

Moschella, William

From: Sampson, Kyle
Sent: Wednesday, December 13, 2006 2:25 PM
To: Battle, Michael (USAE0)
Cc: McNulty, Paul J; Elston, Michael (ODAG); Moschella, William; Mercer, William W; Goodling, Monica; Sutton, Johnny K. (USATXW)
Subject: USA replacements

Mike, Bill Kelley called to report that they are weathering two main complaints: in making the calls, Battle (1) wasn't clear whether the USAs in question would be permitted to resign, or instead were being fired; and (2) was too abrupt. Bill seemed nonplussed by the complaints, but nevertheless passed them on to me.

Perhaps a second round of calls from you, Mike, to the relevant USAs is in order? Talkers would be something like:

- I wanted to be sure you understood that DOJ intends not to say anything about your leaving, but instead allow you to announce your resignation and the reasons for it;
- We want to work with you over the next six weeks to ensure a smooth transition; and
- It's in our interest for you to land on your feet and maintain our good relations with the Department -- how can I help?

Perhaps this is a bad idea? Thoughts?

Kyle Sampson
Chief of Staff
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2001 wk.
(202) 305-5289 cell
kyle.sampson@usdoj.gov

Moschella, William

From: McNulty, Paul J
Sent: Wednesday, December 13, 2006 6:42 PM
To: Sampson, Kyle; Battle, Michael (USAEO)
Cc: Elston, Michael (ODAG); Moschella, William; Mercer, William W; Goodling, Monica; Sutton, Johnny K. (USATXW)
Subject: RE: USA replacements

I generally think this is a good idea. The more communication, the better. They are probably slowly adjusting and some hand-holding may calm things down.

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Cc: McNulty, Paul J; Elston, Michael (ODAG); Moschella, William; Mercer, William W; Goodling, Monica; Sutton, Johnny K. (USATXW)
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kyle.sampson@usdoj.gov

Moschella, William

From: McNulty, Paul J
Sent: Thursday, December 14, 2006 1:03 PM
To: Sampson, Kyle; Battle, Michael (USAEO)
Cc: Elston, Michael (ODAG); Moschella, William; Mercer, William W; Goodling, Monica; Sutton, Johnny K. (USATXW)
Subject: RE: USA replacements

Just had a lengthy chat with Margaret and she is fine, although she has an issue on which I need to get back to her..

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Sent: Wednesday, December 13, 2006 2:25 PM
To: Battle, Michael (USAEO)
Cc: McNulty, Paul J; Elston, Michael (ODAG); Moschella, William; Mercer, William W; Goodling, Monica; Sutton, Johnny K. (USATXW)
Subject: USA replacements

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Perhaps this is a bad idea? Thoughts?

Kyle Sampson
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U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2001 wk.
(202) 305-5289 cell
kyle.sampson@usdoj.gov

Moschella, William

From: Goodling, Monica
Sent: Thursday, December 14, 2006 1:21 PM
To: Sampson, Kyle; McNulty, Paul J; Mercer, William W; Elston, Michael (ODAG); Moschella, William; Battle, Michael (USAEO)
Subject: FW: Happy Trails

FYI - Looks like McKay's ok.

From: McKay, John (USAWAW) [mailto:John.McKay@usdoj.gov]
Sent: Thursday, December 14, 2006 1:02 PM
To: USAEO-USAttorneysOnly
Subject: Happy Trails

Dear Friends,

This may NOT be the greatest job I've ever had.

It must be, however, a close second to my 6th Grade paper route, and only because I got a box of Butterfingers (Bonus Size) at Christmas from the newspaper's owner.

Still, I HAVE made the most friends, worked and played with wonderfully talented colleagues and had the opportunity to serve a great President in challenging times for our Country.

What a privilege this has been.

I will wrap up my service here in Seattle next month, and after leaving office will pursue new opportunities. As always, you are welcome to visit or call when you are in my neck of the woods.

All the best,

- JOHN

John McKay
United States Attorney
Seattle, Washington

DAG000000947

2/13/2007



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
December 14, 2006

UNITED STATES ATTORNEY JOHN MCKAY ANNOUNCES RESIGNATION
*Lead Reorganization and Refocusing of Federal Law Enforcement Resources
Following 9-11 Attacks*

United States Attorney John McKay announced today that he will resign as U.S. Attorney for the Western District of Washington effective January 26, 2007. After more than five years as the top federal law enforcement official in Western Washington, McKay will be returning to the private sector.

"I have been privileged to serve President Bush, and the people of Western Washington as United States Attorney. Our work in the United States Attorney's Office has increased the safety and security of our community, while carefully safeguarding civil rights," McKay said.

John McKay was nominated by President Bush to be United States Attorney for the Western District of Washington on September 19, 2001, just days after the attacks of September 11th. He was confirmed by the United States Senate on October 24, 2001, and began his tenure October 30, 2001. McKay's 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) an innovative computer network that allows state, local and federal law enforcement agencies to share information. The LInX system now connects 113 law enforcement agencies and has been instrumental in solving countless crimes, and is being copied by numerous jurisdictions around the country.

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.

Under McKay's leadership the United States Attorney's Office has significantly improved productivity, despite declining budgets. 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.

DAG00000948

During McKay's tenure, he personally prosecuted important cases, including the sentencing and appeals of Ahmed Ressam, the first terrorist captured on U.S. soil with an explosive device. McKay was a lead negotiator in the \$35 million settlement between the Department of Justice and the University of Washington over illegal billing by doctors at UW Physicians. At McKay's urging the FBI continues to make the investigation of the assassination of Assistant United States Attorney Tom Wales a top priority.

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 & Hempelmann.

Crediting the success of the United States Attorney's Office to his staff, McKay said, "I am privileged to work with so many outstanding lawyers, staff and agents in this district," and added he is looking forward to seeking new challenges after his departure in January.

