

Battle informs the U.S. Attorneys as follows:

- What are your plans with regard to continued service as U.S. Attorney?
- The Administration is grateful for your service as U.S. Attorney, but has determined to give someone else the opportunity to serve as U.S. Attorney in your district for the final two years of the Administration.
- We will work with you to make sure that there is a smooth transition, but intend to have a new Acting or Interim U.S. Attorney in place by January 31, 2007.

STEP 3

Prepare to Withstand Political Upheaval: U.S. Attorneys desiring to save their jobs (aided by their allies in the political arena as well as the Justice Department community), likely will make efforts to preserve themselves in office. We should expect these efforts to be strenuous. Direct and indirect appeals of the Administration's determination to seek these resignations likely will be directed at: various White House offices, including the Office of the Counsel to the President and the Office of Political Affairs; Attorney General Gonzales and DOJ Chief of Staff Sampson; Deputy Attorney General McNulty and ODAG staffers Moschella and Elston; Acting Associate AG Bill Mercer; EOUSA Director Mike Battle; and AGAC Chair Johnny Sutton. Recipients of such "appeals" must respond identically:

- What? U.S. Attorneys serve at the pleasure of the President (there is no right, nor should there be any expectation, that U.S. Attorneys would be entitled to serve beyond their four-year term).
- Who decided? The Administration made the determination to seek the resignations (not any specific person at the White House or the Department of Justice).
- Why me? The Administration is grateful for your service, but wants to give someone else the chance to serve in your district.
- I need more time! The decision is to have a new Acting or Interim U.S. Attorney in place by January 31, 2007 (granting "extensions" will hinder the process of getting a new U.S. Attorney in place and giving that person the opportunity to serve for a full two years).

STEP 4

Evaluation and Selection of "Interim" Candidates: During December 2006-January 2007, the Department of Justice, in consultation with the Office of the Counsel to the President, evaluates and selects candidates for Attorney General-appointment (or candidates who may become Acting U.S. Attorney by operation of law) to serve upon the resignation of above-listed U.S. Attorneys.

STEP 5

Selection, Nomination, and Appointment of New U.S. Attorneys: Beginning as soon as possible in November 2006, Office of the Counsel to the President and Department of Justice carry out (on an expedited basis) the regular U.S. Attorney appointment process: obtain recommendations from Senators/Bush political leads and other sources; evaluate candidates; make recommendations to the President; conduct background investigations; have President make nominations and work to secure confirmations of U.S. Attorney nominees.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

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

Dear Congressman Issa:

This is in response to your letter dated May 24, 2006, to Carol C. Lam, United States Attorney for the Southern District of California, regarding immigration prosecutions in that district, as well as your request to meet with USA Lam. We apologize for any inconvenience our delay in responding may have caused you.

Please rest assured that the immigration laws in the Southern District of California are being vigorously enforced. Indeed, prosecutions for alien smuggling in Fiscal Year 2006 in the Southern District of California are rising dramatically. 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. Moreover, as you are aware, Congress did not fully fund the President's budget request in FY 2006, and this increase in alien smuggling prosecutions in Southern California is being accomplished with the same or fewer number of Assistant United States Attorneys in that Office as in Fiscal Year 2005.

Certainly the U.S. Attorney's Office for the Southern District of California devotes substantial available resources to the prosecution of illegal immigration, and to alien smuggling in particular. Fully half of its 110 Assistant U.S. Attorneys are used to prosecute illegal immigration cases.

Although felony immigration filings in the Southern District of California dropped from FY 2004 to FY 2005, that result flowed from a conscious decision to focus resources on seeking higher sentences for more serious offenders. And, in fact, the number of immigration defendants prosecuted who received prison sentences of between 1-12 months dropped from 896 in 2004 to 338 in 2005, while 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.

DAG000000576

The Honorable Darrell Issa
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 42 criminal immigration cases; in FY 2005 the District tried 89 criminal immigration cases – substantially more than any other Southwest Border district in 2005.

In addition, the Southern District has 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 CBP officers who were working with alien smuggling organizations. These investigations and prosecutions typically have time-consuming financial and electronic surveillance components.

Please also know that decisions concerning whether to prosecute a given case as an alien smuggling case, or under some related charge, are case specific and very fact based. The number of possible alien smuggling charges that can be filed depends in part on the quality of the matter being referred to the United States Attorney's Office. For example, it is often necessary in an alien smuggling case to make a number of the smuggled aliens available as material witnesses, for the defense as well as the prosecution. If such witnesses are released at the time of the suspect's arrest, the opportunity to prosecute the case as an alien smuggling case, as opposed to a lesser charge, may be lost forever.

With regard to the immigration memo referred to in your letter, we cannot vouch for its authenticity. However, as you well realize, it is not physically possible to prosecute and imprison every single person apprehended on immigration violations. Thus, every United States Attorney's office necessarily uses prosecution guidelines to help identify which cases to prosecute under various circumstances. We have previously outlined for you in earlier correspondence the broad parameters of the guidelines used in the Southern District of California. Public dissemination of the details of such guidelines only serves to undercut law enforcement efforts. We note that the Bureau of Customs and Border Protection was heavily consulted during the drafting of the guidelines and approved of them at the time they were first disseminated.

Finally, we are aware that you recently spoke personally with USA Lam. If you are still interested in a meeting, please let us know.

DAG000000577

The Honorable Darrell Issa
Page Three

Please do not hesitate to contact the Department of Justice if we can be of assistance in other matters.

Sincerely,

William E. Moschella
Assistant Attorney General

DAG00000578

Elston, Michael (ODAG)

From: Goodling, Monica
Sent: Tuesday, December 19, 2006 1:53 PM
To: Sampson, Kyle; Elston, Michael (ODAG); Mercer, William W; Moschella, William; Nowacki, John (USAEO); Battle, Michael (USAEO)
Subject: FW: U.S. ATTORNEY PAUL CHARLTON TO STEP DOWN AT END OF JANUARY
Attachments: 2006-270(Charlton).wpd; 2006-270(Charlton).pdf

FYI

From: Roehrkas, Brian
Sent: Tuesday, December 19, 2006 1:16 PM
To: Goodling, Monica
Subject: FW: U.S. ATTORNEY PAUL CHARLTON TO STEP DOWN AT END OF JANUARY

From: Smith, Kimberly A
Sent: Tuesday, December 19, 2006 1:16 PM
To: Ames, Andrew; Block, Jonathan; Blomquist, Kathleen M; Boyd, Dean; Brian Roehrkas; Clarke, Elizabeth E (OPA); Holland, Eric W; Jean Card; Lesch, Jaclyn; Magnuson, Cynthia; Miller, Charles S; Mitchell, John A; Peterson, Evan; Schwartz, Arthur; Scolinos, Tasia; Sellers, Donna J.; Sierra, Bryan; Smith Kimberly A; Talamona, Gina; Williams, Linda Fitzgerald
Subject: U.S. ATTORNEY PAUL CHARLTON TO STEP DOWN AT END OF JANUARY

3/12/2007

DAG00000579



FOR IMMEDIATE RELEASE
December 19, 2006

*Office of the United States Attorney
District of Arizona*

For Information Contact Public Affairs
WYN HORNBUCKLE
Telephone: (602) 514-7625
Cell: (602) 525-2681

U.S. ATTORNEY PAUL CHARLTON TO STEP DOWN AT END OF JANUARY

PHOENIX – U.S. Attorney Paul K. Charlton has announced he will resign his position as the U.S. Attorney for the District of Arizona and take a position as a partner with the firm of Gallagher and Kennedy, P.A. Charlton will step down at the end of January after more than five years as U.S. Attorney in which his office addressed many pressing challenges posed by terrorism, public corruption, illegal immigration, methamphetamine, and ensuring the rights of victims of federal crimes, among many others.

