am simply not in a position to defy the President's claim of privilege. I hope that you can appreciate the difficulty of my situation – it makes Odysseus' voyage between Scylla and Charybdis seem like a pleasure cruise.

In conclusion, I will attempt today to answer your questions about the U.S. Attorneys matter to the best of my ability within the parameters of the President's directive. However, to the extent that there are questions that I am unable to answer, I would like to reiterate that I am willing to abide by the ultimate resolution of this issue. I commit to you that I will answer such questions at a later date if the White House and the Committee reach an agreement that permits me to do so, or if a court rules that the Committee is entitled to the information.

Thank you.

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From: Jennings, Jeffery S.
Sent: Wednesday, February 28, 2007 10:17 AM
To: 'KR@georgewbush.com'; Fielding, Fred F.; Sullivan, Kevin F.; Perino, Dana M.; 'kyle.sampson@usdoj.gov'
Cc: 'Sara Taylor'
Subject: NM USATTY - urgent issue
Importance: High

I just received a telephone call from Steve Bell, Sen. Domenici's CoS, who urgently reported the following:

1. Outgoing USATTY David Iglesias is holding a press conference at 11:30 Eastern this morning.
2. He is allegedly going to say that he was contacted by two Members of Congress last Fall regarding the investigation into the courthouse construction corruption case. Information on this is in the following article:
http://www.abqtrib.com/news/2006/dec/19/federal-attorney-plans-step-down-iglesias-investig/
3. He is allegedly going to say that the Members urged him to deliver indictments before November's election. He will further say that one of the Members, frustrated with his answer, hung up on him in anger.
4. He is allegedly going to link these phone calls with the current news – saying that he believes this ultimately led to his being asked to resign by DOJ.

Bell said Domenici's idea is not to respond, and hopefully make this a one day story. They have already been contacted by McClatchey Unfortunately, I do not think that they can make an allegation such as this go away so easily. They have not confirmed to the reporter they were one of the Members.

I am available to discuss further – clearly, once this happens in Albuquerque the reporters will be asking DoJ and the White House

J. Scott Jennings

Special Assistant to the President and

Deputy Director, Office of Political Affairs

(202) 456-5275

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Goodling, Monica

From: Goodling, Monica
Sent: Tuesday, June 20, 2006 11:45 AM
To: 'SJennings@gwb43.com'
Subject: RE: USATTY meeting

Happy to do so. Thanks.

-----Original Message-----
From: SJennings@gwb43.com [mailto:SJennings@gwb43.com]
Sent: Tuesday, June 20, 2006 11:42 AM
To: Goodling, Monica
Subject: RE: USATTY meeting

It is sensitive -- perhaps you should do it.

I am going to send an email to both of you and let you two work out the scheduling.

J. Scott Jennings
Special Assistant to the President and
Deputy Political Director
The White House
Washington D.C. 20502
sjennings@gwb43.com
Office: 202-456-5275

-----Original Message-----
From: Monica.Goodling@usdoj.gov [mailto:Monica.Goodling@usdoj.gov]
Sent: Tuesday, June 20, 2006 11:30 AM
To: Scott Jennings
Subject: RE: USATTY meeting

Sure -- I'm happy to do it if it involves sensitive issues. If it's more generic resources type of conversation, our EOUSA Director is here this week and available. Just let me know.

-----Original Message-----
From: SJennings@gwb43.com [mailto:SJennings@gwb43.com]
Sent: Tuesday, June 20, 2006 10:16 AM
To: Goodling, Monica
Subject: USATTY meeting

I have a person from New Mexico coming to town this week - he is the President's nominee for the US Postal Board of Governors. He was heavily involved in the President's campaign's legal team.

His name is Mickey Barnett, and he has requested a meeting with someone at DOJ to discuss the USATTY situation there.

Would someone in EOUSA or you or Kyle be available?

