- Professor at the University of Arkansas Law School (approximately 8 years)
- Chief Counsel & Legislative Director to Senator Dale Bumpers (approximately 3 years)
- Lobbyist for the Arkansas Bar Association (approximately 1 year)

****

WESTERN DISTRICT

George W. Bush USA: Robert Cramer Balfe, III for WDAR (37 years old at nomination)
Nominated 6/1/2004; confirmed 11/20/2004

Talkers:
- While he had local experience as a prosecutor, he did not have federal prosecution experience. Also, he did not attend top-rated universities.

Background:
- B.S. from Arkansas State University in 1990
- J.D. from University of Arkansas School of Law in 1994

- Prosecuting Attorney for the 19th Judicial District West (approximately 3 years)
- Deputy Prosecuting Attorney for the 19th Judicial District West (approximately 5 years)
- Secretary/Treasurer of the Arkansas Prosecuting Attorney's Association

****

George W. Bush USA for WDAR: Thomas C. Gean (39 years old at nomination)
Nominated 8/2/2001; confirmed 10/23/2001

Talkers:
- While he did have local prosecution experience, he did not have any federal prosecution experience.

Background:
- Bachelor degree from University of Arkansas
- J.D. from Vanderbilt University Law School

- Prosecuting Attorney for the Sebastian County District Attorney's Office (approximately 4 years)
- Attorney with Gean, Gean, and Gean in Fort Smith, Arkansas (approximately 4 years)
- Attorney with Alston and Bird in Atlanta, Georgia (approximately 4 years)

****

Clinton USA for WDAR: Paul Kinloch Holmes, III (42 years old at nomination)
Nominated 8/6/1993; confirmed 9/21/93

Talkers:

- ***Unlike Mr. Griffin, he did not have any military or federal prosecution experience. He also did not have any state or local prosecution experience. He also did not attend top-rated universities.***
- *Like Mr. Griffin, he had political experience.* He served as chairman of the Sebastian County Democratic Party and Sebastian County Election Commission from 1979-1983. (See *Arkansas Democrat-Gazette*, 10/19/00)

Background:

- B.A. from Westminster College in 1973
- J.D. from University of Arkansas in 1978

- Attorney for Warner and Smith, Fort Smith, Arkansas (approximately 15 years)

****

TIMOTHY GRIFFIN AS INTERIM UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF ARKANSAS

- The Attorney General appointed Tim Griffin as the interim U.S. Attorney following the resignation of Bud Cummins, who resigned on Dec. 20, 2006. Since early in 2006, Mr. Cummins had been talking about leaving the Department to go into private practice for family reasons.

- Timothy Griffin is highly qualified to serve as the U.S. Attorney for the Eastern District of Arkansas.

- Mr. Griffin has significant experience as a federal prosecutor at both the Department of Justice and as a military prosecutor. At the time of his appointment, he was serving as a federal prosecutor in the Eastern District of Arkansas. Also, from 2001 to 2002, Mr. Griffin served at the Department of Justice as Special Assistant to the Assistant Attorney General for the Criminal Division and as a Special Assistant U.S. Attorney in the Eastern District of Arkansas in Little Rock. In this capacity, Mr. Griffin prosecuted a variety of federal cases with an emphasis on firearm and drug cases and organized the Eastern District's Project Safe Neighborhoods (PSN) initiative, the Bush Administration's effort to reduce firearm-related violence by promoting close cooperation between State and federal law enforcement, and served as the PSN coordinator.

- Prior to rejoining the Department in the fall of 2006, Mr. Griffin completed a year of active duty in the U.S. Army, and is in his tenth year as an officer in the U.S. Army Reserve, Judge Advocate General's Corps (JAG), holding the rank of Major. In September 2005, Mr. Griffin was mobilized to active duty to serve as an Army prosecutor at Fort Campbell, Ky. At Fort Campbell, he prosecuted 40 criminal cases, including *U.S. v. Mikel*, which drew national interest after Pvt. Mikel attempted to murder his platoon sergeant and fired upon his unit's early morning formation. Pvt. Mikel pleaded guilty to attempted murder and was sentenced to 25 years in prison.

- In May 2006, Tim was assigned to the 501st Special Troops Battalion, 101st Airborne Division and sent to serve in Iraq. From May through August 2006, he served as an Army JAG with the 101st Airborne Division in Mosul, Iraq, as a member of the 172d Stryker Brigade Combat Team Brigade Operational Law Team, for which he was awarded the Combat Action Badge and the Army Commendation Medal.

- Like many political appointees, Mr. Griffin has political experience as well. Prior to being called to active duty, Mr. Griffin served as Special Assistant to the President and Deputy Director of the Office of Political Affairs at the White House, following a stint at the Republican National Committee. Mr. Griffin has also served as Senior Counsel to the House Government Reform Committee, as an Associate Independent Counsel for *In Re: Housing and Urban Development Secretary Henry Cisneros*, and as an associate attorney with a New Orleans law firm.

- Mr. Griffin has very strong academic credentials. He graduated *cum laude* from Hendrix College in Conway, Ark., and received his law degree, *cum laude*, from Tulane Law School. He also attended graduate school at Pembroke College at Oxford University. Mr. Griffin was raised in Magnolia, Ark., and resides in Little Rock with his wife, Elizabeth.

- The Attorney General has assured Senator Pryor that we are not circumventing the process by making an interim appointment and that the Administration would like to nominate Mr. Griffin. However, because the input of home-state Senators is important to the Administration, the Attorney General has asked Senator Pryor whether he would support Mr. Griffin if he was nominated. While the Administration consults with the home-state Senators on a potential nomination, however, the Department must have someone lead the office – and we believe Mr. Griffin is well-qualified to serve in this interim role until such time as a new U.S. Attorney is nominated and confirmed.

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 31, 2007

The Honorable Mark Pryor
United States Senate
257 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Pryor:

This is in response to your letter to the Attorney General dated January 11, 2007, regarding the Attorney General's appointment of J. Timothy Griffin to serve as interim United States Attorney for the Eastern District of Arkansas.

As the Attorney General informed you in his telephone conversations with you on December 13, 2006, and December 15, 2006, Mr. Griffin was chosen for appointment to serve as interim United States Attorney because of his excellent qualifications. To be clear, Mr. Griffin was not chosen because the First Assistant United States Attorney was on maternity leave and therefore was not able to serve as your letter states. As you know, Mr. Griffin has federal prosecution experience both in the Eastern District of Arkansas and in the Criminal Division in Washington, D.C. During his service in the Eastern District of Arkansas, Mr. Griffin established that district's successful Project Safe Neighborhoods initiative to reduce firearms-related violence. In addition, Mr. Griffin has served for more than a decade in the U.S. Army Reserve, Judge Advocate General's Corps, for whom he has prosecuted more than 40 criminal cases, including cases of national significance. Mr. Griffin's military experience includes recent service in Iraq, for which he was awarded the Combat Action Badge and the Army Commendation Medal. Importantly, Mr. Griffin is a "real Arkansan" with genuine ties to the community. Based on these qualifications, Mr. Griffin was selected to serve as interim United States Attorney.