“Paul Charlton has been an extraordinary public servant during a time of grave challenge to our national security,” said U.S. Senator Jon Kyl. “We will miss his strong and principled leadership.”

USA Charlton made the announcement to his staff Monday afternoon. “I am immensely proud of what the men and women of this office have accomplished over the past five years,” Charlton stated. “I am grateful to the President, the Department of Justice and Arizona’s dedicated law enforcement community for this incredible opportunity to serve. I’m excited to open a new chapter in my career, and to face the very new and different challenges of private practice.”

Paul K. Charlton was appointed U.S. Attorney by President George W. Bush on November 12, 2001 and confirmed by the United States Senate. In the wake of the 9/11 terrorist attacks, Charlton established the Anti-Terrorism Task Force (now called ATAC - the Anti-Terrorism Advisory Council), which has improved statewide law enforcement communication and coordination to fight terrorism and explored how to better secure nuclear power plants, water supply, air travel, rail transportation, and computer security. In 2006, Charlton established a National Security Division within the U.S. Attorney’s Office to actively work with law enforcement agencies on terrorism related criminal cases.

FBI Special Agent in Charge of the Phoenix Division John E. Lewis stated: “Paul Charlton has supported the FBI’s investigative efforts on many fronts and has been most proactive concerning the Bureau’s number one priority, protecting the United States from terrorist attacks. As the FBI works with many law enforcement agencies concerning terrorism matters, USA Charlton has dedicated resources to support terrorism investigations and other national security issues. I applaud and appreciate USA Charlton’s work as he has served the District of Arizona.”

“Paul Charlton has served Arizona exceptionally well over the last five years,” said Arizona Attorney General Terry Goddard. “He has forged partnerships across state, local and federal jurisdiction, and this has made Arizona a safer place to live.”

Another chief goal of USA Charlton has been to advocate for the rights of federal crime victims. He expanded the Victim Advocate staff in his office to better serve crime victims. In 2002, the

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DAG00000580

U.S. Attorney's Office Victim Witness Program was awarded the Federal Service Award and this December the U.S. Department of Justice announced that the Arizona U.S. Attorney's Office would serve as a national "Model Program."

In an effort to address the growing problems posed by methamphetamine, in the summer of 2005, Charlton met with Arizona federal and tribal law enforcement agencies to discuss how to confront the methamphetamine problems in Indian Country. After gaining commitments for assistance from federal and tribal law enforcement, he consulted with and invited Arizona's 21 tribes to participate in the Arizona Indian Country Methamphetamine Eradication Initiative. Since then, numerous Indian tribes have engaged in the Initiative, resulting in multiple arrests of methamphetamine dealers in the Navajo Nation, the Salt River Pima-Maricopa Indian Community, the San Carlos Apache and the White Mountain Apache tribal communities.

"Paul has proven time and time again to be an outstanding law enforcement leader for the people of Arizona," said DEA Special Agent in Charge Timothy J. Landrum. "I have developed a strong personal and professional relationship with Paul. His innovative initiatives to combat crime on tribal lands and to battle the scourge of methamphetamine will leave a standing legacy that other federal districts will strive to emulate. His dedication to protecting the people of Arizona and the United States will be missed, but never forgotten."

In 2004, USA Charlton joined U.S. Attorneys in Utah, New Mexico, and Colorado to address Indian tribal concerns over the damage, theft, and trafficking in cultural patrimony and archeological resources. Together they initiated a 90-day amnesty from federal prosecution, resulting in telephone tips and returns of cultural patrimony belonging to tribes throughout the Southwest.

"It is with regret that the Inter Tribal Council of Arizona extends its heart felt good wishes to Paul Charlton," said Inter Tribal Council Executive Director John Lewis. "Paul has proven to be very responsive to the law enforcement needs of tribal governments in Arizona. He understands the sovereign status of the tribes and the U.S. Government's commitment to recognize this status and at the same time the need to carry out the U.S. Government's constitutional directed responsibility of Trust for Indian tribes. He will be greatly missed."

U.S. Attorney Charlton made public corruption cases a priority, sending a clear message that the U.S. Attorney's Office would hold public officials to the highest standards of ethical conduct. He joined with federal, state, and local law enforcement to identify, investigate, and aggressively prosecute corrupt public officials. This included several successful prosecutions of corrupt border officials, such as Fernando Arango and Michael Anderson, who received stiff penalties for taking bribes from and assisting narcotics traffickers.

"U.S. Attorney Paul Charlton has been a steadfast supporter of law enforcement and has played a tremendous part in the United States Border Patrol's efforts in bringing control to our nation's borders," stated National Border Patrol Chief David V. Aguilar, the chief Border Patrol officer for the United States. "The void left by U.S. Attorney Charlton's departure will be one that will be felt by the entire law enforcement community. Arizona can and should be proud of Mr. Charlton for what he has done for his country and state during his tenure."

-MORE-

DAG00000581

USA Charlton also worked to build the capacity of the U.S. Attorney's Office to address pressing issues of illegal immigration, drug trafficking, and crimes in Indian Country. In 2002, Charlton made temporary offices in Yuma and Flagstaff permanent, and during his tenure he brought on 16 new Assistant U.S. Attorney positions. Under his leadership, the U.S. Attorney's Office expanded prosecutions, increasing the number of criminal cases charged in federal district court from 3,979 in fiscal year 2001 to 5,026 in FY 2005.

Arizona Department of Public Safety Director Roger Vanderpool stated: "The law enforcement community is losing a great partner. Paul has shown he is a man of great integrity. He is a proven leader and will be missed."

Cochise County Sheriff Larry A. Dever stated: "I was saddened to hear Paul is leaving us. He has served Arizona law enforcement and the people of the State of Arizona in the highest traditions of the office. It has been a great honor to work with him over the past several years and I will miss my friend. We wish him the best in his new endeavor."

The Attorney General will appoint an interim U.S. Attorney who will serve until such time as the President nominates and the Senate confirms a new U.S. Attorney. In the interim, USA Charlton pledged to work with the Department of Justice and Arizona's law enforcement community to ensure a smooth transition.

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DAG000000582

Elston, Michael (ODAG)

From: Chiara, Margaret M. (USAMIW) [MM.Chiara@usdoj.gov]
Sent: Wednesday, January 10, 2007 6:44 AM
To: Elston, Michael (ODAG)
Subject: FW: Status Report

FYI: As requested, I will keep you informed by copying you on future updates to DAG Paul McNulty. MMC

From: Chiara, Margaret M. (USAMIW)
Sent: Saturday, January 06, 2007 8:08 PM
To: McNulty, Paul J
Subject: Status Report

As promised, this is the first status report, with periodic updates to follow, on progress made to secure employment. Numerous applications have been submitted, resumes circulated and contacts made in Michigan, the Washington area and South Carolina.

Mike Battle contacted me about available Immigration Judge positions. I had ample time over the holidays to research the option and to consult with persons who are knowledgeable about these particular courts. While there is a strong inclination to settle this situation quickly by any means possible, I have concluded that the Immigration Judge would be the wrong "next step" for me. Thank you for providing the alternative.

Here are three possibilities within DOJ where your assistance would be helpful. (1) OIG Attorney-Advisor GS-0905-14/15. Application deadline is January 8. (2) SMART Office at OJP. I am aware that SMART Director Laura Rogers will need assistance implementing the "Adam Walsh" mandate. I have already contacted Ms. Rogers indicating my interest in such an assignment. Note that I previously contact Assistant AG Regina Schofield regarding employment options at OJP. Actually, OJP is the DOJ entity for which my experience and current interest are most suited. (3) NAC options which I realize presently do not exist due to funding constraints. Also, I have contacted OPR Director Marshall Jarrett regarding organizational opportunities. Currently, the only position available is a one year detail. Given my considerable OPR experience as a USA, I am confident that I could make a useful contribution if a permanent staff position were made available.