J. Scott Jennings
Special Assistant to the President and
Deputy Political Director
The White House
Washington D.C. 20502
sjennings@gwb43.com
Office: 202-456-5275

Sampson, Kyle

From: Sampson, Kyle
Sent: Monday, December 04, 2006 6:26 PM
To: 'Kelley, William K.'
Cc: 'Miers, Harriet'
Subject: RE: US Atty Plan
Attachments: USA replacement plan.doc

here is the revised plan, per our discussions

From: Sampson, Kyle
Sent: Monday, December 04, 2006 6:12 PM
To: 'Kelley, William K.'
Cc: Miers, Harriet
Subject: RE: US Atty Plan
Importance: High

Great. We would like to execute this on Thursday, December 7 (all the U.S. Attorneys are in town for our Project Safe Childhood conference until Wednesday; we want to wait until they are back home and dispersed, to reduce chatter). So, on Thursday morning, we'll need the calls to be made as follows:

* AG calls Sen. Kyl
* Harriet/Bill call Sens. Ensign and Domenici (alternatively, the AG could make these calls and, if Senators express any concern, offer briefings re why the decision was made – let me know)
* White House OPA calls California, Michigan, and Washington "leads"

EOUSA Director Mike Battle then will call the relevant U.S. Attorneys. Okay?

From: Kelley, William K. [mailto:William_K._Kelley@who.eop.gov]
Sent: Monday, December 04, 2006 4:48 PM
To: Sampson, Kyle
Cc: Miers, Harriet
Subject: US Atty Plan

We're a go for the US Atty plan. WH leg, political, and communications have signed off and acknowledged that we have to be committed to following through once the pressure comes.

Sampson, Kyle

From: Sampson, Kyle
Sent: Thursday, December 07, 2006 9:07 PM
To: Sampson, Kyle; 'Kelley, William K.'
Subject: RE:

bill, please forward to Jennings, thx

From: Sampson, Kyle
Sent: Thursday, December 07, 2006 9:06 PM
To: 'Kelley, William K.'
Cc: 'sjennings@who.eop.gov'
Subject: RE:

do not mind at all
scott – call me
_____ hm
_____ cell
(202) 514-3892 desk

From: Kelley, William K. [mailto:William_K._Kelley@who.eop.gov]
Sent: Thursday, December 07, 2006 6:15 PM
To: Sampson, Kyle
Subject:

Kyle—Do you mind talking to Scott Jennings about the particulars of Ryan's situation? Ryan is the only one so far calling in political chits (which is reason enough to justify the decision, in my view), but Karl would like to know some particulars as he fields these calls.

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Sampson, Kyle

From: Sampson, Kyle
Sent: Friday, August 18, 2006 5:13 PM
To: Goodling, Monica
Subject: RE: Conf Call, re: Tim Griffin

I agree, but don't think it really should matter where we park him here, as AG will appoint him forthwith to be USA. (Is Cummins gone?)

-----Original Message-----
From: Goodling, Monica
Sent: Friday, August 18, 2006 12:09 PM
To: Sampson, Kyle
Subject: Re: Conf Call, re: Tim Griffin

Fyi - to catch you up on the latest here (unless something else has happened this week), scott and I spoke last thurs or fri and this is what's going on...

We have a senator prob, so while wh is intent on nominating, scott thinks we may have a confirmation issue. Also, WH has a personnel issue as tim returns to the states this week and is still on WH payroll. The possible solution I suggested to scott was that we (DOJ) pick him up as a political, examine the BI completed in May pursuant to his WH post, and then install him as an interim. That resolves both the WH personnel issue and gets him into the office he and the WH want him in. I asked Elston to feel out the DAG on bringing Tim into one of the vacant ADAG spots there, just for a short time until we install him in Arkansas. The DAG wanted to look at his resume, and I sent it him before I left. Was going to run this plan by you once I knew the DAG was onboard. If not, I suppose we can look at CRIM, but knowing Tim, my guess is he'd prefer something else given that he was in CRIM in 2001. (Tim knows nothing about my idea for a solution at this point - wanted your signoff, and a home for him, before I called him.)

-----Original Message-----
From: Sampson, Kyle
To: 'SJennings@gwb43.com' <SJennings@gwb43.com>; Goodling, Monica
Sent: Fri Aug 18 11:52:05 2006
Subject: RE: Conf Call, re: Tim Griffin

Tell us when, Scott, and we'll be on it.