As the Attorney General also has stated to you, the Administration is committed to having a Senate-confirmed United States Attorney for all 94 federal districts. At no time has the Administration sought to avoid the Senate confirmation process by appointing an interim United States Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination and confirmation of a new United States Attorney. Not once.

The Eastern District of Arkansas is not different. As the Attorney General stated to you again two weeks ago, in a telephone conversation on January 17, 2007, the Administration is committed to having a Senate-confirmed United States Attorney in that district too. That is why the Administration has consulted with you and Senator Lincoln for several months now regarding possible candidates for nomination, including Mr. Griffin. That is why the Attorney General has sought your views as to whether, if nominated, you would support Mr. Griffin's confirmation. The Administration awaits your decision. *

If you decide that you would support Mr. Griffin's confirmation, then the President's senior advisors (after taking into account Senator Lincoln's views) likely would recommend that the President nominate him. With your support, Mr. Griffin almost certainly would be confirmed and appointed. We are convinced that, given his strong record as a federal prosecutor and as a military prosecutor, Mr. Griffin would serve ably as a Senate-confirmed United States Attorney. If, in contrast, you decide that for whatever reason you will not support Mr. Griffin's confirmation, then the Administration looks forward to considering any alternative candidates for nomination that you might put forward. In any event, your views (and the views of Senator Lincoln) will be given substantial weight in determining what recommendation to make to the President regarding who is nominated.

Last year's amendment to the Attorney General's appointment authority was necessary and appropriate. Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in numerous, recurring problems. For example, some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments. In contrast, other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances. Contrary to your letter, nothing in the text or history of the statute even suggests that the Attorney General should articulate a national security or law enforcement need for making an interim appointment. Because the Administration is committed to having a Senate-confirmed United States Attorney for all 94 federal districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

Enclosed is information regarding the exercise of the Attorney General's authority to appoint interim United States Attorneys. As you will see, the enclosed information establishes conclusively that the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. Indeed, every single time

that a United States Attorney vacancy has arisen, the President either has made a nomination or – as with the Eastern District of Arkansas – the Administration is working, in consultation with home-State Senators, to select a candidate for nomination. Such nominations are, of course, subject to Senate confirmation.

Sincerely,

Richard A. Hertling
Acting Assistant Attorney General

cc: The Honorable Blanche L. Lincoln

Enclosure

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, when the Congress amended the Attorney General's authority to appoint interim United States Attorneys, the President has nominated 15 individuals to serve as United States Attorney. The 15 nominations are:

- **Erik Peterson** – Western District of Wisconsin;
- **Charles Rosenberg** – Eastern District of Virginia;
- **Thomas Anderson** – District of Vermont;
- **Martin Jackley** – District of South Dakota;
- **Alexander Acosta** – Southern District of Florida;
- **Troy Eid** – District of Colorado;
- **Phillip Green** – Southern District of Illinois;
- **George Holding** – Eastern District of North Carolina;
- **Sharon Potter** – Northern District of West Virginia;
- **Brett Tolman** – District of Utah;
- **Rodger Heaton** – Central District of Illinois;
- **Deborah Rhodes** – Southern District of Alabama;
- **Rachel Paulose** – District of Minnesota;
- **John Wood** – Western District of Missouri; and
- **Rosa Rodriguez-Velez** – District of Puerto Rico.

All but Phillip Green, John Wood, and Rosa Rodriguez-Velez have been confirmed by the Senate.

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, there have been 13 new U.S. Attorney vacancies that have arisen. They have been filled as noted below.

For 4 of the 13 vacancies, the First Assistant United States Attorney (FAUSA) in the district was selected to lead the office in an acting capacity under the Vacancies Reform Act, *see* 5 U.S.C. § 3345(a)(1) (first assistant may serve in acting capacity for 210 days unless a nomination is made) until a nomination could be or can be submitted to the Senate. Those districts are:

- **Central District of California** – FAUSA George Cardona is acting United States Attorney
- **Southern District of Illinois** – FAUSA Randy Massey is acting United States Attorney (a nomination was made last Congress for Phillip Green, but confirmation did not occur);

- **Eastern District of North Carolina** – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting United States Attorney (Sharon Potter was nominated and confirmed).

For 1 vacancy, the Department first selected the First Assistant United States Attorney to lead the office in an acting capacity under the Vacancies Reform Act, but the First Assistant retired a month later. At that point, the Department selected another employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) ("Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant"). This district is:

- **Northern District of Iowa** – FAUSA Judi Whetstine was acting United States Attorney until she retired and Matt Dummermuth was appointed interim United States Attorney.

For 8 of the 13 vacancies, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) ("Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant"). Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division;
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned; and
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned.

ATTORNEY GENERAL APPOINTMENTS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

The Attorney General has exercised the authority to appoint interim United States Attorneys a total of 12 times since the authority was amended in March 2006.

In 2 of the 12 cases, the FAUSA had been serving as acting United States Attorney under the Vacancies Reform Act (VRA), but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed that same FAUSA to serve as interim United States Attorney. These districts include:

- **District of Puerto Rico** – Rosa Rodriguez-Velez (Rodriguez-Velez has been nominated); and
- **Eastern District of Tennessee** – Russ Dedrick

In 1 case, the FAUSA had been serving as acting United States Attorney under the VRA, but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **District of Alaska** – Nelson Cohen

In 1 case, the Department originally selected the First Assistant to serve as acting United States Attorney; however, she retired from federal service a month later. At that point, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **Northern District of Iowa** – Matt Dummermuth

In the 8 remaining cases, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division;
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;

- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned; and
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned.

MARK PRYOR
ARKANSAS

COMMITTEES:
COMMERCE, SCIENCE AND TRANSPORTATION

HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

SELECT COMMITTEE ON ETHICS

SMALL BUSINESS AND ENTREPRENEURSHIP

United States Senate

WASHINGTON, DC 20510

257 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-2353

500 PRESIDENT CLINTON AVENUE
SUITE 401
LITTLE ROCK, AR 72201
(501) 324-6336
TOLL FREE: (877) 259-9602
http://pryor.senate.gov

112502 DA

January 11, 2007

The Honorable Alberto Gonzales
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

Dear Attorney General Gonzales:

I am writing this letter to express my displeasure regarding your appointment of Tim Griffin as Interim U.S. Attorney for the Eastern District of Arkansas. As you will recall, we discussed this matter in two telephone calls (Wednesday December 13, 2006, and December 15, 2006) in which I informed you of my reservations.