Thank you for accompanying me on this journey! Margaret

Elston, Michael (ODAG)

From: Goodling, Monica
Sent: Thursday, January 11, 2007 5:28 PM
To: Scolinos, Tasia; Roehrkasse, Brian; Sampson, Kyle; Elston, Michael (ODAG); Moschella, William
Subject: Draft talkers
Attachments: Appointments.doc



Appointments.doc
(32 KB)

U.S. Attorney Appointments by the Attorney General:

- United States Attorneys serve at the pleasure of the President, and whenever a vacancy occurs, we act to fill it in compliance with our obligations under the Constitution, the laws of the United States, and in consultation with the home-state Senators in the region. The Senators have raised concerns based on a misunderstanding of the facts surrounding the resignations of a handful of U.S. Attorneys, each of whom have been in office for their full four year term or more.
- When a United States Attorney submits his or her resignation, the Administration has -- in every case -- consulted with home-state Senators regarding candidates for the Presidential nomination and Senate confirmation. The Administration continues to be committed to working to nominate a candidate for Senate consideration in every case that a vacancy is created, as evidenced by the fact that there have been 125 confirmations of new U.S. Attorneys since January 20, 2001.
- With 93 U.S. Attorney positions across the country, the Department has often averaged between 8-15 vacancies at any given time. Because of the important work conducted by these offices, and the need to ensure that the office is being managed effectively and appropriately, the Department uses a range of options to ensure continuity of operations.
- In some cases, the First Assistant U.S. Attorney is an appropriate choice. However, in other cases, the First Assistant may not be an appropriate option for reasons including that he or she: resigns or retires at the same time as the outgoing U.S. Attorney; indicates that he/she does not want to serve as Acting; has ongoing or completed OPR or IG matters in their file, which may make his/her elevation to the Acting role inappropriate; or is subject of an unfavorable recommendation by the outgoing U.S. Attorney or otherwise does not enjoy the confidence of those responsible for ensuring ongoing operations and an appropriate transition until such time as a new U.S. Attorney is nominated and confirmed by the Senate. In those cases, the Attorney General has appointed another individual to lead the office during the transition.

Usage Since the Change in the Law:

- Since March 9, 2006, when the appointment authority was amended, there have been 11 vacancies created by outgoing U.S. Attorneys. Of the 11 vacancies, the Administration nominated candidates to fill four of these positions and has interviewed candidates for the other 7 positions.

- The 11 vacancies were filled as follows:
 - In 5 cases, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period.
 - In 5 cases, the Department selected another Department employee to serve as interim.
 - In 1 case, the First Assistant resigned at the same time as the U.S. Attorney, creating a need for an interim.

The Statute:

- We are aware of no other federal agency where federal judges, members of a separate branch of government and not the head of the agency, appoint staff on behalf of the agency. In early 2006, the statute that authorizes the appointment of interim United States Attorneys (28 U.S.C. § 546) was amended by section 502 of Public Law 109-177 to eliminate the provision of a 120-day appointment. Due to the change in the law, the Attorney General now appoints interim United States Attorneys to serve until the nomination and confirmation of a United States Attorney under 28 U.S.C. § 541. The way the statute previously worked was that, in the case of an AG interim appointment, the federal district judge appointed the U.S. Attorney after 120 days.
- The statute was amended for several reasons: 1) the previous provision was unconstitutional and the Senate respects the Constitution; 2) some federal judges, recognizing the inherent problems, have refused to do appoint, creating a situation where the Attorney General had to do multiple 120-day appointments; 3) a small number of federal judges, disregarding the Constitutional issues, attempted to appoint individuals other than those proposed by the Department – in one case, someone who had never been a federal government official and hence had never been subject of the standard U.S. Attorney national security clearance process.

7

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Tuesday, January 16, 2007 5:27 PM
To: Sampson, Kyle; Goodling, Monica; McNulty, Paul J
Subject: FW: USA Lam

From: Long, Linda E
Sent: Tuesday, January 16, 2007 5:26 PM
To: Elston, Michael (ODAG)
Subject: USA Lam

Phone call from USA Lam's office to notify that she has faxed her resignation to Debbie Hardos/EOUSA - with original copy overnight mail. DAG has been advised. Linda

FW:

Page 1 of 1

Elston, Michael (ODAG)

From: Beste, Eric (USACAS) [Eric.Beste@usdoj.gov]
Sent: Tuesday, January 16, 2007 5:42 PM
To: Elston, Michael (ODAG)
Subject: FW:

FYI

From: Lam, Carol (USACAS)
Sent: Tuesday, January 16, 2007 2:14 PM
To: USACAS-ALL-SAN-DIEGO
Subject:

Today I am submitting a letter to the President of the United States tendering my resignation as the United States Attorney for the Southern District of California, effective February 15, 2007.

For the past four and a half years, I have had the great fortune of heading an office staffed by some of the most talented and experienced attorneys and staff in the nation. In that time, the office has continued its commitment to protecting the border and prosecuting and defending criminal and civil cases in a number of other important areas. It has been an experience that I will always look back on with great pride, and with great affection for each and every one of you.

Thank you all for your good work. I look forward to talking to each of you during the next few weeks.

Carol

3/13/2007

DAG000000587

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Wednesday, January 17, 2007 4:05 PM
To: Mercer, William W
Subject: Cummins

He says you do not need to call him back.

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Wednesday, January 17, 2007 5:37 PM
To: Charlton, Paul (USAAZ)
Subject: Please call when you have a minute

Thanks. 202-307-2090



U.S. Department of Justice

1125135
0A

United States Attorney
District of Nevada

Daniel G. Bogden
United States Attorney

333 Las Vegas Boulevard South
Suite 3000
Las Vegas, Nevada 89101

Telephone (702) 388-6336
FAX: (702) 388-6296

January 17, 2007

The Attorney General
United States Department of Justice
Main Justice Building, Room 5111
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

I am hereby submitting my resignation as United States Attorney for the District of Nevada, effective midnight February 28, 2007. It has been a great honor and privilege to have served the past five and one-half years as a United States Attorney, initially by appointment of Attorney General John Ashcroft and thereafter by Presidential appointment.

Serving the United States as a United States Attorney has been the highest honor and most fulfilling duty of my public career. Thank you for your support and the support of the Department of Justice during my tenure.

I deeply appreciate the opportunity to have served as the United States Attorney for the District of Nevada. I wish you the best of luck and success.

Sincerely,

DANIEL G. BOGDEN
United States Attorney
District of Nevada

DAG00000590

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Thursday, January 18, 2007 10:58 AM
To: Sampson, Kyle; Moschella, William; Goodling, Monica
Cc: Mercer, William W; McNulty, Paul J
Subject: USAO-NDCA

Kyle:

Kevin Ryan's FAUSA, Eumi Choi, just called to let us know that Kevin is not returning calls from Sen. Feinstein or Carol Lam and doing his best to stay out of this. He wanted us to know that he's still a "company man." I gave her my talkers for McKay and Charlton and asked her to convey them to Kevin.

Mike

Elston, Michael (ODAG)

From: Sampson, Kyle
Sent: Thursday, January 25, 2007 5:34 PM
To: Hertling, Richard; Seidel, Rebecca; Goodling, Monica; Nowacki, John (USAEO)
Cc: Moschella, William; Elston, Michael (ODAG); Scott-Finan, Nancy
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

Importance: High

Will/Mike, I think that the DAG should be the witness. We need to be serious and hit back hard. Will you ask him if he is willing?