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 interviews with John McKay or additional information please contact Emily Langlie, Public Affairs Officer for the United States Attorney's Office, at (206) 553-4110. A full biography of John McKay is available on the U.S. Attorney's website at:
http://www.usdoj.gov/usao/waw/about/mckay_bio.html

DAG000000949

RE: It has been a great ride...

Page 1 of 1

Moschella, William

From: Goodling, Monica
Sent: Friday, December 15, 2006 8:25 PM
To: Moschella, William
Subject: FW: It has been a great ride...

From: Cummins, Bud (USAARE) [mailto: Bud.Cummins@usdoj.gov]
Sent: Friday, December 15, 2006 12:57 PM
To: USAEO-USAttorneysOnly
Subject: RE: It has been a great ride...

Friends and Colleagues:

Next Wednesday, December 20, will be my final day as United States Attorney in the Eastern District of Arkansas. Simply put, this is the best job I have ever had. It may be the best job there is. I am very grateful that President Bush gave me this opportunity to serve. Perhaps the best aspect of this job has been getting to know each of you and establishing contacts all over the country with such special and talented people.

I could write a long essay about my feelings about this job and my experience here over the past five years, but I know you could write the same essay. Suffice to say that it has been an honor to serve in this way and at this time and with you.

My contact information can be found below. I have not completely committed to the "next endeavor." Jody and I have four kids and the youngest is only five, so I know that whatever I do next may need to last awhile, so I am being a little picky. Maybe greedy is a better word. When Alexander Hamilton left the Department of the Treasury, he supposedly said "Having taken care of the nation's finances, I go to take a little care of my own which need my care not a little." I am currently thinking along those lines as well.

In the meantime I will be working on some individual cases and other projects.

I hope that you would never hesitate to contact me if I can be of service to you at any time.

Best Regards,

Bud

DAG000000950



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

-MORE-

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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-

DAG00000952

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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DAG000000953

Moschella, William

From: Elston, Michael (ODAG)
Sent: Sunday, January 14, 2007 1:21 PM
To: Sampson, Kyle; Moschella, William; Goodling, Monica
Subject: Fw: Re:

FYI, Kevin's positive response to my request for a letter Tuesday. Announcement now expected on Friday.

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

From: Ryan, Kevin (USACAN) <Kevin.Ryan@usdoj.gov>
To: Elston, Michael (ODAG)
CC: Ryan, Kevin (USACAN)
Sent: Sat Jan 13 11:37:31 2007
Subject: RE: Re:

It does.

Thank you,

K

Sent from my GoodLink synchronized handheld (www.good.com)

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

From: Elston, Michael (ODAG)
Sent: Friday, January 12, 2007 09:13 PM Eastern Standard Time
To: Ryan, Kevin (USACAN)
Subject: Re:

Kevin:

After consultation with others (which I inadvertently forwarded to you as well -- sorry), we are fine with your proposal. However, we would like to have a copy of your resignation letter by fax on Tuesday. We will not begin the transition process until after your announcement, but it will allow us to put certain things in motion on Tuesday.

Let me know if that works for you.

Thanks,
Mike

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

From: Ryan, Kevin (USACAN) <Kevin.Ryan@usdoj.gov>
To: Elston, Michael (ODAG)
CC: Ryan, Kevin (USACAN)
Sent: Fri Jan 12 18:30:25 2007
Subject:

Mike,

Just checking in. We talked about the timing of my announcement and departure, and I am happy to abide by the time frame but would only ask if it is possible for me to make the announcement next Friday instead of this Monday since it is a federal holiday and I would like to get a few things in order before making the public announcement. The time frame for departure however is fine-- I see that the 15th is a Thursday, how about Friday the 16th?

Thanks,

Kevin

Moschella, William

From: Goodling, Monica
Sent: Tuesday, January 16, 2007 4:06 PM
To: Sampson, Kyle; Elston, Michael (ODAG); Moschella, William
Subject: Jeff Taylor called

Says that he is hearing from people in the office that Carol Lam is telling people she is resigning.

Moschella, William

From: Elston, Michael (ODAG)
Sent: Tuesday, January 16, 2007 4:10 PM
To: Goodling, Monica; Sampson, Kyle; Moschella, William
Subject: Re: Jeff Taylor called

Vy interesting.

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

From: Goodling, Monica
To: Sampson, Kyle; Elston, Michael (ODAG); Moschella, William
Sent: Tue Jan 16 16:05:48 2007
Subject: Jeff Taylor called

Says that he is hearing from people in the office that Carol Lam is telling people she is resigning.

Moschella, William

From: Roehrkasse, Brian
Sent: Tuesday, January 16, 2007 7:57 PM
To: Goodling, Monica; Sampson, Kyle; Elston, Michael (ODAG); Moschella, William
Subject: FW: Statement

Attachments: LAMPR.pdf

From: Smith, Kimberly A
Sent: Tuesday, January 16, 2007 7:47 PM
To: Roehrkasse, Brian; Scolinos, Tasia; Ablin, Erik
Subject: FW: Statement

FYI—this just in.

From: Hartman, Debra (USACAS) [<mailto:Debra.Hartman@usdoj.gov>]
Sent: Tuesday, January 16, 2007 7:45 PM
To: Smith, Kimberly A
Subject: Statement



LAMPR.pdf (45 KB)

NEWS RELEASE



OFFICE OF THE UNITED STATES ATTORNEY SOUTHERN DISTRICT OF CALIFORNIA

San Diego, California

*United States Attorney
Carol C. Lam*

For Immediate Release

NEWS RELEASE SUMMARY - January 16, 2007

United States Attorney Carol Chien-Hua Lam announced today that she will be leaving her position as the United States Attorney for the Southern District of California, which includes San Diego and Imperial Counties, effective February 15, 2007. "It has been both a great honor and a great privilege to have served the nation and the Southern District of California as United States Attorney for the past four and one-half years," said U.S. Attorney Lam. "The dedication shown by the men and women of the U.S. Attorney's Office can be seen every day in the important cases they prosecute, including cases relating to terrorism, immigration, narcotics, public corruption, and fraud."