First, it is clear (from events that occurred in July and August 2006), that there was an attempt to force then U.S. Attorney Cummins to resign. At that time, my office expressed my concern to the White House Counsel regarding this matter, and Mr. Cummins was able to remain in his position until the end of December. While I am pleased that his service was extended, I am left with the conclusion that the purpose for the dismissal of Mr. Cummins was to appoint Mr. Griffin.

Second, I am astonished that the reason given by your office for the interim appointment is that the First Assistant U.S. Attorney is on maternity leave and therefore would not be able to perform the responsibilities of the appointment. This reason was given to my Chief of Staff, to the news media, and to me by your liaison in a meeting this week. This concerns me on several levels, but most importantly it uses pregnancy and motherhood as conditions that deny an appointment. While this may not be actionable in a public employment setting, it clearly would be in a private employment setting. The U.S. Department of Justice should never discriminate against women in this manner.

Finally, and most importantly, the appointment undermines the Senate confirmation process. The authority granted to the Attorney General to make an interim appointment for an indefinite time was given pursuant to the Patriot Act. I believe that in using this provision, the Attorney General should articulate a national security or law enforcement need that necessitates such an appointment. You have failed to do so in this case. In fact, as cited above, the reason articulated is at worst grossly deficient, and at best, a poor pretense.

For me personally this last point is most troublesome. When the Patriot Act was up for reauthorization, you called me and discussed the importance of its passage. I told you that while there were items in the Act that concerned me, I trusted that the spirit of the law would be upheld. It has also come to my attention that there may have been other similar appointments made under this provision of the Patriot Act. Therefore, I believe that the spirit of the law regarding this interim appointment (and perhaps others) has been violated. As such, I am pushing for a legislative change. I have signed on to a Bill that would strike the previous amended language and restore appointment authority to the original 120 days.

I am quite sure that you may not agree with some or all of my conclusions, therefore, I await your response and I appreciate your cooperation in this matter.

Sincerely,

Mark Pryor

Mark Pryor

Sent via facsimile

ArkansasTimes
ARKANSAS'S NEWSPAPER OF POLITICS AND CULTURE

Published 12/30/2004

The Insider Dec. 30

Holiday schedules Among the Arkansas congressional delegation, constituent service during the holiday season is something that senators can't be bothered with. Then again, they only have to run for re-election every six years, so who cares? Calls to the Little Rock and Washington, D.C., offices of U.S. Sens. Blanche Lincoln and Mark Pryor yielded recorded messages informing us that no one would be available from Dec. 23-Jan. 3. The House members had varying policies. U.S. Reps. Vic Snyder and John Boozman kept their Arkansas offices open through the holidays except for Christmas Eve and New Year's Eve. U.S. Rep. Marion Berry operated his Jonesboro office from 10 a.m.-2 p.m. most days, but closed it on Dec. 23-24 and 30-31. Perhaps the loftier ambitions of U.S. Rep. Mike Ross are evident in his senatorial decision to shutter his offices from Dec. 23-Jan. 3
Gen. Clark, the TV series A New York Post gossip column recently reported that retired Gen. Wesley Clark, the former presidential candidate from Arkansas, is "working on a sitcom." Clark's office told us that the Post exaggerated his role in the project, especially by saying that Clark was "writing" the TV show and would "pitch" it to networks next year. In reality, Clark's associates insist that he is merely serving as a consultant in the development of the idea. "General Clark is contributing to a show concept of an officer returning to his hometown after a career in the military," Clark's office said. "Gen. Clark is primarily focused on his business but continues to be involved in numerous other projects." That would include plotting a future political career, of course. **Legal action** It's a low-priority public issue, but tens of millions of dollars are at stake in plans to establish tax increment finance districts in, among others, Fayetteville, Rogers, Bentonville, Lowell, Johnson, North Little Rock, Sherwood and Jonesboro. They will divert local property taxes to subsidize private developments in already prosperous areas. Schools, but not other local tax units, will be made whole by the Arkansas legislature, meaning Arkansas taxpayers. Columnist Max Brantley has been griping about this at some length recently. We hear he may soon have a valuable ally. There's solid indication a lawsuit could be filed shortly against the whole TIF scheme in Arkansas. TIF projects already underway have no guarantee they'd be grandfathered.
Four more years? We were talking to U.S. Attorney Bud Cummins a while back on another subject and happened to ask about his plans, now that George W. Bush is set to serve another four years as president. Cummins (we forgot to mention earlier) said he went into the election with no contingency plans, so was relieved by Bush's victory not to have to make any sudden decisions. Now completing his third year in the office, Cummins, 45, said that, with four children to put through college someday, he'll likely begin exploring career options. It wouldn't be "shocking," he said, for there to be a change in his office before the end of Bush's second term.

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2006 WLNR 16455132

Arkansas Times

August 24, 2006

Volume 32; Issue 51

THE INSIDER

Anonymous

The final days

US. Attorney **Bud Cummins** of Little Rock says he'll likely be leaving his job in the next few "weeks or months," but almost certainly by the end of the year. He'd earlier told us he didn't intend to serve out the entirety of the Bush administration's second term and that he'd be looking for private sector work.

More newsy, perhaps, is who Cummins' successor might be. Informed sources say one possibility for a White House nomination is Tim Griffin, an Arkansas native who has worked in top jobs at both the Republican National Committee and the White House on hardcharging political opposition research.

Though Griffin, currently finishing a military obligation, spent one year in Little Rock as an assistant U.S. attorney, his political work would likely get more attention - and Democratic opposition - in the Senate confirmation process. He'd likely have to endure some questioning about his role in massive Republican projects in Florida and elsewhere by which Republicans challenged tens of thousands of absentee votes. Coincidentally, many of those challenged votes were concentrated in black precincts.

If not Griffin, state Rep. Marvin Childers is another Arkansas lawyer whose name has been mentioned by prominent Republicans to serve out Cummins' term.

No carrying charge

Word comes from Little Rock City Hall that Simon Property Group, more than five years late, has finally paid the $25,000 it promised to contribute to a University Avenue development study by the Urban Land Institute. Simon, which manages the decrepit and failing University Mall, stiffed the city on the debt after it lost its bid to build the new Summit Mall, on account of citizen opposition. City officials reminded Simon of the May 2001 bill at a recent meeting in Indianapolis

over the sorry state of University Mall.

No, Simon paid no interest on the 63month-late payment. You can bet one of their mall tenants would have added interest - $5,000 or so at 4 percent per annum - on a past-due account.