From: Hertling, Richard
Sent: Thursday, January 25, 2007 5:23 PM
To: Seidel, Rebecca; Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO)
Cc: Moschella, William; Elston, Michael (ODAG); Scott-Finan, Nancy
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

we need to decide who our witness will be

From: Seidel, Rebecca
Sent: Thursday, January 25, 2007 4:02 PM
To: Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO); Hertling, Richard
Cc: Moschella, William; Elston, Michael (ODAG); Scott-Finan, Nancy
Subject: FW: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

here is the notice for the hearing on the USA issue.

From: Butterfield, Jane (Judiciary-Rep) [mailto:Jane_Butterfield@judiciary-rep.senate.gov]
Sent: Thursday, January 25, 2007 8:56 AM
To: White, Brandi (Frist); Andrea Looney (Whitehouse); Bacak, Brooke (RPC); Bellocchi, Luke (RPC); Best, David T; Dianna Dunne (Whitehouse); Hicks, Allen (Frist); Hippe, Jim (Frist); Janette Evans-Lee ; Jeri Gronewold; Mark Braswell; Michael Allen (Whitehouse); Moschella, William; Seidel, Rebecca; Stout, Stacey L; Kebodeaux, Tiffany (DHS); Dewine; Peterlin,

January 25, 2007

NOTICE OF FULL COMMITTEE HEARING

The Senate Committee on the Judiciary has scheduled a hearing on
"Preserving Prosecutorial

**Independence: Is the Department of Justice Politicizing the Hiring and Firing of
U.S. Attorneys?"**

for Wednesday, February 7, 2007 at 9:30 a.m. in Room 226 of the Dirksen Senate
Office Building.

Senator Schumer will chair the hearing.

By order of the Chairman

Elston, Michael (ODAG)

From: Nowacki, John (USAEO) [John.Nowacki@usdoj.gov]
Sent: Thursday, January 25, 2007 5:39 PM
To: Seidel, Rebecca; Sampson, Kyle; Goodling, Monica; Moschella, William; Elston, Michael (ODAG)
Cc: Scott-Finan, Nancy; Bounds, Ryan W (OLP)
Subject: FW: SJC hearing on USA issue

I should clarify that these are AG-appointed interim USA's. We have one court-appointed USA (Paula Silsby, District of Maine) and three Acting USA's under the VRA (George Cardona, Central California; Randy Massey, Southern Illinois; and Judi Whetstone, Northern Iowa).

From: Nowacki, John (USAEO)
Sent: Thursday, January 25, 2007 5:28 PM
To: Seidel, Rebecca; Sampson, Kyle; Goodling, Monica; Moschella, William; Elston, Michael (ODAG)
Cc: Scott-Finan, Nancy; Bounds, Ryan W (OLP)
Subject: RE: SJC hearing on USA issue

The currently-serving interim USA's are:

District of Alaska – Nelson Cohen
Eastern District of Arkansas – Tim Griffin
District of Columbia – Jeff Taylor
Western District of Missouri – Brad Schlozman
District of Nebraska – Joe Stecher
District of Puerto Rico – Rosa Rodriguez-Velez
Eastern District of Tennessee – Russ Dedrick
Middle District of Tennessee – Craig Morford
Southern District of West Virginia – Chuck Miller

From: Seidel, Rebecca
Sent: Thursday, January 25, 2007 5:10 PM
To: Sampson, Kyle; Goodling, Monica; Moschella, William; Elston, Michael (ODAG); Nowacki, John (USAEO)
Cc: Scott-Finan, Nancy; Bounds, Ryan W (OLP); Seidel, Rebecca
Subject: SJC hearing on USA issue

Just got off the phone with Matt Miner on Specter's staff who called to discuss the hearing. He said we will be getting an invite shortly. Has there been further thought on the DOJ witness? The DAG?

He asked for a few things (info for some is in the talking points, let me know what else we have):

- 1) names of currently serving interims and where they are serving
- 2) # of interim appointments
- 3) any data we have about the Vacancy Act and appointments
- 4) suggestions for witnesses for 2nd panel

Re the bill - he is organizing a Republican amendment strategy so that they have one strategy and the Dems don't divide and conquer. He asked if we have any amendments to please draft and get them to him.

I re-sent him the talking points (as he had given his copy away - he realized we had a lot of info in there).

Elston, Michael (ODAG)

From: Sampson, Kyle
Sent: Thursday, January 25, 2007 5:53 PM
To: Moschella, William
Cc: Elston, Michael (ODAG)
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

hah. let me know what he says.

From: Moschella, William
Sent: Thursday, January 25, 2007 5:45 PM
To: Sampson, Kyle
Cc: Elston, Michael (ODAG)
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

are you crazy? no way, you ask him! . . .

Of course we will raise it with him.

From: Sampson, Kyle
Sent: Thursday, January 25, 2007 5:34 PM
To: Hertling, Richard; Seidel, Rebecca; Goodling, Monica; Nowacki, John (USAEO)
Cc: Moschella, William; Elston, Michael (ODAG); Scott-Finan, Nancy
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.
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willing?

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Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

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From: Seidel, Rebecca
Sent: Thursday, January 25, 2007 4:02 PM
To: Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO); Hertling, Richard
Cc: Moschella, William; Elston, Michael (ODAG); Scott-Finan, Nancy
Subject: FW: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

here is the notice for the hearing on the USA issue.

From: Butterfield, Jane (Judiciary-Rep) [mailto:Jane.Butterfield@judiciary-rep.senate.gov]
Sent: Thursday, January 25, 2007 8:56 AM
To: White, Brandi (Frist); Andrea Looney (Whitehouse); Bacak, Brooke (RPC); Bellocchi, Luke (RPC); Best, David T; Dianna Dunne (Whitehouse); Hicks, Allen (Frist); Hippe, Jim (Frist); Janette Evans-Lee; Jeri Gronewold; Mark Braswell; Michael Allen (Whitehouse); Moschella, William; Seidel, Rebecca; Stout, Stacey L; Kebodeaux, Tiffany (DHS); Dewine; Peterlin,

January 25, 2007

NOTICE OF FULL COMMITTEE HEARING

The Senate Committee on the Judiciary has scheduled a hearing on
"Preserving Prosecutorial

**Independence: Is the Department of Justice Politicizing the Hiring and Firing of
U.S. Attorneys?"**

for Wednesday, February 7, 2007 at 9:30 a.m. in Room 226 of the Dirksen Senate
Office Building.

Senator Schumer will chair the hearing.

By order of the Chairman

Elston, Michael (ODAG)

From: Moschella, William
Sent: Thursday, January 25, 2007 7:05 PM
To: Elston, Michael (ODAG)
Cc: Hertling, Richard; Sampson, Kyle
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

Are you serious? I was going to be in El Paso on Wednesday.

-----Original Message-----
From: Sampson, Kyle
Sent: Thursday, January 25, 2007 6:41 PM
To: Elston, Michael (ODAG); Moschella, William
Cc: Hertling, Richard
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

Looping in Richard.

-----Original Message-----
From: Elston, Michael (ODAG)
Sent: Thursday, January 25, 2007 6:40 PM
To: Sampson, Kyle; Moschella, William
Subject: Re: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

DAG and I discussed it earlier today, and his choice is ... Moschella.

-----Original Message-----
From: Sampson, Kyle
To: Moschella, William
CC: Elston, Michael (ODAG)
Sent: Thu Jan 25 17:53:25 2007
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

hah. let me know what he says.

From: Moschella, William
Sent: Thursday, January 25, 2007 5:45 PM
To: Sampson, Kyle
Cc: Elston, Michael (ODAG)
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

are you crazy? no way, you ask him! . . .