"I thank the President for giving me the opportunity to serve as United States Attorney."

Lam, a graduate of Yale University and Stanford Law School, was sworn in as the United States Attorney on September 4, 2002, having previously served as a Superior Court judge in San Diego. Prior to her appointment to the bench, Ms. Lam was an Assistant United States Attorney in the San Diego office from 1986 to 2000, where she was Chief of the office's Major Frauds Section. Ms. Lam has extensive experience

DAG00000959

in the prosecution of health care fraud and white collar crime cases in San Diego. She served as the Chairperson on the San Diego Medical Fraud Task Force, as well as a member of the National Health Care Fraud Working Group. Ms. Lam began her legal career as a law clerk in the Department of Justice Appellate Tax Division in 1984. Later that year, she began an internship in San Diego with United States District Judge Earl B. Gilliam and later served as a law clerk to the Honorable Irving R. Kaufman, Judge of the U.S. Court of Appeals, Second Circuit, in New York. Ms. Lam also taught conversational English and American literature at the Jiao Tong University in Shanghai, China in 1982. During her tenure as United States Attorney, she served as a member of a number of the Attorney General's Advisory Committee's Subcommittees on Health Care Fraud, Controlled Substances, Terrorism/National Security, Border and Immigration, and White Collar/Fraud.

Adele Fasano, San Diego Director of Field Operations, U.S. Customs and Border Protection, said, "U.S. Customs and Border Protection has enjoyed a strong, collaborative relationship with the U.S. Attorney's Office to combat smuggling activity through the ports of entry. This focused effort has been particularly effective in the area of alien smuggling and has resulted in the aggressive prosecution of serious violators and organizations. Such efforts by the U.S. Attorney's Office have been an integral part of our enforcement program to combat cross-border smuggling."

Michael Unzueta, Special Agent in Charge, Immigration and Customs Enforcement (ICE) said, "There is no greater challenge than that of public service. Carol Lam is truly an example of a dedicated public servant and a law enforcement professional. We will miss her leadership and we wish her well in any future endeavor. I will personally miss her."

Naval Criminal Investigative Service (NCIS) Southwest Field Office Special Agent in Charge John Cooper said, "The departure of Ms. Lam will be a great loss, as our offices have consistently worked closely and successfully during her tenure. Ms. Lam is the consummate law enforcement executive who leads by example, continually demonstrating tremendous conviction, integrity, and the highest of professional standards. It has truly been an honor to work with her."

Alan Poleszak, Acting Special Agent in Charge, Drug Enforcement Administration, San Diego Field Division, stated, "Over the past four years DEA enjoyed a productive and proactive relationship with United States Attorney Carol Lam and her team of dedicated and talented prosecutors. The ongoing prosecution of the Javier Arellano Felix drug trafficking organization is both historic and noteworthy, adding to a legacy which includes aggressive regional methamphetamine enforcement and the prosecution of marijuana dispensaries. The United States Attorney is an integral part of the close-knit San Diego law enforcement community. As such, her commitment to federal law enforcement in this judicial district, county and city will be missed. DEA wishes her the very best."

Internal Revenue Service, Criminal Investigation, Special Agent in Charge Kenneth Hines stated, "It is a loss to the law enforcement community to lose such a respected and dedicated prosecutor that has served the citizens of San Diego County throughout her career. The Internal Revenue Service Criminal Investigation has worked well with her as a prosecutor and as the United States Attorney."

Chief William Lansdowne, San Diego Police Department, said, "Carol is one of the best U.S. Attorneys I have had the pleasure of working with. She is always available, very responsive and makes tough decisions quickly. I believe crime is down in our city because of her aggressiveness, especially with the gang challenges we experience. I am impressed with her recent handling of the case against the Arellano-Felix cartel members. Carol gets high marks from all of our assistant chiefs as well. I admire Carol for her assertiveness in going after elected officials who have broken the law. She certainly isn't shy when it comes to these types of cases and that is a quality we need in a U.S. Attorney."

United States Attorney Lam said, "During the past four years, we have obtained higher sentences for illegal aliens with serious criminal histories, and the violent crime rate has declined in San Diego. We have prosecuted serious cases involving public corruption, dismantled the leadership of large narcotics cartels and prison gangs, and protected the public fisc in civil litigation. I want to take this opportunity to thank the talented attorneys and staff of the U.S. Attorney's Office for serving the people of the Southern District of California so well."

Moschella, William

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

Moschella, William

From: Goodling, Monica
Sent: Thursday, January 25, 2007 8:07 PM
To: Sampson, Kyle; Elston, Michael (ODAG); Moschella, William; Battle, Michael (USAEO); Nowacki, John (USAEO); 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
Cell Number: 206-697-2053
E-mail: jmckay@seattleu.edu

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

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

DAG000000963

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

DAG000000964

Moschella, William

From: Clifton, Deborah J
Sent: Wednesday, January 31, 2007 9:23 AM
To: Benderson, Judith (USAEO); Nowacki, John (USAEO); Smith, David L. (USAEO); Voris, Natalie (USAEO); Beth Beers; Carol Keeley; Denyse Coates; Erin Sanford; Kristan Mack; Rene Morton Nevens; Theresa Spinola; Ficaretta, Teresa; Rubenstein, Steve R.; Alexander, Robert (USMS); Conway, Janice (USMS); Edgar, Eliza (USMS); Mayer, Diana (USMS); McNulty, John (USMS); Noory, John (USMS); Brown, Jason F.; Dudley, John A.; Flaherty, Connor; Jameson, Dana B; Kripp, Joseph W.; Newman, Yvette; Shoemaker, Sheldon R; Whelan, Colleen; Cummings, Holly (CIV); Gunn, Currie (SMO); Katsas, Gregory; Shaw, Aloma A; Lofton, Betty; Massie, Patricia; Opl, Legislation; Samuels, Julie
Cc: Sampson, Kyle; Moschella, William; Elston, Michael (ODAG); Bounds, Ryan W (OLP); Goodling, Monica; Caballero, Luis (ODAG); Davis, Valorie A; Jackson, Wykema C; Wilcox, Matrina (OLP); Scott-Finan, Nancy; Seidel, Rebecca; Blackwood, Kristine
Subject: DAG McNulty draft testimony for a 02/06/07 hearing re Preserving Prosecutorial Independence
Importance: High
Attachments: S214control.pdf; DRAFT Testimony -- US Attorneys Hearing.doc

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OLA, NO LATER THAN 3 pm 01/31/07.**



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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.