-----Original Message-----
From: SJennings@gwb43.com [mailto:SJennings@gwb43.com]
Sent: Friday, August 18, 2006 11:41 AM
To: Sampson, Kyle; Goodling, Monica
Subject: Conf Call, re: Tim Griffin

Can we get a call together on this Monday or Tuesday ... after you are back, Monica?

J. Scott Jennings

Special Assistant to the President and

Deputy Political Director

The White House

Goodling, Monica

From: Goodling, Monica
Sent: Friday, February 16, 2007 7:00 PM
To: 'Scott Jennings'; Sara Taylor
Subject: RE: Statement

Ok, I sent Public Affairs the revised. Although the other version went out to the folks who called earlier, they'll use this version from this point forward.

From: Scott Jennings [mailto:SJennings@gwb43.com]
Sent: Friday, February 16, 2007 6:30 PM
To: Goodling, Monica; Sara Taylor
Subject: RE: Statement

Why don't we take out this line out of the statement: "We are pleased that he is willing to serve as interim United States Attorney until a candidate is nominated and confirmed. We will continue to work with the Arkansas delegation to find a candidate for this position."

From: Goodling, Monica [mailto:Monica.Goodling@usdoj.gov]
Sent: Friday, February 16, 2007 6:02 PM
To: Sara Taylor; Scott Jennings
Subject: Statement

Sara/Scott -- As we discussed, in addition to providing the below statement and bio info, when/if asked about the phone call between the AG and Pryor, our spokesperson will state/confirm on background that the Attorney General pressed Senator Pryor for an answer on whether he would support Tim if we nominated him and Pryor said that he would not. When/if told that Pryor has stated that he was open to Tim's nomination, our spokesperson will dispute that and say that Senator Pryor made his opposition to Tim clear to the Attorney General and that he can not have it both ways by telling the Attorney General that he would not support him and then telling the media that he would.

The two outlets that have called here (at this point) are the NYT and AP in Little Rock. I'll be here for a while if you need me (office is [ ] and my cell is [ ]

****

Statement:

"Tim Griffin is a talented and experienced lawyer and prosecutor who has a deep commitment to public service. Tim is a ten-year officer in the U.S. Army Reserve who served his country in Iraq and brought real experience as a federal

Opening Statement of Senator Patrick Leahy,
Chairman, Senate Judiciary Committee,
On Hearing On "Preserving Prosecutorial Independence: Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys? – Part VII"
August 2, 2007

Today, the Committee welcomes Scott Jennings, Special Assistant to the President and Deputy Director of Political Affairs. He is accompanied by his attorney Mark Paoletta, whom the Committee has permitted to be seated with Mr. Jennings at the witness table to provide him with counsel. Mr. Jennings, through his attorney, has informed the Committee that he will refuse to answer questions falling within the President's unsubstantiated blanket claim of executive privilege. I had a chance to meet with Mr. Jennings just before the hearing. I thanked him for appearing today and shared my hope that he would instead cooperate and testify to the best of his knowledge and information. I reiterate that hope -- the choice is his.

His appearance here today contrasts with the failure to appear by Karl Rove, who was also served with subpoenas to produce documents and testify today. Mr. Jennings' appearance shows that the White House's newly minted claim of "immunity" for White House employees is a sham. It is also a shame that this White House continues to act as if it is above the law. That is wrong. The subpoenas authorized by this Committee in connection with its investigation into the mass firings of U.S. Attorneys and the corrosion of federal law enforcement by White House political influence deserve respect and compliance.
For many months, I have sought the voluntary cooperation of the White House with our investigation to no avail. Instead, the President and his counsel have conditioned any limited availability of information on their demand that whatever the White House provides initially must end the matter, and the Senate Judiciary Committee must agree to stop its pursuit of the truth. They also demand that the information they chose to provide be shared behind closed doors, not under oath and without any record of the responses. This matter is too important to the public's trust in federal law enforcement to be left to a self-serving, one-time only, secret interview on which there can be no follow up.

The White House said it was willing to provide some information under these secret conditions, but when pressed to do so in a manner that would allow for follow up, this information suddenly becomes somehow "privileged" and withheld from Congress. How can that be? How can communications with the Justice Department, the RNC and others outside the White House be subject to any claim of "executive privilege"? How can White House employees like Karl Rove speak publicly about these matters one day but declare that he cannot in any way be accountable to the American people and their duly elected representatives in Congress on the same matter?