Tipping point

Subscribers to the Arkansas Democrat-Gazette have been seeing a little something extra on their subscription invoices lately: a typed notation stating that because of the increase in gas prices, their paper carrier would appreciate tips.

D-G general manager Paul Smith said that the note was added recently as a way of helping out carriers, who are independent contractors. Carriers buy the paper at a wholesale rate, and then sell the paper to subscribers on their route. Smith said the wholesale rate varies from carrier to carrier based on the concentration of subscribers on their route, with carriers in rural areas paying less per paper than those in the city. Because they are independent contractors, Smith said the only way to raise the amount carriers make is to either raise the price of the paper, or ask for tips. Why not cut the wholesale rate? Said Smith: "After the carrier gets his cut, there is usually not enough left. . . to pay for the paper. We make all of our money on advertising," he said. "If we reduce our wholesale rate, we're going to go in the hole more on the cost of the newspaper. It's just a matter of economics."

---- INDEX REFERENCES ----

COMPANY: SIMON SA

REGION: (USA (1US73); Americas (1AM92); Arkansas (1AR83); North America (1NO39))

Language: EN

OTHER INDEXING: (INSIDER; PROPERTY GROUP; PEPUBLICAN; REPUBLICAN NATIONAL COMMITTEE; REPUBLICANS; ROCK; SENATE; SIMON; UNIVERSITY AVENUE; UNIVERSITY MALL; URBAN LAND INSTITUTE; WHITE HOUSE) (Bud Cummins; Bush; Coincidentally; Cummins; Griffin; Informed; Marvin Childers; Paul Smith; Smith; Tim Griffin; Word)

Word Count: 631
8/24/06 ARKTIMES 1

END OF DOCUMENT

I have one more or so.

Elston, Michael (ODAG)

From: Tim Griffin [griffinjag@comcast.net]
Sent: Monday, February 05, 2007 8:09 PM
To: Goodling, Monica
Subject: I have one more or so.
Importance: High

That guy is a British reporter who accepted some false allegations and made a story up. That's why no other national press picked it up in 2004. Now Palast (who wrote about it the first time in 2004) has written about it again. It is all about an election year.

The RNC was in no way trying to keep anyone from voting.

During the closing weeks of the 2004 presidential campaign when Mighty Mouse, Donald Duck, etc. were registering to vote. Voter registration fraud was rampant. That was the context.

The real story is this:

There were thousands of reported illegal/fake voter registrations around the country, so some of the Republican State Parties mailed letters welcoming new voters to the newly registered voters. Many, thousands, of the letters came back marked "return to sender," etc. because the address given in the registration did not exist. The RNC was asked to assist the State Parties with reviewing the thousands of letters that were kicked back. The RNC tried to identify if the addresses were real addresses because in some cases telephone poles, vacant buildings, and strip malls were found when the addresses were determined in person by folks on the ground. The results of that analysis is what was ultimately given to Greg Palast—nothing but an excel file full of addresses—some phoney, some not. (One of the emails sent by Tim Griffin an email on it that a campaign staffer had spelled wrong so it went to the mailbox--a dead letter office of email if you will--that a Democrat had set up. That's how they discovered the email with "caging" on it and tried to make a story out of it.)

In the world of direct mail, with which I am not intimately familiar, "caging" is the process of taking returned mail and organizing it in a spreadsheet--basically separating the "real" addresses from the bad ones. If you type caging in on the internet with Direct Mail, you will see that caging is a term of art. Hence, the use of the word caging for the file.

The Republican State Parties ultimately wanted to show that thousands of fraudulent voter registrations had been completed. They ultimately did..

That is all there is to it. Some bloggers, etc. tried to spin it in the last week of the election as the Republicans trying to keep minorities from voting, but that was a lie.

Elston, Michael (ODAG)

From: Tim Griffin [griffinjag@comcast.net]
Sent: Monday, February 05, 2007 8:07 PM
To: Goodling, Monica
Subject: HERE IS THE GREG PALAST ARTICLE
Importance: High

HERE IS THE ARTICLE THAT GREG PLAST WROTE THIS SUMMER: he has written several variations on the same theme. google bbc caging and greg palast and you will see all sorts of ridiculous charges against me and the RNC.

HERE IS THE LINK:

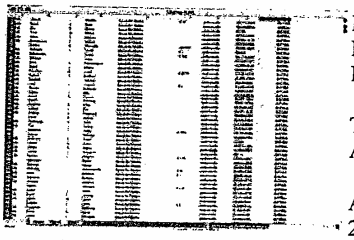
http://www.gregpalast.com/massacre-of-the-buffalo-soldiers

Armed Madhouse: Part I
My Father's Victory in the Pacific »

African-American Soldiers Scrubbed by Secret GOP Hit List

Published by Greg Palast June 16th, 2006 in Articles

Massacre of the Buffalo Soldiers
by Greg Palast
As reported for Democracy Now!



Palast, who first reported this story for BBC Television Newsnight (UK) and Democracy Now! (USA), is author of the New York Times bestseller, Armed Madhouse.

The Republican National Committee has a special offer for African-American soldiers: Go to Baghdad, lose your vote.

A confidential campaign directed by GOP party chiefs in October 2004 sought to challenge the ballots of tens of thousands of voters in the last presidential election, virtually all of them cast by residents of Black-majority precincts. Files from the secret vote-blocking campaign were obtained by BBC Television Newsnight, London. They were attached to emails accidentally sent by Republican operatives to a non-party website.

One group of voters wrongly identified by the Republicans as registering to vote from false addresses: servicemen and women sent overseas.

****

For Greg Palast's discussion with broadcaster Amy Goodman on the Black soldier purge of 2004, go to http://gregpalast.com/armedmadhouse/palastDN6-14-06.mp3

****

Here's how the scheme worked: The RNC mailed these voters letters in envelopes marked, "Do not forward", to be returned to the sender. These letters were mailed to servicemen and women, some stationed overseas, to their US home addresses. The letters then returned to the Bush-Cheney campaign as "undeliverable."

The lists of soldiers of "undeliverable" letters were transmitted from state headquarters, in this case Florida, to the RNC in Washington. The party could then challenge the voters' registration and thereby prevent their absentee ballots being counted.

One target list was comprised exclusively of voters registered at the Jacksonville, Florida, Naval Air Station. Jacksonville is third largest naval installation in the US, best known as home of the Blue Angels fighting squandron.

[See this scrub sheet at http://flickr.com/photo_zoom.gne?id=160156893&context=set-72157594155273706&size=o]

Our team contacted the homes of several on the caging list, such as Randall Prausa, a serviceman, whose wife said he had been ordered overseas.