Elston, Michael (ODAG)

From: Goodling, Monica
Sent: Thursday, January 25, 2007 8:07 PM
To: Sampson, Kyle; Elston, Michael (ODAG); Moschella, William; Battle, Michael (USAE0); Nowacki, John (USAE0); Scolinos, Tasia; Roehrkasse, Brian
Subject: FW: My Contact Information
Attachments: MCKAY -1-25-07.wpd

Apparently, McKay put this out today.. FYI.

From: McKay, John (USAWAW) [mailto:John.McKay@usdoj.gov]
Sent: Thursday, January 25, 2007 8:05 PM
To: USAEO-USAttorneysOnly
Subject: My Contact Information

Colleagues,

My contact information and office press release is below. All the best.

- JOHN MCKAY

Seattle University School of Law
901 - 12th Avenue
P. O. Box 222000
Seattle, WA 98122-1090

"UNITED STATES ATTORNEY JOHN MCKAY JOINS SEATTLE UNIVERSITY LAW SCHOOL"

<<MCKAY -1-25-07.wpd>>



U.S. Department of Justice

United States Attorney
Western District of Washington

700 Stewart Street, Suite 5220 Tel: (206) 553-7970
Seattle, Washington 98101-1271 Fax: (206) 553-0882

FOR IMMEDIATE RELEASE

January 25, 2007

UNITED STATES ATTORNEY JOHN MCKAY JOINS SEATTLE UNIVERSITY LAW SCHOOL

U.S. Attorney Credited with Innovative Leadership of Federal and Local Law Enforcement

United States Attorney John McKay completes his term tomorrow and will join Seattle University Law School as Visiting Professor of Law. After more than five years as the top federal law enforcement official in Western Washington, McKay is looking forward to working with law students and encouraging them to explore opportunities for public service.

McKay's five year tenure as United States Attorney has been marked by a number of key initiatives designed to enhance law enforcement efforts in the Western District of Washington. McKay reorganized the office to address priorities such as terrorism, organized crime, identity theft and methamphetamine abuse. McKay initiated and lead efforts to establish Northwest LInX, (Law Enforcement Information Exchange) a critical computer network that allows state, local and federal law enforcement agencies to share information. The LInX system now connects 138 law enforcement agencies and has been instrumental in solving countless crimes.

"John McKay has provided exceptional leadership and direction to the federal law enforcement community and specifically to ICE," said Leigh Winchell, Special Agent in Charge of U.S. Immigration and Customs Enforcement (ICE). "We are grateful for his support and commend his integrity and dedication to public service. He will be missed."

"One of John's greatest contributions to law enforcement has been his dedication to the idea of information sharing among agencies," said Laura Laughlin, Special Agent in Charge of the FBI. "He has been instrumental in encouraging federal, state and local law enforcement to find common ground and work together. The FBI has benefited greatly from his leadership and support."

"I appreciate John McKay's ability to deal with and support the issues of local law enforcement, more than any U.S. Attorney I have worked with in the last 19 years, said Everett Police Chief Jim Scharf. "John worked hard to make the relationships with local law enforcement work because he understood the importance of local law enforcement. He will be greatly missed, and very hard to replace."

"All of us in the criminal justice community are sorry to be losing US Attorney John McKay. He has been a strong advocate for crime victims and public safety in our communities. He has maintained his focus on the importance of accountability with those responsible for criminal activity and he has maintained a strong and positive relationship with local, state and federal law enforcement," said Port Orchard Police Chief Alan Townsend.

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United States Attorney McKay spearheaded efforts to reach out to minority communities concerned about racial and ethnic profiling following the September 11th attacks. McKay organized meetings between law enforcement leaders and leaders in the Arab-American and Muslim communities to promote better understanding and cooperation.

Seattle Police Chief Gil Kerlikowske lauded McKay's concern for civil rights saying, "The co-operation and support that United States Attorney John McKay has shown to local law enforcement and the Seattle Police Department has resulted not only in a safer community, but one in which people should feel that their civil rights are protected."

"John McKay is and always has been the utmost professional in the performance of his duties as the U.S. Attorney in Western Washington. Above and beyond that, he has continually tried to do the right thing for the sake of justice. He will be missed as a law enforcement leader here in Washington," said Special Agent in Charge Kelvin N. Crenshaw, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

Under McKay's leadership the United States Attorney's Office has significantly improved productivity, despite declining budgets. Preliminary statistics indicated that in 2006, the U.S. Attorney's Office charged nearly twice as many defendants as it did in 2001. The prosecutions are the second highest in the history of the office, despite declining manpower. The office has established itself as a national leader in prosecuting computer crimes, identity theft and multi-national criminal drug organizations. McKay has worked to build bridges between Canadian and U.S. law enforcement to combat cross border crime, and has enhanced federal law enforcement resources in the fast growing counties of Southwest Washington.

"The Drug Enforcement Administration knows John McKay to be a superb leader who for the past five years has led an outstanding group of Federal prosecutors in targeting some of the nations most prolific drug trafficking organizations," said DEA Special Agent in Charge Rodney Benson. "John recognized that drug traffickers are using any and all means, including the use of the latest technology, to circumvent law enforcement efforts to disrupt and dismantle their organizations. Through his outstanding efforts, the United States Attorney's Office in the Western District of Washington adapted to this evolving threat with aggressive wiretap prosecutions against the largest traffickers operating in and around the Pacific Northwest. John is a true friend to law enforcement and, more importantly, a dedicated individual who succeeded in making the communities we live in safer."

"John McKay did an outstanding job in helping to increase federal law enforcement presence in southwest Washington during the time he was U.S. Attorney for the Western District," said Clark County Prosecutor Art Curtis. "We are greatly indebted to him, and he will be missed."

Prior to his appointment, McKay served as President of Legal Services Corporation (LSC) in Washington D.C. Congress established LSC in 1974 as a private non-profit corporation to ensure justice under the law for all low income Americans. From 1989 to 1990 McKay served as a White House Fellow, where he worked as Special Assistant to the Director of the FBI. Following his graduation from Creighton Law School in Nebraska, McKay was a litigation partner at Lane Powell Spears Lubersky in Seattle, and later was a managing partner at the Seattle law firm of Cairncross &

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Hempelmann.

United States Attorney General Alberto Gonzalez has the authority to appoint an interim United States Attorney whose term lasts until a new United States Attorney is nominated by President Bush and confirmed by the U.S. Senate.

For additional information please contact Emily Langlie, Public Affairs Officer for the United States Attorney's Office, at (206) 553-4110

DAG000000603

Elston, Michael (ODAG)

From: Sampson, Kyle
Sent: Monday, January 29, 2007 6:29 PM
To: Battle, Michael (USAEO); Nowacki, John (USAEO)
Cc: Hertling, Richard; Scott-Finan, Nancy; Goodling, Monica; Elston, Michael (ODAG)
Subject: RE: Independence of US Attorneys - testimony

Importance: High

Attachments: draft DAG testimony – USAs hearing.doc



draft DAG
testimony – USAs he.

Mike/John, here's my draft outline for DAG testimony at next week's hearing. Thanks for working on this. Look forward to seeing your draft. Thx.

-----Original Message-----

From: Hertling, Richard
Sent: Monday, January 29, 2007 6:21 PM
To: Sampson, Kyle; Scott-Finan, Nancy; Goodling, Monica
Subject: RE: Independence of US Attorneys - testimony

Oral statement will be 5 minutes, though the DAG could go longer. The written can be a longer still if necessary to cover the subject.

-----Original Message-----

From: Sampson, Kyle
Sent: Monday, January 29, 2007 6:18 PM
To: Scott-Finan, Nancy; Goodling, Monica
Cc: Hertling, Richard
Subject: RE: Independence of US Attorneys - testimony

Working on it.

You tell me: how long would the subcommittee want his statement to be? 10 minutes? 5?