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Moschella, William

From: Moschella, William
Sent: Wednesday, January 31, 2007 4:28 PM
To: Henderson, Charles V
Subject: Fw: DAG McNulty draft testimony for a 02/06/07 hearing re Preserving Prosecutorial Independence

Importance: High

Attachments: S214control.pdf; DRAFT Testimony -- US Attorneys Hearing.doc

Please print

Sent from my BlackBerry Wireless Handheld

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

From: Clifton, Deborah J
To: Benderson, Judith (USAE0); Nowacki, John (USAE0); Smith, David L. (USAE0); Voris, Natalie (USAE0); Beth Beers <Elizabeth.Beers@ic.fbi.gov>; Carol Keeley <Carol.Keeley@ic.fbi.gov>; Denyse Coates <dcoates@leo.gov>; Erin Sanford <Erin.Sanford@ic.fbi.gov>; Kristan Mack <Kristan.Mack@ic.fbi.gov>; Rene Morton Nevens <Rene.Nevens@ic.fbi.gov>; Theresa Spinola <Theresa.Spinola@ic.fbi.gov>; Ficaretta, Teresa; Rubenstein, Steve R.; Alexander, Robert (USMS); Conway, Janice (USMS); Edgar, Eliza (USMS); Mayer, Diana (USMS); McNulty, John (USMS); Noory, John (USMS); Brown, Jason F.; Dudley, John A.; Flaherty, Connor; Jameson, Dana B; Kripp, Joseph W.; Newman, Yvette; Shoemaker, Sheldon R; Whelan, Colleen; Cummings, Holly (CIV); Gunn, Currie (SMO); Katsas, Gregory; Shaw, Aloma A; Lofton, Betty; Massie, Patricia; Opl, Legislation; Samuels, Julie CC: Sampson, Kyle; Moschella, William; Elston, Michael (ODAG); Bounds, Ryan W (OLP); Goodling, Monica; Caballero, Luis (ODAG); Davis, Valorie A; Jackson, Wykema C; Wilcox, Matriona (OLP); Scott-Finan, Nancy; Seidel, Rebecca; Blackwood, Kristine
Sent: Wed Jan 31 09:22:54 2007
Subject: DAG McNulty draft testimony for a 02/06/07 hearing re Preserving Prosecutorial Independence

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DRAFT Testimony -- US Attorney...

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<<DRAFT Testimony -- US Attorneys

Moschella, William

From: Elston, Michael (ODAG)
Sent: Thursday, February 01, 2007 3:52 PM
To: Hertling, Richard
Cc: Sampson, Kyle; Goodling, Monica; Moschella, William; McNulty, Paul J; Seidel, Rebecca
Subject: Bud Cummins

just called to let me know that Pryor's and Schumer's staff have called and asked him to testify on Tuesday. He declined, but wanted to know if we wanted him to testify -- would tell the truth about his circumstances and would also strongly support our view of S 214.

Thoughts?

Moschella, William

From: Moschella, William
Sent: Thursday, February 01, 2007 6:36 PM
To: Seidel, Rebecca
Cc: Scott-Finan, Nancy; Hertling, Richard; Tracci, Robert N; Elston, Michael (ODAG)
Subject: RE: SJC hearing on USA issue - Intel

Thanks. Elston's your man for that one.

I emailed Richard the other day and wanted to make sure we were getting two notebooks with:

1) all correspondence on this issue; 2) the major editorials on the subject; 3) all legislation introduced on this matter; and 4) any other info OLA deems pertinent.

From: Seidel, Rebecca
Sent: Thursday, February 01, 2007 6:12 PM
To: Elston, Michael (ODAG); Moschella, William; Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO)
Cc: Scott-Finan, Nancy; Hertling, Richard; Tracci, Robert N
Subject: SJC hearing on USA issue - Intel

Just spoke with Schumer's Chief counsel.

Other witnesses will be:

For the Dems:

Mary Jo White (you will recall she was NY USA under Clinton)

Laurie Levinson (former AUSA in Central D. of CA for many years, Bush and Clinton)

For the Rs:

Stuart Gerson

The DAG will have his own panel

Schumer staff asked for examples of problematic individuals that Judges have appointed since we have said this has been a problem in the past, we need to give examples.

P.s. Rob just received intel about an HJC hearing on the same subject -

Dems are planning a hearing on this subject before the Subcomm on Comm and Admin Law (which has oversight of U.S. Attnys) on Feb. 15.

No word about witnesses yet but certainly a senior DoJ person is likely to be requested.

Tracking:	Recipient	Read
	Seidel, Rebecca	Read: 2/1/2007 6:45 PM
	Scott-Finan, Nancy	Read: 2/1/2007 6:43 PM
	Hertling, Richard	Read: 2/1/2007 6:41 PM
	Tracci, Robert N	Read: 2/1/2007 6:42 PM
	Elston, Michael (ODAG)	Read: 2/5/2007 10:34 PM

Moschella, William

From: Seidel, Rebecca
Sent: Thursday, February 01, 2007 6:47 PM
To: Moschella, William
Cc: Scott-Finan, Nancy; Hertling, Richard; Tracci, Robert N; Elston, Michael (ODAG)
Subject: RE: SJC hearing on USA issue - Intel

Elston was in my office earlier this afternoon and Nancy showed him the notebook she already has ready (has most of the info in it already) and it will be ready with 2 copies by 2pm tomorrow afternoon is our goal. We are pressing OMB to clear both the testimony and the views letter by then as well so they can be inserted in the binder too.