A soldier returning home in time to vote in November 2004 could also be challenged on the basis of the returned envelope. Soldiers challenged would be required to vote by "provisional" ballot.

Over one million provisional ballots cast in the 2004 race were never counted; over half a million absentee ballots were also rejected. The extraordinary rise in the number of rejected ballots was the result of the widespread multi-state voter challenge campaign by the Republican Party. The operation, of which the purge of Black soldiers was a small part, was the first mass challenge to voting America had seen in two decades.

The BBC obtained several dozen confidential emails sent by the Republican's national Research Director and Deputy Communications chief, Tim Griffin to GOP Florida campaign chairman Brett Doster and other party leaders. Attached were spreadsheets marked, "Caging.xls." Each of these contained several hundred to a few thousand voters and their addresses.

A check of the demographics of the addresses on the "caging lists," as the GOP leaders called them indicated that most were in African-American majority zip codes.

Ion Sanco, the non-partisan elections supervisor of Leon County (Tallahassee) when shown the lists by this reporter said: "The only thing I can think of - African American voters listed like this - these might be individuals that will be challenged if they attempted to vote on Election Day."

These GOP caging lists were obtained by the same BBC team that first exposed the wrongful purge of African-American "felon" voters in 2000 by then-Secretary of State Katherine Harris. Eliminating the voting rights of those voters — 94,000 were targeted — likely caused Al Gore's defeat in that race.

The Republican National Committee in Washington refused our several requests to respond to the BBC discovery. However, in Tallahassee, the Florida Bush campaign's spokespeople offered several explanations for the list.

Joseph Agostini, speaking for the GOP, suggested the lists were of potential donors to the Bush campaign. Oddly, the supposed donor list included residents of the Sulzbacher Center a shelter for homeless families.

Another spokesperson for the Bush campaign, Mindy Tucker Fletcher, ultimately changed the official response, acknowledging that these were voters, "we mailed to, where the letter came back - bad addresses."

The party has refused to say why it would mark soldiers as having "bad addresses" subject to challenge when they had been assigned abroad.

The apparent challenge campaign was not inexpensive. The GOP mailed the letters first class, at a total cost likely exceeding millions of dollars, so that the addresses would be returned to "cage" workers.

"This is not a challenge list," insisted the Republican spokesmistress. However, she modified that assertion by adding, "That's not what it's set up to be."
Setting up such a challenge list would be a crime under federal law. The Voting Rights Act of 1965 outlaws mass challenges of voters where race is a factor in choosing the targeted group.

While the party insisted the lists were not created for the purpose to challenge Black voters, the GOP ultimately offered no other explanation for the mailings. However, Tucker Fletcher asserted Republicans could still employ the list to deny ballots to those they considered suspect voters. When asked if Republicans would use the list to block voters, Tucker Fletcher replied, "Where it's stated in the law, yeah."

It is not possible at this time to determine how many on the potential blacklist were ultimately challenged and lost their vote. Soldiers sending in their ballot from abroad would not know their vote was lost because of a challenge.

For the full story of caging lists and voter purges of 2004, plus the documents, read Greg Palast's New York Times bestseller, ARMED MADHOUSE: Who's Afraid of Osama Wolf?, Armed Madhouse: Who's Afraid of Osama Wolf?, China Floats Bush Sinks, the Scheme to Steal '08, No Child's Behind Left and other Dispatches from the Front Lines of the Class War.

HEARING STATEMENT

Thank you, Mr. Chairman. I appreciate the opportunity to be here this morning and attempt to clear up the misunderstandings and mispersceptions about the recent resignations of some USAs, and to testify in strong opposition to S.214, a bill which would strip the AG of the authority to make interim appointments to fill vacant USA positions.

As you know, I had the privilege of serving as a USA for 4 ½ years. It was the best job I ever had. That's something you hear a lot from former USAs – "Best job I ever had." (In my case, Mr. Chairman, it was even better than serving as counsel on the House Crime Sub. under your leadership.).

Why is being a USA such a great job? There are a variety

of reasons, but I think it boils down to this. The USAs are the President's chief legal representatives in the 94 federal judicial districts. In my former district of Eastern Virginia, Supreme Court Chief Justice John Marshal was the first USA.

Being the President's chief legal representative means you are the face of the Justice Department in your district. Every police chief you support, every victim you comfort, every citizen you inspire or encourage, and, yes, every criminal who is prosecuted in your name, communicates to all of these people something significant about the priorities and values of both the President and the AG. At his inauguration, the President raises his right hand and solemnly swears to faithfully execute the

office of the President of the United States. He fulfills this promise in no small measure through the men and women he appoints as USAs. If the President and the Attorney General want to crack down on gun criminals or go after child pornographers and pedophiles, as this President and AG have ordered federal prosecutors to do, it's the USAs who have the privilege of making such priorities a reality. That's why it's the best job a lawyer can ever have. It's an incredible honor.

And this is why, Mr. Chairman, judges should not appoint USAs, as S.214 proposes. What could be clearer Executive Branch responsibilities than the AG's authority to temporarily appoint and ~~for~~ the President is opportunity to nominate for Senate

confirmation those who will execute the President's duties of office? S.214 doesn't even allow the AG to make ANY interim appointments, contrary to the law prior to the most recent amendment.

The indisputable fact is that USAs serve at the pleasure of the President. They come and they go for lots of reasons. Of the USAs appointed in my class at the beginning of this Administration, more than half are now gone. Turnover is not unusual and it rarely causes a problem because even though the job of USA is extremely important, the greatest assets of any successful USA are the career men and women who serve as AUSAs, victim-witness coordinators, paralegals, legal

assistants, and administrative personnel. Their experience and professionalism ensures smooth continuity as the USA job transitions from one person to another.

Mr. Chairman, I conclude with these three promises to this Committee and the American people on behalf of the AG and myself:

1) We never <u>have</u> and never <u>will</u> seek to remove a USA to interfere with an ongoing investigation or prosecution or in retaliation for a prosecution. Such an act is contrary to the most basic values of our system of justice, the proud legacy of the Department of Justice, and our integrity as public servants.

2) In every single case, where a USA position is vacant, the Administration is committed to filling that position with a USA who is confirmed by the Senate. The AG's appointment authority has not, and will not, be used to circumvent the confirmation process. All accusations in this regard are contrary to the clear factual record. The statistics are all laid out in my written statement.

We have not done .is in Arkansas.

3) Through temporary appointments and nominations for Senate confirmation, the Administration will continue to fill USA vacancies with men and women who are well qualified to assume the important duties of this

office.

Mr. Chairman, I appreciate your friendship and courtesy,

and I am happy to respond to the Committee's questions. ~~I hope I get a~~

If I thought the concerns you outlined in your opening statement were true, I would be disturbed. But these concerns are not based on facts. Selection process will prove this.