-----Original Message-----

From: Scott-Finan, Nancy
Sent: Monday, January 29, 2007 6:12 PM
To: Sampson, Kyle; Goodling, Monica
Cc: Hertling, Richard
Subject: FW: Independence of US Attorneys - testimony

Kyle,

Do you have an outline already available? And, how long would you like the statement to be? Thanks.
Nancy

-----Original Message-----

From: Hertling, Richard
Sent: Monday, January 29, 2007 5:51 PM
To: Scott-Finan, Nancy; Seidel, Rebecca; Bounds, Ryan W (OLP)
Cc: Nowacki, John (USAEO)
Subject: RE: Independence of US Attorneys - testimony

EOUSA will take the initial stab at testimony following receipt of an outline from Kyle Sampson.

-----Original Message-----

From: Scott-Finan, Nancy
Sent: Monday, January 29, 2007 5:51 PM
To: Hertling, Richard; Seidel, Rebecca; Bounds, Ryan W (OLP)
Cc: Nowacki, John (USAEO)
Subject: RE: Independence of US Attorneys - testimony.

Ryan, have you had a chance to check with Rachel?
Thanks.
Nancy

-----Original Message-----
From: Hertling, Richard
Sent: Monday, January 29, 2007 12:01 PM
To: Seidel, Rebecca; Bounds, Ryan W (OLP); Scott-Finan, Nancy
Cc: Nowacki, John (USAEO)
Subject: RE: Independence of US Attorneys - testimony

Whoever drafts it, the testimony needs to include a sentence stating that DOJ is currently reviewing the issue of whether the appointment of an interim US Attorney by the judicial branch is constitutional.

-----Original Message-----
From: Seidel, Rebecca
Sent: Monday, January 29, 2007 11:58 AM
To: Bounds, Ryan W (OLP); Scott-Finan, Nancy
Cc: Hertling, Richard; Nowacki, John (USAEO)
Subject: RE: Independence of US Attorneys - testimony
Importance: High

We have to figure out asap because the testimony needs to go into DOJ clearance TOMORROW (because we have to get to committee 48 hours in advance, so needs to get to Committee Monday, so OMB needs it Wed).

-----Original Message-----
From: Bounds, Ryan W (OLP)
Sent: Monday, January 29, 2007 11:56 AM
To: Seidel, Rebecca; Scott-Finan, Nancy
Cc: Hertling, Richard
Subject: RE: Independence of US Attorneys

I'll raise it with Rachel. She wanted to ensure that the person who is working on the views letter went back to the crime initiative ASAP, and there's no reason for OLP rather than EOUSA to work on drafting testimony if we're reassigning it to someone new anyway.

-----Original Message-----
From: Seidel, Rebecca
Sent: Monday, January 29, 2007 11:38 AM
To: Bounds, Ryan W (OLP); Scott-Finan, Nancy
Cc: Hertling, Richard
Subject: RE: Independence of US Attorneys

Richard thought OLP was doing both the views letter and the testimony, makes sense one can morph into the other.

-----Original Message-----
From: Bounds, Ryan W (OLP)
Sent: Monday, January 29, 2007 11:34 AM
To: Scott-Finan, Nancy
Cc: Seidel, Rebecca
Subject: Re: Independence of US Attorneys

I don't recall anything about any testimony, and OLP probably should not draft it anyway. (RAH was of the view that this was a good project for EOUSA.) We'll be circulating a draft views letter today.

RWB

-----Original Message-----
From: Scott-Finan, Nancy
To: Bounds, Ryan W (OLP)
CC: Seidel, Rebecca
Sent: Mon Jan 29 11:29:56 2007
Subject: Independence of US Attorneys

Ryan,
How are we doing on the views letter and the testimony. It is my understanding that OLP is drafting both and that the DAG will be testifying. Under the Committee rules, since the hearing was noticed two weeks out, our testimony is due on the Hill a week from today. Thanks much.
Nancy

Draft Testimony for
Deputy Attorney General
Paul McNulty

Hearing before the Subcommittee on the Courts
Committee on the Judiciary
U.S. Senate

Wednesday, February 7, 2007

OUTLINE

- I. The role of the U.S. Attorney
 - Chief federal law enforcement officer in the district
 - Law enforcement/Prosecutor
 - Manager/executor of Administration's priorities
- II. U.S. Attorney appointments
 - History of U.S. Attorney appointments
 - Generally
 - In Bush Administration
 - Administration is committed to having Senate-confirmed U.S. Attorney in every district
 - Evidence of this
 - Examples
 - U.S. Attorneys serve at pleasure of the President
 - May be removed for any reason or no reasons
 - Appropriate reasons to remove (or ask or encourage to resign): malfeasance, management issues, etc.
 - Inappropriate reasons to remove (or ask or encourage to resign): to influence investigation or prosecution
- III. The Feinstein bill/interim U.S. Attorney appointments
 - Amendment to § 546 was necessary and appropriate
 - Constitutional concerns
 - Practical/policy concerns
 - Administration's standard practice in making interim U.S. Attorney appointments
 - DOJ employee
 - Preferably someone from within the office (though exceptions where warranted)

DAG000000607

Department Of Justice
Office Legislative Affairs
Control Sheet

Date Of Document: 01/30/07
Date Received: 01/30/07
Due Date: 01/31/07 3 pm

Control No.: 070131-13228
ID No.: 435231

From: ODAG (SENATE JUDICIARY COMTE) (S.214) ((110TH
CONGRESS))

To: SENATE JUDICIARY COMTE

Subject:

ATTACHED FOR YOUR REVIEW AND COMMENT IS A COPY OF THE DRAFT STATEMENT OF
PAUL McNULTY, DEPUTY ATTORNEY GENERAL, REGARDING PRESERVING
PROSECUTORIAL INDEPENDENCE: IS THE DEPARTMENT OF JUSTICE POLITICIZING
THE HIRING AND FIRING OF U.S. ATTORNEYS?, BEFORE THE SENATE JUDICIARY
COMTE, TO BE GIVEN ON FEBRUARY 6, 2007

Action/Information:

Signature Level: OLA

Referred To:

Assigned: Action:

EOUSA, FBI, ATF, USMS,
DEA, CIV, ASG, CRM

01/31/07 COMMENTS DUE TO OLA/BLACKWOOD BY 3 PM
01/31/07. CC: OAG, ODAG, OLP,
OLA/SCOTT-FINAN/SEIDEL

Remarks:

Comments:

File Comments:

Primary Contact: KRISTINE BLACKWOOD, 514-2113

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DRAFT TESTIMONY FOR
DEPUTY ATTORNEY GENERAL PAUL MCNULTY

Hearing before the Subcommittee on the Courts
Committee on the Judiciary
U.S. Senate

Wednesday, February 7, 2007

Chairman Schumer, Senator Sessions, and members of the Subcommittee, thank you for the invitation to discuss the importance and the independence of the Justice Department's United States Attorneys. As a former United States Attorney, I particularly appreciate this opportunity to address the critical role U.S. Attorneys play in enforcing our Nation's laws and carrying out the priorities of the Department of Justice.

I have often said that being a United States Attorney is one of the greatest jobs you can ever have. It is a privilege and a challenge—one that carries a great responsibility. As former Attorney General Griffin Bell and Daniel Meador wrote, U.S. Attorneys are “the front-line troops charged with carrying out the Executive’s constitutional mandate to execute faithfully the laws in every federal judicial district.” As the chief federal law-enforcement officers in their districts, U.S. Attorneys represent the Attorney General before Americans who may not otherwise have contact with the Department of Justice. They lead our efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families—including child pornography, obscenity, and human trafficking.