From: Moschella, William
Sent: Thursday, February 01, 2007 6:36 PM
To: Seidel, Rebecca
Cc: Scott-Finan, Nancy; Hertling, Richard; Tracci, Robert N; Elston, Michael (ODAG)
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From: Scott-Finan, Nancy
Sent: Thursday, February 01, 2007 6:46 PM
To: Moschella, William; Seidel, Rebecca
Cc: Hertling, Richard; Tracci, Robert N; Elston, Michael (ODAG)
Subject: RE: SJC hearing on USA issue - Intel

We have 8 books in process with
A placeholder for the testimony
A placeholder for the views letter on S. 214
S. 214
The correspondence with Feinstein/Leahy, Conyers and Pryor
The relevant parts of the DOJ oversight transcript from 1/18/07
The Feinstein statement floor statement on the issue
Editorials
The Feinstein correspondence re USA Carol Lam

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Sent: Thursday, February 01, 2007 6:53 PM
To: Scott-Finan, Nancy; Seidel, Rebecca
Cc: Hertling, Richard; Tracci, Robert N; Elston, Michael (ODAG)
Subject: RE: SJC hearing on USA issue - Intel

Excellent. The sooner the DAG can get one the better.

From: Scott-Finan, Nancy
Sent: Thursday, February 01, 2007 6:46 PM
To: Moschella, William; Seidel, Rebecca
Cc: Hertling, Richard; Tracci, Robert N; Elston, Michael (ODAG)
Subject: RE: SJC hearing on USA issue - Intel

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Tracking:	Recipient	Read
	Scott-Finan, Nancy	Read: 2/1/2007 8:05 PM
	Seidel, Rebecca	Read: 2/1/2007 7:04 PM
	Hertling, Richard	Read: 2/1/2007 6:53 PM
	Tracci, Robert N	Read: 2/1/2007 6:54 PM
	Elston, Michael (ODAG)	Read: 2/5/2007 10:35 PM

Paul J. McNulty

**Deputy Attorney General
U.S. Department of Justice**

Paul J. McNulty was sworn in as Deputy Attorney General of the United States on March 17, 2006. Prior to his confirmation by the Senate, Mr. McNulty had served as Acting Deputy Attorney General since November 1, 2005.

Mr. McNulty has spent nearly his entire career in public service, with more than two decades of experience in federal and state government. From September 14, 2001, to March 17, 2006, Mr. McNulty served as the United States Attorney for the Eastern District of Virginia. Under Mr. McNulty's leadership, the U.S. Attorney's Office in Eastern Virginia grew more than 20 percent, and he made the prosecution of terrorism, gun violence, drug trafficking, and corporate fraud his top priorities and successfully prosecuted many of our nation's highest profile cases in the War on Terror. He also launched initiatives against gangs, cybercrime and procurement fraud.

Before becoming U.S. Attorney, Mr. McNulty directed President Bush's transition team for the Department of Justice and then served as Principal Associate Deputy Attorney General. In the prior Bush Administration, Mr. McNulty was the Justice Department's director of policy and its chief spokesman.

Mr. McNulty has over 12 years of experience in the United States Congress. He was Chief Counsel and Director of Legislative Operations for the Majority Leader of the U.S. House of Representatives. He was also Chief Counsel to the House Subcommittee on Crime where he served for eight years. During those years he was a principal draftsman of many anti-terrorism, drug control, firearms and anti-fraud statutes.

Mr. McNulty has played a significant role in shaping criminal justice policy in the Commonwealth of Virginia. He served then Governor George Allen as a primary architect of the "Parole Abolition and Sentencing Reform" initiative in 1994, and he served on the board of the Department of Criminal Justice Services and the Advisory Committee of the Office of Juvenile Justice and Delinquency Prevention.

Mr. McNulty grew up in Pittsburgh, Pennsylvania. He married his college sweetheart 26 years ago, and they have four children.

###

January 2007

DAG00000980



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

DAG000000981

**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 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 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, obscenity, 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.

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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

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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.

Moschella, William

From: USDOJ- Office of Public Affairs
Sent: Tuesday, February 06, 2007 3:00 PM
To: USDOJ- Office of Public Affairs
Subject: WRITTEN STATEMENT OF DEPUTY ATTORNEY GENERAL PAUL J. MCNULTY TO THE SENATE JUDICIARY COMMITTEE FOR HEARING ON APPOINTMENTS AND RESIGNATIONS OF U.S. ATTORNEYS

Attachments: Picture (Metafile); Presentations 12 Drawing



Department of Justice

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**WRITTEN STATEMENT OF DEPUTY ATTORNEY GENERAL PAUL J. MCNULTY TO THE
SENATE
JUDICIARY COMMITTEE FOR HEARING ON APPOINTMENTS AND RESIGNATIONS OF U.S.
ATTORNEYS**

WASHINGTON, D.C.

Chairman Leahy, Senator Specter, 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 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 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, obscenity, 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.

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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.

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Moschella, William

From: Scott-Finan, Nancy
Sent: Wednesday, February 07, 2007 10:32 AM
To: Sampson, Kyle; Goodling, Monica; Elston, Michael (ODAG); Moschella, William; Hertling, Richard; Seidel, Rebecca; Battle, Michael (USAEO); Nowacki, John (USAEO); Bounds, Ryan W (OLP); Kirsch, Thomas; Scolinos, Tasia; Mercer, William W; Margolis, David; Burton, Faith
Subject: FW: Transcript of Paul McNulty's hearing on 02-06-07 re US Attorneys
Attachments: 02-06-07 McNulty Transcript re US Attorneys.doc



02-06-07 McNulty
Transcript re...

HEARING OF THE SENATE JUDICIARY COMMITTEE SUBJECT: PRESERVING PROSECUTORIAL INDEPENDENCE: IS THE DEPARTMENT OF JUSTICE POLITICIZING THE HIRING AND FIRING OF U.S. ATTORNEYS? CHAIRED BY: SENATOR CHARLES SCHUMER (D-NY) WITNESSES: SENATOR MARK PRYOR (D-AR); DEPUTY ATTORNEY GENERAL PAUL J. MCNULTY; MARY JO WHITE, ATTORNEY; LAURIE L. LEVENSON, PROFESSOR OF LAW, LOYOLA LAW SCHOOL, LOS ANGELES, CA; STUART M. GERSON, ATTORNEY LOCATION: ROOM 226 DIRKSEN SENATE OFFICE BUILDING, WASHINGTON, D.C. TIME: 9:30 A.M. EST DATE: TUESDAY, FEBRUARY 6, 2007

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SEN. SCHUMER: (Sounds gavel.) Good morning and welcome to the first hearing of our Administrative Law and Court Subcommittee. And we --

STAFF: (Off mike.) SEN. SCHUMER: -- oh. And this is a full-committee hearing, I am just informed -- power has already gone to his head. (Laughter.) Reminds you of that old Woody Allen movie, remember? Anyway, we'll save that for another time.

Anyway, I will give an opening statement, then Senator Specter will, and any others who wish to give opening statements are welcome to do so.

Well, we are holding this hearing because many members of this committee, including Chairman Leahy -- who had hoped to be here, but is speaking on the floor at this time -- have become increasingly concerned about the administration of justice and the rule of law in this country. I have observed with increasing alarm how politicized the Department of Justice has become. I have watched with growing worry as the department has increasingly based hiring on political affiliation, ignored the recommendations of career attorneys, focused on the promotion of political agendas and failed to retain legions of talented career attorneys.

I have sat on this committee for eight years, and before that on the House Judiciary Committee for 16. During those combined 24 years of oversight over the Department of Justice, through seven presidential terms -- including three Republican presidents -- I have never seen the department more politicized and pushed further away from its mission as an apolitical enforcer of the rule of law. And now it appears even the hiring and firing of our top federal prosecutors has become infused and corrupted with political rather than prudent considerations -- or at least there is a very strong appearance that this is so.

For six years there has been little or no oversight of the Department of Justice on matters like these. Those days are now over. There are many questions surrounding the firing of a slew of U.S. attorneys. I am committed to getting to the bottom of those questions. If we do not get the documentary information that we seek, I will consider moving to subpoena that material, including performance evaluations and other documents. If we do not get

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forthright answers to our questions, I will consider moving to subpoena one or more of the fired U.S. attorneys so that the record is clear.

So with that in mind, let me turn to the issue at the center of today's hearing. Once appointed, U.S. attorneys, perhaps more than any other public servant, must be above politics and beyond reproach. They must be seen to enforce the rule of law without fear or favor. They have enormous discretionary power. And any doubt as to their impartiality and their duty to enforce the rule of law puts seeds of poison in our democracy.

When politics unduly infects the appointment and removal of U.S. attorneys, what happens? Cases suffer. Confidence plummets. And corruption has a chance to take root. And what has happened here over the last seven weeks is nothing short of breathtaking. Less than two months ago, seven or more U.S. attorneys reportedly received an unwelcome Christmas present. As The Washington Post reports, those top federal prosecutors were called and terminated on the same day. The Attorney General and others have sought to deflect criticism by suggesting that these officials all had it coming because of poor performance; that U.S. attorneys are routinely removed from office; and that this was only business as usual.

But what happened here doesn't sound like an orderly and natural replacement of underperforming prosecutors; it sounds more like a purge. What happened here doesn't sound like business as usual; it appears more reminiscent of a different sort of Saturday night massacre.

Here's what the record shows: Several U.S. attorneys were apparently fired with no real explanation; several were seemingly removed merely to make way for political up-and-comers; one was fired in the midst of a successful and continuing investigation of lawmakers; another was replaced with a pure partisan of limited prosecutorial experience, without Senate confirmation; and all of this, coincidentally, followed a legal change -- slipped into the Patriot Act in the dead of night -- which for first time in our history gave the Attorney General the power to make indefinite interim appointments and to bypass the Senate altogether.

We have heard from prominent attorneys -- including many Republicans -- who confirm that these actions are unprecedented, unnerving, and unnecessary. Let me quote a few. The former San Diego U.S. Attorney, Peter Nunez, who served under Reagan said, quote, "This is like nothing I've ever seen before in 35-plus years," unquote. He went on to say that while the president has the authority to fire a U.S. attorney for any reason, it is, quote, "extremely rare unless there is an allegation of misconduct."

Another former U.S. attorney and head of the National Association of Former United States Attorneys said members of his group were in "shock" over the purge, which, quote, "goes against all tradition."

The Attorney General, for his part, has flatly denied that politics has played any part in the firings. At a Judiciary Committee hearing last month, he testified that, quote, "I would never, ever make a change in a U.S. attorney position for political reasons." Unquote.

And yet, the recent purge of top federal prosecutors reeks of politics. An honest look at the record reveals that something is rotten in Denmark: In Nevada, where U.S. Attorney Daniel Bogden was reportedly fired, a Republican source told the press that, quote, "the decision to remove U.S. attorneys was

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part of a plan to give somebody else that experience" -- this is a quote -- "to build up the back bench of Republicans by giving them high-profile jobs," unquote. That was in The Las Vegas Review-Journal on January 18th. In New Mexico, where U.S. Attorney David Iglesias was reportedly fired, he has publicly stated that when he asked why he was asked to resign, he, quote, "wasn't given any answers," unquote.

In San Diego, where U.S. Attorney Carol Lam was reportedly fired, the top-ranking FBI official in San Diego said, quote, "I guarantee politics is involved," unquote. And the former U.S. attorney under President Reagan said, quote, "It really is outrageous," unquote. Ms. Lam, of course, was in the midst of a sweeping public corruption investigation of "Duke" Cunningham and his co-conspirators, and her office has outstanding subpoenas to three House Committees. Was her firing a political retaliation? There's no way to know, but the Department of Justice should go out of its way to avoid even the appearance of impropriety. That is not too much to ask, and as I've said, the appearance here -- given all the circumstances -- is plain awful.

Finally, in Arkansas, where U.S. Attorney Bud Cummins was forced out, there is not a scintilla of evidence that he had any blemish on his record. In fact, he was well-respected on both sides of the aisle, and was in the middle of a number of important investigations. His sin -- occupying a high-profile position that was being eyed by an ambitious acolyte of Karl Rove, who had minimal federal prosecution experience, but was highly skilled at opposition research and partisan attacks for the Republican National Committee.

Among other things, I look forward to hearing the Deputy Attorney General explain to us this morning how and why a well-performing prosecutor in Arkansas was axed in favor of such a partisan warrior. What strings were pulled? What influence was brought to bear?

In June of 2006, when Karl Rove was himself still being investigated by a U.S. attorney, was he brazenly leading the charge to oust a sitting U.S. attorney and install his own former aide? We don't know, but maybe we can find out.

Now, I ask, is this really how we should be replacing U.S. Attorneys in the middle of a presidential term? No one doubts the president has the legal authority to do it, but can this build confidence in the Justice Department? Can this build confidence in the administration of justice?

I yield to my colleague from Pennsylvania.

SEN. ARLEN SPECTER (R-PA): I concur with Senator Schumer that the prosecuting attorney is obligated to function in a nonpolitical way. The prosecuting attorney is a quasi-judicial official. He's part judge and part advocate. And have the power of investigation and indictment and prosecution in the criminal courts is a tremendous power. And I know it very well, because I was the district attorney of a big tough city for eight years and an assistant district attorney for four years before that. And the phrase in Philadelphia, perhaps generally, was that the district attorney had the keys to the jail in his pocket.

Well, if he had the keys to the jail, that's a lot of power.

But let us focus on the facts as opposed to generalizations. And I and my colleagues on the Republican side of the aisle will cooperate in finding the

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facts if the facts are present, but let's be cautious about the generalizations, which we heard a great many of in the chairman's opening remarks.

If the U.S. attorney was fired in retaliation for what was done on the prosecution of former Congressman Cunningham, that's wrong. And that's wrong even though the president has the power to terminate U.S. attorneys. But the U.S. attorneys can't function if they're going to be afraid of the consequences of a vigorous prosecution.

When Senator Schumer says that the provision was inserted into the Patriot Act in the dead of night, he's wrong. That provision was in the conference report, which was available for examination for some three months.

The first I found out about the change in the Patriot Act occurred a few weeks ago when Senator Feinstein approached me on the floor and made a comment about two U.S. attorneys who were replaced under the authority of the change in law in the Patriot Act which altered the way U.S. attorneys are replaced.

Prior to the Patriot Act, U.S. attorneys were replaced by the attorney general for 120 days, and then appointments by the court or the first assistant succeeded to the position of U.S. attorney. And the Patriot Act gave broader powers to the attorney general to appoint replacement U.S. attorneys.

I then contacted my very able chief counsel, Michael O'Neill, to find out exactly what had happened. And Mr. O'Neill advised me that the requested change had come from the Department of Justice, that it had been handled by Brett Tolman, who is now the U.S. attorney for Utah, and that the change had been requested by the Department of Justice because there had been difficulty with the replacement of a U.S. attorney in South Dakota, where the court made a replacement which was not in accordance with the statute; hadn't been a prior federal employee and did not qualify.

And there was also concern because, in a number of districts, the courts had questioned the propriety of their appointing power because of separation of powers. And as Mr. Tolman explained it to Mr. O'Neill, those were the reasons, and the provision was added to the Patriot Act, and as I say, was open for public inspection for more than three months while the conference report was not acted on.

If you'll recall, Senator Schumer came to the floor on December 16th and said he had been disposed to vote for the Patriot Act, but had changed his mind when The New York Times disclosed the secret wiretap program, electronic surveillance. May the record show that Senator Schumer is nodding in the affirmative. There's something we can agree on. In fact, we agree sometimes in addition.

Well, the conference report wasn't acted on for months, and at that time, this provision was subject to review. Now, I read in the newspaper that the chairman of the Judiciary Committee, Arlen Specter, "slipped it in." And I take umbrage and offense to that. I did not slip it in and I do not slip things in. That is not my practice. If there is some item which I have any idea is controversial, I tell everybody about it. That's what I do. So I found it offensive to have the report of my slipping it in. That's how it got into the bill.

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Now, I've talked about the matter with Senator Feinstein, and I do agree that we ought to change it back to where it was before. She and I, I think, will be able to agree on the executive session on Thursday.

And let's be candid about it. The atmosphere in Washington, D.C. is one of high-level suspicion. There's a lot of suspicion about the executive branch because of what's happened with signing statements, because of what's happened with the surveillance program.

And there is no doubt, because it has been explicitly articulated -- maybe "articulate" is a bad word these days -- expressly stated by ranking Department of Justice officials that they want to increase -- executive branch officials -- they want to increase executive power.

So we live in an atmosphere of high-level suspicion. And I want to see this inquiry pursued on the items that Senator Schumer has mentioned. I don't want to see a hearing and then go on to other business. I want to see it pursued in each one of these cases and see what actually went on, because there are very serious accusations that are made. And if they're true, there ought to be very, very substantial action taken in our oversight function. But if they're false, then the accused ought to be exonerated.

But the purpose of the hearing, which can be accomplished, I think, in short order, is to change the Patriot Act so that this item is not possible for abuse. And in that, I concur with Senator Feinstein and Senator Leahy and Senator Schumer. And a pursuit of political use of the department is something that I also will cooperate in eliminating if, in fact, it is true.

Thank you, Mr. Chairman. SEN. SCHUMER: Thank you, Senator Specter.

Senator Feingold.

SEN. RUSSELL FEINGOLD (D-WI): Thank you, Mr. Chairman, for holding the hearing.

I have to chair a subcommittee, the Africa Subcommittee of the Foreign Relations Committee, at 10:00. And I was hoping to give an opening statement. But I'm very pleased not only with your statement but, frankly, with Senator Specter's statement, because it sounds to me like there's going to be a bipartisan effort to fix this.

I also have strong feelings about what was done here, but it sounds like there's a genuine desire to resolve this in that spirit. And in light of the fact I have to go anyway, Mr. Chairman, I'm just going to ask that my statement be put in the record.

SEN. SCHUMER: Without objection.

Senator Hatch.

SEN. ORRIN HATCH (R-UT): Thank you, Mr. Chairman. I appreciate it.

I've appreciated both of your statements, too. I don't agree fully with either statement. First of all, the U.S. attorneys serve at the pleasure of the president, whoever the president may be, whether it's a Democrat or a Republican. You know, the Department of Justice has repeatedly and adamantly

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stated that U.S. attorneys are never removed or encouraged to resign in an effort to retaliate against them or interfere with investigations.

Now, this comes from a department whose mission is to enforce the law and defend the interests of the United States. Now, are we supposed to believe and trust their efforts when it comes to outstanding criminal cases and investigations which have made our country a safer place but then claim that they are lying when they tell us about their commitment to appoint proper U.S. attorneys? I personally believe that type of insinuation is completely reckless.

Now, if, in fact, there has been untoward political effort here, then I'd want to find it out just like Senators Schumer and Specter have indicated here. As has been said many times, U.S. attorneys serve at the pleasure of the president. I remember when President Clinton became president, he dismissed 93 U.S. attorneys, if I recall it correctly, in one day. That was very upsetting to some of my colleagues on our side. But he had a right to do it.

And frankly, I don't think anybody should have said he did it purely for political reasons, although I don't think you can ever remove all politics from actions that the president takes. The president can remove them for any reason or no reason whatsoever. That's the law, and it's very clear.

U.S. Code says that, quote, "Each United States attorney is subject to removal by the president," unquote. It doesn't say that the president has to give explanations, it doesn't say that the president has to get permission from Congress and it doesn't say that the president needs to grant media interviews giving full analysis of his personal decisions. Perhaps critics should seek to amend the federal court and require these types of restrictions on the president's authority, but I would be against that.

Finally, I want to point out that the legislation that we are talking about applies to whatever political party is in office. The law does not say that George Bush is the only president who can remove U.S. attorneys. And the law does not say that attorneys general appointed by a Republican president have interim appointment authority. The statutes apply to whoever is in office, no matter what political party.

Now, I remember, with regard to interim U.S. attorneys, that an interim appointed during the Clinton administration served for eight years in Puerto Rico and was not removed. Now, you know, I, for one, do not want judges appointing U.S. attorneys before whom they have to appear. That's why we have the executive branch of government.

Now, I would be interested if there is any evidence that impropriety has occurred or that politics has caused the removal of otherwise decent, honorable people. And I'm talking about pure politics, because let's face it, whoever's president certainly is going to be -- at least so far -- either a Democrat or Republican in these later years of our republic. So, these are important issues that are being raised here. But as I understand, we're talking about seven to nine U.S. attorneys, some of whom -- we'll just have to see what people have to say about it, but I'm going to be very interested in the comments of everybody here today. It should be a very, very interesting hearing.

But I would caution people to reserve your judgment. If there is an untoward impropriety here, my gosh, we should come down very hard against it.

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But this is not abnormal for presidents to remove U.S. attorneys and replace them with interims. And there are all kinds of problems, even with that system as it has worked, because sometimes we in the Judiciary Committee don't move the confirmations like we should as well, either. So, there are lots of things that you could find faults with, but let's be very, very careful before we start dumping this in the hands of federal judges, most of whom I really admire, regardless of their prior political beliefs.

Thank you, Mr. Chairman.

SEN. SCHUMER: Thank you, Senator Hatch.

And Senator Cardin had to leave.

Senator Whitehouse, do you want to make an opening statement? No? Okay, thank you for coming,

And our first witness --- and I know he has a tight schedule, I appreciate him being here at this time -- is our hardworking friend from Arkansas, Senator Mark Pryor.

Senator Pryor.

SEN. MARK PRYOR (D-AR): Mr. Chairman, thank you.

And I also want to thank all the members of the committee.

I've come here today to talk about events that occurred regarding the appointment of the interim U.S. attorney for the eastern district of Arkansas which I believe -- SEN. SCHUMER: Senator, if you could just pull the mike a little closer.

SEN. PRYOR: -- raised serious concerns over the administration's encroachment on the Senate's constitutional responsibilities. I'm not only concerned about this matter as a member of the Senate but as a former practicing lawyer in Arkansas and former attorney general in my state. I know the Arkansas bar well, and all appointments that impact the legal and judicial arena in Arkansas are especially important to me.

Moreover, due to the events of the past Congress, I've given much thought as to what my role as a senator should be regarding executive and judicial nominations. I believe the confirmation process is as serious as anything that we do in government. You know my record. I've supported almost all of the president's nominations. On occasion, I have felt they were unfairly criticized for political purposes, for when I consider a nominee, I use a three-part test. First, is the nominee qualified?; second, does the nominee possess the proper temperament?; third, will the nominee be fair and impartial -- in other words, can they check their political views at the door?

Executive branch nominees are different from judicial nominees in many ways, but U.S. attorneys should be held to a high standard of independence. In other words, they're not inferior officers as defined by the U.S. Supreme Court. All U.S. attorneys must pursue justice. Wherever a case takes them, they should protect our republic by seeing that justice is done. Politics has no place in the pursuit of justice. This was my motivation in helping form the Gang of 14. I've tried very hard to be objective in my dealings with the president's nominations, including his nominations to the U.S. Supreme Court. I want the

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