I have a lot of respect for you, and when I hear you talk about politicizing DOJ, it's like a knife in my heart. The AG + I love DOJ and honor its mission. Your perspective is completely contrary to my daily experience. I would love to dispel you of this opinion.

Department of Justice

STATEMENT

OF

PAUL J. MCNULTY
DEPUTY ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

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

PRESENTED ON

FEBRUARY 6, 2007

Testimony
of

Paul J. McNulty
Deputy Attorney General
U.S. Department of Justice

Committee on the Judiciary
United States Senate

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

February 6, 2007

Chairman Schumer, Senator Sessions, and members of the Committee, thank you for the invitation to discuss the importance of the Justice Department's United States Attorneys. As a former United States ttorney, 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 said, 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, bscenity, and human trafficking.

U.S. Attorneys are not only prosecutors; they are government officials charged with managing and implementing the policies and priorities of the Executive Branch. 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 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 possible discharging the responsibilities of that office at all times and in every district.

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 are removed or asked or encouraged to resign from time to time. However, in this Administration U.S. Attorneys are never—repeat, never—removed, or asked or encouraged to resign, in an effort to retaliate against them, or interfere with, or inappropriately influence a particular investigation, criminal prosecution, or civil case. Any suggestion to the contrary is unfounded, and it irresponsibly undermines the reputation for impartiality the Department has earned over many years and on which it depends.

Turnover in the position of U.S. Attorney is not uncommon. When a presidential election results in a change of administration, every U.S. Attorney leaves and the new President nominates a successor for

confirmation by the Senate. Moreover, U.S. Attorneys do not necessarily stay in place even during an administration. For example, approximately half of the U.S. Attorneys appointed at the beginning of the Bush Administration had left office by the end of 2006. Given this reality, career investigators and prosecutors exercise direct responsibility for nearly all investigations and cases handled by a U.S. Attorney's Office. While a new U.S. Attorney may articulate new priorities or emphasize different types of cases, the effect of a U.S. Attorney's departure on an existing investigation is, in fact, minimal, and that is as it should be. The career civil servants who prosecute federal criminal cases are dedicated professionals, and an effective U.S. Attorney relies on the professional judgment of those prosecutors.

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

At no time, however, has the Administration sought to avoid the Senate confirmation process by appointing an interim U.S. Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination, confirmation and appointment of a new U.S. Attorney. The appointment

of U.S. Attorneys by and with the advice and consent of the Senate is unquestionably the appointment method preferred by both the Senate and the Administration.

In every single case where a vacancy occurs, the Bush Administration is committed to having a United States Attorney who is confirmed by the Senate. And the Administration's actions bear this out. Every time 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 refusing to move forward, in consultation with home-State Senators, on the selection, nomination and confirmation of a new United States Attorney. Not once.

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

However, while that nomination process continues, the Department must have a leader in place to carry out the important work of these offices. To ensure an effective and smooth transition during U.S. Attorney

vacancies, the office of the U.S. Attorney must be filled on an interim basis. To do so, the Department relies on the Vacancy Reform Act ("VRA"), 5 U.S.C. § 3345(a)(1), when the First Assistant is selected to lead the office, or the Attorney General's appointment authority in 28 U.S.C. § 546 when another Department employee is chosen. Under the VRA, the First Assistant may serve in an acting capacity for only 210 days, unless a nomination is made during that period. Under an Attorney General appointment, the interim U.S. Attorney serves until a nominee is confirmed the Senate. There is no other statutory authority for filling such a vacancy, and thus the use of the Attorney General's appointment authority, as amended last year, signals nothing other than a decision to have an interim U.S. Attorney who is not the First Assistant. It does not indicate an intention to avoid the confirmation process, as some have suggested.

No change in these statutory appointment authorities is necessary, and thus the Department of Justice strongly opposes S. 214, which would radically change the way in which U.S. Attorney vacancies are temporarily filled. S. 214 would deprive the Attorney General of the authority to appoint his chief law enforcement officials in the field when a vacancy occurs, assigning it instead to another branch of government.

As you know, before last year's amendment of 28 U.S.C. § 546, the Attorney General could appoint an interim U.S. Attorney for the first 120 days after a vacancy arose; 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 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 consequently required to make multiple successive 120-day interim appointments. Other district

courts ignored the inherent conflicts and sought to appoint as interim U.S. Attorneys wholly unacceptable candidates who lacked the required clearances or appropriate qualifications.

In most cases, of course, the district court simply appointed the Attorney General's choice as interim U.S. Attorney, revealing the fact that most judges recognized the importance of appointing an interim U.S. Attorney who enjoys the confidence of the Attorney General. In other words, the most important factor in the selection of past court-appointed interim U.S. Attorneys was the Attorney General's recommendation. By foreclosing the possibility of judicial appointment of interim U.S. Attorneys unacceptable to the Administration, last year's amendment to Section 546 appropriately eliminated a procedure that created unnecessary problems without any apparent benefit.

S. 214 would not merely reverse the 2006 amendment; it would exacerbate the problems experienced under the prior version of the statute by making judicial appointment 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—appoint the interim staff of an 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 appearance of potential conflict that undermines the performance or perceived performance of both the Executive and Judicial Branches. A judge may be inclined to select a U.S. Attorney who shares the judge's ideological or prosecutorial philosophy. Or a judge may select a prosecutor apt to settle cases and enter plea bargains, so as to preserve judicial resources. *See* Wiener, Inter-Branch Appointments After the Independent Counsel: Court Appointment of United States Attorneys, 86 Minn. L. Rev. 363, 428 (2001) (concluding that court appointment of interim U.S. Attorneys is unconstitutional).

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. Court-appointed U.S. Attorneys would be at least as accountable to the chief judge of the district court as to the Attorney General, which could, in some circumstances become untenable. In no context is accountability more important to our society than on the front lines of law enforcement and the exercise of prosecutorial discretion, and the Department contends that the chief prosecutor should be accountable to the Attorney General, the President, and ultimately the people.

Finally, S. 214 seems to be aimed at solving a problem that does not exist. As noted, when a vacancy in the office of U.S. Attorney occurs, the Department typically 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 has looked to other Department employees to serve temporarily. No matter which way a U.S. Attorney is temporarily appointed, the Administration has consistently sought, and will continue to seek, to fill the vacancy—in consultation with home-State Senators—with a presidentially-nominated and Senate-confirmed nominee.

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

VIEWS LETTER ON S.214

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 2, 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is to advise you of the Department of Justice's strong opposition to S. 214, the "Preserving United States Attorney Independence Act of 2007." S. 214 would significantly alter the manner in which U.S. Attorney vacancies are filled by completely removing the Attorney General's authority to appoint interim U.S. Attorneys and allocating that authority to an entirely different branch of government. Under S. 214, the Attorney General would have no authority whatsoever to fill a U.S. Attorney vacancy on an interim basis—even one of short duration. Instead, only the district court would have this authority.