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U.S. Attorneys are not only prosecutors; they are government officials charged with managing and implementing the policies and priorities of the Executive Branch. The Department of Justice—including the office of United States Attorney—was created precisely so that the government's legal business could be effectively managed and carried out through a coherent program under the supervision of the Attorney General. And unlike judges, who are supposed to act independently of those who nominate them, U.S. Attorneys are accountable to the Attorney General, and through him, to the President—the head of the Executive Branch. For these reasons, the Department is committed to having the best person discharging the responsibilities of that office at all times and in every district.

When a U.S. Attorney submits his or her resignation, the Administration has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's Office during the period when there is not a Presidentially-nominated, Senate-confirmed United States Attorney. In some cases, the First Assistant U.S. Attorney is the appropriate person to serve in that capacity, but there are reasons he or she may not be, including: an impending retirement; an indication that the First Assistant has no desire to serve as an Acting U.S. Attorney, an IG or OPR matter in his or her file, which may make elevation inappropriate; an unfavorable recommendation by the outgoing U.S. Attorney; or that the individual does not enjoy the confidence of those responsible for ensuring ongoing operations and an appropriate transition. In those

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situations, the Attorney General has appointed another individual to lead the office during the transition.

In every single case where a vacancy occurs, it is the goal of the Bush Administration to have a United States Attorney that is confirmed by the Senate. Every single time that a vacancy has arisen, the President has either made a nomination, or the Administration is working—in consultation with home-state Senators—to select candidates for nomination. Let me be perfectly clear—at no time has the Administration sought to avoid the Senate confirmation process by appointing an interim United States Attorney and then refused to move forward in consultation with home-state Senators on the selection, nomination, and confirmation of a new U.S. Attorney. Consultation and confirmation is the method preferred by the Senate, and that is the method preferred by the Administration.

Since January 20, 2001, 125 new U.S. Attorneys have been nominated by the President and confirmed by the Senate. On March 9, 2006, the Congress amended the Attorney General's authority to appoint interim U.S. Attorneys, and 13 vacancies have occurred since that date. This amendment has not changed our commitment to nominating candidates for Senate confirmation. In fact, the Administration has nominated a total of 15 individuals for Senate consideration since the appointment authority was amended, with 12 of those nominees having been confirmed to date. Of the 13 vacancies that have occurred since the time that the law was amended, the Administration has nominated candidates to fill five of these positions, has interviewed

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candidates for seven positions, and is waiting to receive names to set up interviews for one position—all in consultation with home-state Senators.

However, while that process continues, the Department must continue to manage the important prosecutions and work of these offices. In order to ensure an effective and smooth transition during those vacancies, the office of the U.S. Attorney was filled on an interim basis using a range of authorities.

In four cases, the First Assistant was selected to lead the office and took over under the provisions of the Vacancy Reform Act, at 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period. In a fifth case, the First Assistant was selected under that provision of the Vacancy Reform Act but took federal retirement a month later. The Department then selected another Department employee to serve as an interim U.S. Attorney under an Attorney General appointment until a nomination is submitted to the Senate.

In one case, the First Assistant resigned at the same time as the U.S. Attorney, creating a need for an interim until such time as a nomination is submitted to the Senate.

In the eight remaining cases, the Department selected another Department employee to serve as interim U.S. Attorney under an Attorney General appointment until such time as a nomination is submitted to the Senate.

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United States Attorneys serve at the pleasure of the President. Like any other high-ranking officials in the Executive Branch, they may be removed for any reason or no reason. The Attorney General and I are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their offices effectively. It should come as no surprise to anyone that, in an organization as large as the Justice Department, U.S. Attorneys may be removed, or asked or encouraged to resign. However, U.S. Attorneys are never removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or inappropriately influence a particular investigation, criminal prosecution, or civil case. Any suggestion to the contrary is simply irresponsible.

With 93 U.S. Attorneys across the country, the Department often averages between eight to 15 vacancies at any given time. Given this occasional turnover, career investigators and prosecutors exercise direct responsibility for nearly all investigations and cases handled by a U.S. Attorney's Office. The effect of a U.S. Attorney's departure on an ongoing investigation would be minimal.

Given these facts, the Department of Justice strongly opposes S. 214, which would radically change the way in which U.S. Attorney vacancies are temporarily filled, taking the authority to appoint members of his own staff from the Attorney General and delegating it instead to another branch of government.

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As you know, prior to last year's amendment of 28 U.S.C. § 546, the Attorney General could appoint an interim U.S. Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim U.S. Attorney. In cases where a Senate-confirmed U.S. Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in several recurring problems. Some district courts recognized the conflicts inherent in the appointment of an interim U.S. Attorney who would then have matters before the court—not to mention the oddity of one branch of government appointing officers of another—and simply refused to exercise the appointment authority. In those cases, the Attorney General was then required to make multiple 120-day interim appointments. Other district courts ignored the inherent conflicts and the oddity, and sought to appoint as interim U.S. Attorneys unacceptable candidates without the required clearances or appropriate qualifications. Last year's amendment of section 546, which brought the section largely into conformity with the Vacancies Reform Act, was necessary and entirely appropriate.

S. 214, on the other hand, would not only fail to ensure that those problems did not recur; it would exacerbate them by making appointment by the district court the only means of temporarily filling a vacancy—a step inconsistent with sound separation-of-powers principles. We are aware of no other agency where federal judges—members of a separate branch of government and not the head of the agency—appoint interim staff on behalf of the agency. Such a judicial appointee would have authority for litigating the entire federal criminal and civil docket before the very district court to whom he or she was beholden for the appointment. This arrangement, at a minimum, gives rise to an

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appearance of potential conflict that undermines the performance of both the Executive and Judicial Branches. Furthermore, prosecutorial authority should be exercised by the Executive Branch in a unified manner, consistent with the application of criminal enforcement policy under the Attorney General. S. 214 would undermine the effort to achieve a unified and consistent approach to prosecutions and federal law enforcement.

S. 214 seems aimed at solving a problem that does not exist. When a vacancy in the office of U.S. Attorney occurs, the Department often looks first to the First Assistant or another senior manager in the office to serve as an Acting or interim U.S. Attorney. Where neither the First Assistant nor another senior manager is able or willing to serve as an Acting or interim U.S. Attorney, or where their service would not be appropriate under the circumstances, the Administration may look to other Department employees to serve temporarily. No matter which way a U.S. Attorney is temporarily appointed, the Administration consistently seeks to consult with home-state Senators and fill the vacancy with a Presidentially-nominated and Senate-confirmed nominee.

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

DAG00000615

Elston, Michael (ODAG)

From: Seidel, Rebecca
Sent: Tuesday, January 30, 2007 7:34 PM
To: Sampson, Kyle; Moschella, William; Elston, Michael (ODAG); Brand, Rachel; Bounds, Ryan W (OLP); Goodling, Monica
Cc: Scott-Finan, Nancy; Nowacki, John (USAEO); Clifton, Deborah J; Blackwood, Kristine; Hertling, Richard
Subject: FW: SJC U.S. Attorneys hearing Draft testimony
Importance: High
Attachments: DRAFT Testimony – US Attorneys Hearing.doc

Thank you John. Debbie and Kristine are gone for the evening, but will circulate within DOJ first thing in the morning. OAG, ODAG and OLP - wanted to get to you directly so you don't have to wait till morning circulation. Debbie, we need OMB clearance by Friday COB, so that means we have to get to OMB Wed COB at latest.

note the hearing is now Tuesday the 6th instead of Wed the 7th.

From: Nowacki, John (USAEO) [mailto:John.Nowacki@usdoj.gov]
Sent: Tuesday, January 30, 2007 7:30 PM
To: Seidel, Rebecca; Scott-Finan, Nancy
Subject: SJC U.S. Attorneys hearing

The draft testimony for the DAG is attached.

<<DRAFT Testimony – US Attorneys Hearing.doc>>

DAG000000616

3/12/2007

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DRAFT TESTIMONY FOR
DEPUTY ATTORNEY GENERAL PAUL MCNULTY

Hearing before the Subcommittee on the Courts
Committee on the Judiciary
U.S. Senate

Wednesday, February 7, 2007

Chairman Schumer, Senator Sessions, and members of the Subcommittee, thank you for the invitation to discuss the importance and the independence of the Justice Department's United States Attorneys. As a former United States Attorney, I particularly appreciate this opportunity to address the critical role U.S. Attorneys play in enforcing our Nation's laws and carrying out the priorities of the Department of Justice.

I have often said that being a United States Attorney is one of the greatest jobs you can ever have. It is a privilege and a challenge—one that carries a great responsibility. As former Attorney General Griffin Bell and Daniel Meador wrote, U.S. Attorneys are "the front-line troops charged with carrying out the Executive's constitutional mandate to execute faithfully the laws in every federal judicial district." As the chief federal law-enforcement officers in their districts, U.S. Attorneys represent the Attorney General before Americans who may not otherwise have contact with the Department of Justice. They lead our efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families—including child pornography, obscenity, and human trafficking.

DAG00000617

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U.S. Attorneys are not only prosecutors; they are government officials charged with managing and implementing the policies and priorities of the Executive Branch. The Department of Justice—including the office of United States Attorney—was created precisely so that the government’s legal business could be effectively managed and carried out through a coherent program under the supervision of the Attorney General. And unlike judges, who are supposed to act independently of those who nominate them, U.S. Attorneys are accountable to the Attorney General, and through him, to the President—the head of the Executive Branch. For these reasons, the Department is committed to having the best person discharging the responsibilities of that office at all times and in every district.

When a U.S. Attorney submits his or her resignation, the Administration has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney’s Office during the period when there is not a Presidentially-nominated, Senate-confirmed United States Attorney. In some cases, the First Assistant U.S. Attorney is the appropriate person to serve in that capacity, but there are reasons he or she may not be, including: an impending retirement; an indication that the First Assistant has no desire to serve as an Acting U.S. Attorney, an IG or OPR matter in his or her file, which may make elevation inappropriate; an unfavorable recommendation by the outgoing U.S. Attorney; or that the individual does not enjoy the confidence of those responsible for ensuring ongoing operations and an appropriate transition. In those

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situations, the Attorney General has appointed another individual to lead the office during the transition.

In every single case where a vacancy occurs, it is the goal of the Bush Administration to have a United States Attorney that is confirmed by the Senate. Every single time that a vacancy has arisen, the President has either made a nomination, or the Administration is working—in consultation with home-state Senators—to select candidates for nomination. Let me be perfectly clear—at no time has the Administration sought to avoid the Senate confirmation process by appointing an interim United States Attorney and then refused to move forward in consultation with home-state Senators on the selection, nomination, and confirmation of a new U.S. Attorney. Consultation and confirmation is the method preferred by the Senate, and that is the method preferred by the Administration.

Since January 20, 2001, 125 new U.S. Attorneys have been nominated by the President and confirmed by the Senate. On March 9, 2006, the Congress amended the Attorney General's authority to appoint interim U.S. Attorneys, and 13 vacancies have occurred since that date. This amendment has not changed our commitment to nominating candidates for Senate confirmation. In fact, the Administration has nominated a total of 15 individuals for Senate consideration since the appointment authority was amended, with 12 of those nominees having been confirmed to date. Of the 13 vacancies that have occurred since the time that the law was amended, the Administration has nominated candidates to fill five of these positions, has interviewed

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candidates for seven positions, and is waiting to receive names to set up interviews for one position—all in consultation with home-state Senators.

However, while that process continues, the Department must continue to manage the important prosecutions and work of these offices. In order to ensure an effective and smooth transition during those vacancies, the office of the U.S. Attorney was filled on an interim basis using a range of authorities.

In four cases, the First Assistant was selected to lead the office and took over under the provisions of the Vacancy Reform Act, at 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period. In a fifth case, the First Assistant was selected under that provision of the Vacancy Reform Act but took federal retirement a month later. The Department then selected another Department employee to serve as an interim U.S. Attorney under an Attorney General appointment until a nomination is submitted to the Senate.

In one case, the First Assistant resigned at the same time as the U.S. Attorney, creating a need for an interim until such time as a nomination is submitted to the Senate.

In the eight remaining cases, the Department selected another Department employee to serve as interim U.S. Attorney under an Attorney General appointment until such time as a nomination is submitted to the Senate.

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United States Attorneys serve at the pleasure of the President. Like any other high-ranking officials in the Executive Branch, they may be removed for any reason or no reason. The Attorney General and I are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their offices effectively. It should come as no surprise to anyone that, in an organization as large as the Justice Department, U.S. Attorneys may be removed, or asked or encouraged to resign. However, U.S. Attorneys are never removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or inappropriately influence a particular investigation, criminal prosecution, or civil case. Any suggestion to the contrary is simply irresponsible.

With 93 U.S. Attorneys across the country, the Department often averages between eight to 15 vacancies at any given time. Given this occasional turnover, career investigators and prosecutors exercise direct responsibility for nearly all investigations and cases handled by a U.S. Attorney's Office. The effect of a U.S. Attorney's departure on an ongoing investigation would be minimal.

Given these facts, the Department of Justice strongly opposes S. 214, which would radically change the way in which U.S. Attorney vacancies are temporarily filled, taking the authority to appoint members of his own staff from the Attorney General and delegating it instead to another branch of government.

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As you know, prior to last year's amendment of 28 U.S.C. § 546, the Attorney General could appoint an interim U.S. Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim U.S. Attorney. In cases where a Senate-confirmed U.S. Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in several recurring problems. Some district courts recognized the conflicts inherent in the appointment of an interim U.S. Attorney who would then have matters before the court—not to mention the oddity of one branch of government appointing officers of another—and simply refused to exercise the appointment authority. In those cases, the Attorney General was then required to make multiple 120-day interim appointments. Other district courts ignored the inherent conflicts and the oddity, and sought to appoint as interim U.S. Attorneys unacceptable candidates without the required clearances or appropriate qualifications. Last year's amendment of section 546, which brought the section largely into conformity with the Vacancies Reform Act, was necessary and entirely appropriate.

S. 214, on the other hand, would not only fail to ensure that those problems did not recur; it would exacerbate them by making appointment by the district court the only means of temporarily filling a vacancy—a step inconsistent with sound separation-of-powers principles. We are aware of no other agency where federal judges—members of a separate branch of government and not the head of the agency—appoint interim staff on behalf of the agency. Such a judicial appointee would have authority for litigating the entire federal criminal and civil docket before the very district court to whom he or she was beholden for the appointment. This arrangement, at a minimum, gives rise to an

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appearance of potential conflict that undermines the performance of both the Executive and Judicial Branches. Furthermore, prosecutorial authority should be exercised by the Executive Branch in a unified manner, consistent with the application of criminal enforcement policy under the Attorney General. S. 214 would undermine the effort to achieve a unified and consistent approach to prosecutions and federal law enforcement.

S. 214 seems aimed at solving a problem that does not exist. When a vacancy in the office of U.S. Attorney occurs, the Department often looks first to the First Assistant or another senior manager in the office to serve as an Acting or interim U.S. Attorney. Where neither the First Assistant nor another senior manager is able or willing to serve as an Acting or interim U.S. Attorney, or where their service would not be appropriate under the circumstances, the Administration may look to other Department employees to serve temporarily. No matter which way a U.S. Attorney is temporarily appointed, the Administration consistently seeks to consult with home-state Senators and fill the vacancy with a Presidentially-nominated and Senate-confirmed nominee.

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

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