Karl Rove, who refused to comply with Senate subpoenas, spoke publicly in sessions at Troy University in Alabama and at the Clinton School of Public Service in Arkansas about the U.S. Attorney firings when the scandal first became public. In March, he spoke about the reasons that were then being given for the firings of individual U.S.

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Attorneys—reasons that have now been shown to be inaccurate after-the-fact fabrications. Yet, he will not appear when summoned before Congress to tell the truth. He refuses to tell this Committee -- with legislative, oversight and advice and consent responsibilities for the Department of Justice and United States Attorney -- about his role in targeting well-respected U.S. Attorneys for firing and in seeking to cover up his role and that of his staff in the scandal.

As in the Scooter Libby matter, this White House starts by saying one thing and when caught in a lie, it changes its talking points, all the while holding itself above the law. When the firing scandal became public in January, the White House said that it was not involved. When the then-Deputy Attorney General revealed in testimony in February something of the White House's role in the targeting of Bud Cummins for firing in Arkansas, it incensed the White House political operatives. Mr. Rove's top aide, Sara Taylor, appeared before this Committee last month but hid behind the White House claim of "Executive privilege." I hope that Mr. Jennings will not repeat that error but will testify truthfully about what he did, what he knows and what, in fact, happened. Like in the Libby scandal, as we have pried back the cover up, the White House has hunkered down and sought to fortify protection of political operatives like Mr. Rove at all costs. That is why he is not here today.

The blanket claim of Executive privilege has not been substantiated. To date the White House refuses even to specify the documents being withheld pursuant to its claim. Could it be that the mere listing of the documents, their dates, author and recipient will confirm the intimate involvement of political operatives at the White House, such as Mr. Rove? Sadly, our efforts to follow the evidence where it leads has been met with Nixonian stonewalling.

We are quickly reaching the point where, given the claim of executive privilege, the logical question is what did the President know and when did he know it? By his claim of executive privilege, is President Bush now taking responsibility for the firing of such well-regarded and well-performing U.S. attorneys?

To date, that has not been the President's position. The Attorney General's former chief of staff, the former political director at the White House and the Attorney General himself have testified under oath that they did not talk to the President about these firings. That is one reason why the White House's blanket claim of Executive privilege rings so hollow.

The White House continues to try to have it both ways, but it cannot. It cannot block Congress from obtaining the relevant evidence and credibly assert that nothing improper occurred. It cannot claim Executive privilege based on the President's involvement and need for candid advice and simultaneously contend that he was not involved, that this was done at the Justice Department. This blanket claim appears to me to be a misdirected effort by the White House legal team to protect White House political operatives whose partisan schemes are being discovered in a new set of "White House horrors," rivaling those of the Nixon White House and Watergate era.

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This is a grave matter. This is about improper political influence of our justice system – it is about the White House manipulating the Justice Department into its own political arm. It is about manipulating our justice system to pursue a partisan political agenda. It is about pressuring prosecutors to bring cases of purported voter fraud to try to influence elections – of sending a partisan operative like Bradley Schlozman to Missouri to file charges on the eve of an election in violation of Justice Department guidelines. It is about high-ranking officials misleading Congress and the American people about this political manipulation of justice. It is about the unprecedented and improper reach of politics into the Department's professional ranks – such as the admission by the Department's White House Liaison Monica Goodling that she improperly screened career employees for political loyalty.

It is about political operatives pressuring prosecutors to bring partisan cases and seeking retribution against those who refuse to bend to their political will -- such as the example of New Mexico U.S. Attorney David Iglesias, who was fired a few weeks after Karl Rove complained to the Attorney General about the lack of purported "voter fraud" enforcement cases in Mr. Iglesias' jurisdiction. I hope to learn more from Mr. Jennings today about why Mr. Iglesias was fired.

The accumulated evidence shows that the list for firings was compiled based on input from the highest political ranks in the White House, including Mr. Rove and Mr. Jennings. The evidence shows that senior officials were apparently focused on the political impact of federal prosecutions and whether federal prosecutors were doing enough to bring partisan voter fraud and corruption cases. It is obvious that the reasons given for these firings were contrived as part of a cover up and that the stonewalling by the White House is part and parcel of that same effort. Just recently during his sworn testimony, Mr. Gonzales himself contrasted these politically motivated firings with the replacement of other United States Attorneys for "legitimate cause."

There can be no more conclusive demonstration of this Administration's partisan intervention in federal law enforcement than its threat to block the Justice Department from pursuing congressional contempt citations. This Administration has announced its intentions to interfere with our system of justice by preventing a United States Attorney from fulfilling his sworn constitutional duty to faithfully execute the laws and proceed pursuant to section 194 of title 2 of the United States Code.

What the White House stonewalling is preventing is conclusive evidence of who made the decisions to fire these federal prosecutors. Despite the constitutional duty of all members of the Executive branch to "take Care that the Laws be faithfully executed," the message from this White House is that the President, Vice President, and their loyal aides are above the law. No check. No balance. No accountability.

Given the stonewalling by this White House, the American people are left to wonder: What is it that the White House is so desperate to hide? As more and more stories leak out about the involvement of Karl Rove and his political team in political briefings of

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what should be nonpartisan government offices, we seem to be getting a better sense of what they are trying to hide.

We have learned of political briefings at over 20 government agencies, including briefings attended by Justice Department officials. Mr. Rove briefed diplomats on vulnerable Democratic districts before mid-term elections. Why, Senator Whitehouse properly asked at our recent hearing, were members of our foreign service being briefed on domestic political contests? Mr. Gonzales had no answer. Similarly, why were political operatives giving such briefings to the Government Services Administration, which rents government property and buys supplies? In her testimony before this Committee, the former political director at the White House ultimately had to concede that her briefings included specific political races and particular candidates being targeted.

In this context, is anyone surprised that the evidence in our investigation of the firings of U.S. Attorneys for political purposes points to Mr. Rove and his political operations in the White House? Mr. Rove's own words suggest that placing "loyal Bushies" in key battleground states for the next election played a significant role in these firings. In April 2006, Mr. Rove gave a speech to the Republican National lawyers' Association where he listed 11 states he saw as pivotal battlegrounds for the 2008 election, Pennsylvania, Michigan, Ohio, Florida, Colorado, Arkansas, Wisconsin, Minnesota, Nevada, Iowa, New Mexico. Since 2005, U.S. Attorneys have been replaced in nine of these states and considered for removal in all but one of them. Four of the U.S. Attorneys who were fired as part of the mass firing were from these states and many now have to wonder what others did to show they were "loyal Bushies" and keep their jobs.

We have learned that Mr. Rove raised concerns with the Attorney General about prosecutors not aggressively pursuing purported voter fraud cases in several of the districts he discussed in that speech and that prior to the 2006 mid-term election he sent the Attorney General's chief of staff a packet of information containing a 30-page report concerning voting in Wisconsin in 2004. This evidence points to his role and the role of those in his office in removing or trying to remove prosecutors not considered sufficiently loyal to Republican electoral prospects. Such manipulation shows corruption of federal law enforcement for partisan political purposes.

Documents and testimony also show that Mr. Rove had a role in shaping the Administration's response to congressional inquiries into these dismissals, which led to inaccurate and misleading testimony to Congress and statements to the public. This response included an attempt to cover up the role that he and other White House officials played in the firings.

There is a cloud over this White House and a gathering storm. Federal prosecutors observed that such a cloud hangs over the Vice President in the Libby case. A similar cloud now envelopes Mr. Rove and his partisan political team at the White House, as well. In the course of sentencing Libby to 30 months in prison, Judge Walton rightly observed that public servants owe a duty to the American people. That duty includes

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telling the truth. I believe that duty also includes not corrupting law enforcement for partisan political gain.

Congress will continue to pursue the truth behind this matter because it is our constitutional responsibility -- and it is the right thing to do. I continue to hope that the White House will stop its stonewalling and accept my offer to negotiate a workable solution to the Committee's oversight needs, so that we can effectively get to the bottom of what has gone on and gone wrong.

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