United States Attorneys are at the forefront of the Department of Justice's law-enforcement efforts. They lead the charge to protect America from acts of terrorism; to reduce violent crime, including gun crime and gang crime; to fight illegal drug trafficking; to enforce immigration laws; to combat crimes that endanger children and families, including child pornography, obscenity, and human trafficking; and to ensure the integrity of government and of the marketplace by prosecuting corrupt government officials and perpetrators of corporate fraud. In pursuit of these objectives, U.S. Attorneys play a pivotal role coordinating with federal, State, and local law enforcement officials on many of these law enforcement issues. Additionally, they have significant administrative responsibilities, such as managing large offices of federal prosecutors and reporting directly to the Deputy Attorney General and the Attorney General. Importantly, U.S. Attorneys represent the Attorney General as the chief federal law enforcement officer in their respective communities. For these reasons, the Department is committed to having the best person possible discharging the responsibilities of the U.S. Attorney at all times and in every district.

The Department's principal objection to S.214 is that it would be inappropriate, and inconsistent with sound separation of powers principles, to vest federal courts with the authority to appoint a critical Executive Branch officer such as a United States Attorney under the circumstances described in the bill. Indeed, the Department is unaware of any other federal agency for which federal judges have such authority. As soon as a vacancy occurs, the federal court would be enabled to appoint a person of its choosing whose tenure would continue through the entire period needed for both a Presidential nomination and Senate confirmation. That judicial appointee would have authority for litigating the entire federal criminal and civil docket for this period before the very district court to whom he was beholden for his appointment. Such an arrangement at a minimum gives rise to an appearance of potential conflict that undermines the performance of not just the Executive Branch, but also the Judicial one. Furthermore, prosecutorial authority should be exercised by the Executive Branch in a unified manner, with consistent application of criminal enforcement policy under the supervision of the Attorney General. The U.S. Attorneys, unlike the court-appointed independent counsel whose appointment survived separation of powers challenge in *Morrison v. Olson*, 487 U.S. 654 (1988), have wide-ranging, extensive authority over any number of matters. Among other things, they have played, and continue to play, a crucial role in investigations and prosecutions in the ongoing war on terrorism, where close coordination is critical. S. 214 would tend to fragment the exercise of such authority, thereby undermining the effort to achieve a unified and consistent approach to prosecutions and federal law enforcement.

S. 214 would supersede last year's amendment to 28 U.S.C. § 546 that authorized the Attorney General to appoint an interim U.S. Attorney to serve until a person fills the position by being confirmed by the Senate and appointed by the President. Last year's amendment was intended to ensure continuity of operations in the event of a U.S. Attorney vacancy that lasts longer than expected. S. 214 would institute a new appointment regime without allowing the Attorney General's authority under current law to be tested in practice.

Before last year's amendment, 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 in which 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. For example, some district courts—recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim U.S. Attorney who would then have many matters before the court—refused to exercise the court's statutory appointment authority. Such refusals required the Attorney General to make multiple 120-day appointments. In contrast, other district courts—ignoring the oddity and inherent conflicts—sought to appoint as interim U.S. Attorney wholly unacceptable candidates who did not have the appropriate qualifications or the necessary clearances. S. 214 fails to ensure that such problems do not recur and, indeed, would exacerbate those problems by making appointment by the district court the exclusive means of filling U.S. Attorney vacancies.

S. 214 appears to be aimed at addressing a problem that has not arisen. The Administration has repeatedly demonstrated its commitment to having a Senate-confirmed U.S. Attorney in every federal district. To be sure, when a U.S. Attorney vacancy occurs, the Department must first determine who will serve temporarily as interim U.S. Attorney until a new Senate-confirmed U.S. Attorney is appointed. Often, the Department looks to the First Assistant U.S. Attorney or another senior manager in the office to serve as U.S. Attorney on a temporary, interim basis. When neither the First Assistant U.S. Attorney nor another senior manager in the office is able or willing to serve as interim U.S. Attorney, or when the appointment of either would not be appropriate in the circumstances, the Department has looked to other, qualified Department employees. At no time, however, has the Administration sought to avoid the Senate confirmation process by appointing an interim U.S. Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination, confirmation and appointment of a new U.S. Attorney. The appointment of U.S. Attorneys by and with the advice and consent of the Senate is unquestionably the appointment method preferred by the Senate and the one that the Administration follows.

Thank you for the opportunity to present the Department's views on S. 214. The Office of Management and Budget advises that it has no objection to the presentation of this response from the standpoint of the Administration's program and that enactment of S. 214 would not be in accord with the program of the President. If we may be of additional assistance, please do not hesitate to contact this office.

Sincerely,

Richard A. Hertling

Richard A. Hertling
Acting Assistant Attorney General

cc: The Honorable Arlen Specter
Ranking Minority Member

The Honorable John Cornyn

110TH CONGRESS
1ST SESSION

S. 214

To amend chapter 35 of title 28, United States Code, to preserve the independence of United States attorneys.

IN THE SENATE OF THE UNITED STATES

JANUARY 9, 2007

Mrs. FEINSTEIN (for herself and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend chapter 35 of title 28, United States Code, to preserve the independence of United States attorneys.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Preserving United States Attorney Independence Act of 2007".

SEC. 2. VACANCIES.

Section 546 of title 28, United States Code, is amended to read as follows:

"§ 546. Vacancies

"The United States district court for a district in which the office of the United States attorney is vacant may appoint a United States attorney to serve until that vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court.".

Q & A FROM DOJ 1/8/07
OVERSIGHT HEARING

FEINSTEIN:

Thank you.

You and I talked on Tuesday about what's happening with U.S. attorneys. And it spurred me to do a little research. And let me begin. Title 28, Section 541 states: "Each United States attorney shall be appointed for a term of four years. On the expiration of his term, a United States attorney shall continue to perform the duties of his office until his successor is appointed and qualified."

Now, I understand that there is a pleasure aspect to it. But I also understand what practice has been in the past.

We have 13 vacancies. Yesterday, you sent up two nominees for the 13 existing vacancies.

GONZALES:

We've now nominated, I think -- there have been 11 vacancies created since the law was changed; 11 vacancies in U.S. Attorneys' Offices. The president has now nominated as to six of those. As to the remaining five, we're in discussions with home-state senators.

And so let me publicly sort of preempt perhaps a question you're going to ask me, and that is: I am fully committed, as the administration's fully committed, to ensure that, with respect to every United States attorney position in this country, we will have a presidentially appointed, Senate-confirmed United States attorney.

GONZALES:

I think a United States attorney who I view as the leader, law enforcement leader, my representative in the community -- I think he has greater imprimatur of authority, if in fact that person's been confirmed by the Senate.

FEINSTEIN:

Now, let me get at where I'm going. How many United States attorneys have been asked to resign in the past year?

GONZALES:

Senator, you know, you're asking me to get into a public discussion about personnel...

FEINSTEIN:

No, I'm just asking you to give me a number. That's all. I'm asking you to give me a number. I'm asking...

GONZALES:

You know, I don't know the answer to that question. But we have been very forthcoming...

FEINSTEIN:

You didn't know it on Tuesday when I spoke with you. said you would find out and tell me.

GONZALES:

I'm not sure I said that, but...

FEINSTEIN:

Yes, you did, Mr. Attorney General.

GONZALES:

Well, if that's what I said, then that's what I will do. But we did provide to you a letter where we gave you a lot of information about...

FEINSTEIN:

I read the letter.

GONZALES:

OK.

FEINSTEIN:

It doesn't answer the questions that I have.

I know of at least six that have been asked to resign. I know that we amended the law in the Patriot Act and we amended it because if there were a national security problem, the attorney general would have the ability to move into the gap.

We did not amend it to prevent the confirmation process from taking place. And I'm very concerned. I've had two of them asked to resign in my state from major jurisdictions with major cases ongoing, with substantially good records as prosecutors.

And I'm very concerned, because, technically, under the Patriot Act, you can appoint someone without confirmation for the remainder of the president's term. I don't believe you should do that. We are going to try to change the law back.

GONZALES:

Senator, may I just say that I don't think there was any evidence that is what I'm trying to do. In fact, to the contrary, the evidence is quite clear that what we're trying to do is ensure that for the people in each of these respective districts we have the very best possible representative for the Department of Justice and that we are working to nominate people and that we are working with home state senators to get U.S. attorneys nominated.

So the evidence is just quite contrary to what your possibly suggesting.

Let me just say...

FEINSTEIN:

Do you deny that you have asked -- your office has asked United States attorneys to resign in the past year?

GONZALES:

Senator, that...

FEINSTEIN:

Yes or no?

GONZALES:

Yes.

No, I don't deny that. What I'm saying is -- but that happens during every administration during different periods for different reasons.

And so the fact that that's happened, quite frankly, some people should view that as a sign of good management. What we do is we make an evaluation about the performance of individuals, and I have a responsibility to the people in your district that we have the best possible people in these positions.

And that's the reason why changes sometimes have to be made, although there are a number of reasons why changes get made and why people leave on their own.

I think I would never, ever make a change in a United States attorney for political reasons or if it would in any way jeopardize an ongoing serious investigation. I just would not do it.

FEINSTEIN:

Well, let me just say one thing. I believe very strongly that these positions should come to this committee for confirmation.

GONZALES:

They are, Senator.

FEINSTEIN:

I believe very strongly we should have the opportunity...

GONZALES:

I agree with you.

FEINSTEIN:

... to answer (sic) questions about...

GONZALES:

I agree with you.

FEINSTEIN:

And I have been asked by another senator to ask this question, and I will: Was there any other reason for asking Bud Cummings of Arkansas to resign other than the desire to put in Tim Griffin?

GONZALES:

Senator, again, I'm not going to get into a public discussion about the merits or not with respect to personnel decisions.

I will say that I've had two conversations -- one as recanvassed, I think, yesterday -- with a senator from Arkansas about this issue. He and I are in a dialogue. We are -- I am consulting with the home state senator so he understands what's going on and the reasons why, and working with him to try to get this thing resolved; to make sure for his benefit, for the benefit of the Department of Justice that we have the best possible person manning that position.

LEAHY:

I'm just wondering, during the -- when we take our break for lunch, would it be possible to get the numbers that Senator Feinstein has asked for?

GONZALES:

I think it's possible. I will certainly...

FEINSTEIN:

U.S. attorneys asked to resign.

GONZALES:

Senator, that's a number that I would like to share with you. I don't want to have a public discussion about personnel decisions. It's not fair, quite frankly, to the people.

LEAHY:

I'm just curious as to the numbers. I don't care who they are. I want to know the numbers.

Thank you.

CORNYN:

Thank you, Mr. Chairman.

Welcome, Attorney General Gonzales.

I want to talk a minute about the questions that Senator Feinstein raised about the process by which interim United States attorney are appointed, so that we can understand this better and perhaps put it in context.

My understanding that was prior to the reauthorization of the Patriot Act the attorney general had the authority to appoint an interim United States attorney for a period up to 120 days, wafter which the courts before the U.S. attorney would appear would make a longer-term interim appointment until such time as the president nominated and the Senate confirmed a permanent United States attorney.

CORNYN:

Is that correct?

GONZALES:

That is correct. And as you might imagine, Senator, that created some issues that we were worried about. It would be like a federal judge deciding who was going to serve on your staff.

A U.S. attorney, of course, serves on my staff. And the other problems that we had is that there's an inherent conflict where you've got a U.S. attorney appearing before a court where he's been appointed by the judge.

And so that created a problem. We had, also, a problem, of judges, recognizing the oddity of the situation, who, kind of, would refuse to act.

And so we'd have to take action or give them a name or something. But it created some discomfort among some judges. Other judges were quite willing to make an appointment.

Regrettably, though, you have a potential for a situation where someone is appointed who's never worked at the Department of Justice, doesn't have the necessary background check, can't get the necessary clearances.

And so that's a serious problem, particularly when you're at war, during a time of war.

And so, for these reasons, quite frankly, I think the change that was made in the re-authorization of the Patriot Act makes sense. And I've said to the committee today, under oath, that we are fully committed to try to find presidentially appointed, Senate-confirmed, U.S. attorneys for every position.

But they're too important to let go unfilled for any period of time, quite frankly. And it's very, very important for me, even on an interim basis, the qualification, the judgment of the individuals serving in that position.

QUESTION:

Well, Mr. Attorney General, this was not just, sort of, an odd arrangement before the re-authorization of the Patriot Act. It raised very serious concerns with regard to the separation powers doctrine under our Constitution, did it not?

GONZALES:

It does in mind. Again, it would be like a federal judge telling you, I'm putting this person on your staff.

CORNYN:

The chief law enforcement officer for the district concerned. And the process that Senator Feinstein asked questions about that is now the norm, after the re-authorization of the Patriot Act -- that is something Congress itself embraced and passed by way of legislation and the president has signed into law.

Is that correct?

GONZALES:

I believe ti reflects the policy decision, the will of the Congress, yes.

CORNYN: