FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

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

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

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

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

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

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

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

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

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

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

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

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

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

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

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

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

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

- **District of Alaska** – Nelson Cohen

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

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

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

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

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

MARK PRYOR
ARKANSAS

COMMITTEES:
COMMERCE, SCIENCE AND TRANSPORTATION
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
SELECT COMMITTEE ON ETHICS
SMALL BUSINESS AND ENTREPRENEURSHIP

United States Senate

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January 11, 2007

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

Dear Attorney General Gonzales:

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

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

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

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

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

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

Sincerely,

Mark Pryor

Mark Pryor

Sent via facsimile

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 22, 2007

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

The Honorable Howard L. Berman
Member
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Conyers and Representative Berman:

This is in response to your letter, dated January 17, 2007, regarding Carol Lam's resignation as United States Attorney for the Southern District of California.

Your letter's suggestion that Ms. Lam was asked or encouraged to resign in an effort to disrupt an ongoing public corruption investigation is categorically untrue. United States Attorneys never are removed, or asked or encouraged to resign, in an effort to disrupt any particular investigation, criminal prosecution or civil case – including any public corruption case. Any suggestion to the contrary simply is irresponsible. Indeed, the Attorney General has directed United States Attorneys to prosecute public corruption vigorously. A fair examination of the Department of Justice's performance in this area clearly demonstrates the Department's commitment to protect the integrity of government by rooting out public corruption – whenever it is found and whoever is implicated.

Moreover, the removal of a United States Attorney to impede an ongoing public corruption investigation would be entirely ineffective. Public corruption investigations typically involve many agents and prosecutors. The departure of the United States Attorney, for whatever reason, does not stop or even slow the investigation. Given the occasional turnover of United States Attorneys, career investigators and prosecutors exercise direct responsibility for nearly all such cases.

United States Attorneys serve at the pleasure of the President. Like other high-ranking Executive Branch officials, they may be removed for any reason or no reason. The Attorney General and the Deputy Attorney General are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their

offices effectively. That on occasion in an organization as large as the Justice Department some United States Attorneys resign – for whatever reason – should come as no surprise.

With regard to the upcoming United States Attorney vacancy in the Southern District of California, the Department will select a person to serve temporarily as United States Attorney until a Senate-confirmed United States Attorney is appointed, and the Administration will consult with home-State Senators to select a person to be nominated, confirmed and appointed. Please be assured that both persons will be experienced lawyers who are committed to the Department's priorities – including the vigorous prosecution of public corruption.

Sincerely,

Richard A. Hertling

Richard A. Hertling
Acting Assistant Attorney General

cc: The Honorable Lamar S. Smith
Ranking Minority Member

112589
DA

Congress of the United States
Washington, DC 20515

January 17, 2007

The Honorable Alberto Gonzales
U.S. Attorney General
Robert F. Kennedy Building
Washington, DC 20530

Dear Mr. Attorney General:

In the last week, we learned that the Administration has asked for the resignation of Carol Lam, United States Attorney for the Southern District of California. Ms. Lam announced yesterday that she has submitted her resignation effective February 15th.

Prior to her appointment as U.S. Attorney, Ms. Lam was a San Diego Superior Court Judge and a career prosecutor. Since her appointment as U.S. Attorney in 2002, we have heard no suggestion that she was either unqualified for the position or that she was guilty of misconduct in her office.

To the contrary, since word of the Administration's effort to remove Ms. Lam surfaced, reports in the San Diego Union-Tribune quote other prosecutors and defense lawyers as being "universally shocked" by her impending dismissal. San Diego's City Attorney called Lam, "the most outstanding U.S. Attorney we've ever had." The head of the FBI office in San Diego called Lam "crucial to the success of multiple ongoing investigations" adding that she "has an excellent reputation and has done an excellent job."

Given this praise and concern for the potential ramifications of her sudden departure, we are perplexed as to why you have chosen to remove Ms. Lam from the U.S. Attorneys' office in San Diego now. The one reason we've heard suggested for her dismissal was a decrease in immigration-related prosecutions, yet in the months of May, June and July of 2006, the U.S. Attorneys' Office in the Southern District of California was one of the top three USAOs in immigration prosecutions, hardly a record that would lead to removal.

At the moment, Ms. Lam is leading an office in the middle of a high-profile public corruption investigation. While the work on this investigation led to the conviction of former-Rep. Cunningham, a number of other corruption probes have grown out of the case and are still pending. We do not doubt that removing Ms. Lam from the U.S. Attorneys' office in San Diego now will disrupt this investigation.

Forcing Ms. Lam's resignation now leaves the appearance that this growing public corruption probe may be part of the Administration's motivation in removing her. If this is untrue, it is vitally important that this perception be corrected, and we ask you to share with us the basis of your request for her resignation.

Sincerely,

John Conyers, Jr.
Chairman
House Committee on the Judiciary

Howard L. Berman
Member
House Committee on the Judiciary

CONGRESSMAN
HOWARD L. BERMAN

2221 Rayburn House Office Building
Washington, D.C. 20515
202-225-4695
202-225-3196 (fax)

(Facsimile Transmission Cover Sheet)

Date 1/17/07
Fax# 202-514-4507

To Attorney General Alberto Gonzales

Number of pages (including cover sheet): 2

From:

☒ Howard L. Berman Member	☐ Gene Smith Chief of Staff	☐ Deanne Samuels Executive Secretary	☐ Doug Campbell Legis. Director
☐ Bari Schwartz Counsel	☐ Julia Massimino Legis. Counsel	☐ Shanna Winters Legis. Counsel	☐ Stephanie Williamson Legis. Assistant
☐ Jami Crespo Legis. Assistant	☐ Cong. Fellow	☐ Cong .Fellow	☐ Intern

Message:

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 16, 2007

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

The Honorable Dianne Feinstein
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Senator Feinstein:

This is in response to your letter, dated January 9, 2007, regarding the Administration's appointment of United States Attorneys.

United States Attorneys are at the forefront of the Department of Justice's efforts. They are leading the charge to protect America from acts of terrorism; reduce violent crime, including gun crime and gang crime; enforce immigration laws; fight illegal drugs, especially methamphetamine; combat crimes that endanger children and families like child pornography, obscenity, and human trafficking; and ensure the integrity of the marketplace and of government by prosecuting corporate fraud and public corruption. The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the United States Attorneys and ensuring that United States Attorneys are leading their offices effectively.

United States Attorneys serve at the pleasure of the President. Thus, like other high-ranking Executive Branch officials, they may be removed for any reason or no reason. That on occasion in an organization as large as the Justice Department some United States Attorneys are removed, or are asked or encouraged to resign, should come as no surprise. Discussions with United States Attorneys regarding their continued service generally are non-public, out of respect for those United States Attorneys; indeed, a public debate about the United States Attorneys that may have been asked or encouraged to resign only disserves their interests. In any event, please be assured that United States Attorneys never are 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. United States Attorneys are law

enforcement officials and officers of the court who must carry out their responsibilities with strict impartiality.

The Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. When a vacancy in the office of United States Attorney occurs (because of removal, resignation or for any other reason), the Administration first must determine who will serve temporarily as United States Attorney until a new Senate-confirmed United States Attorney is appointed. Because of the importance of continuity in the office, the Administration often looks to the First Assistant United States Attorney or another senior manager in the office to serve as acting or interim United States Attorney. Where neither the First Assistant United States Attorney nor another senior manager in the office is able or willing to serve as acting or interim United States Attorney, or where their service would not be appropriate in the circumstances, the Administration may look to other Department employees to serve as interim United States Attorney. At no time, however, has the Administration sought to avoid the Senate confirmation process by (1) appointing an interim United States Attorney and then (2) refusing to move forward, in consultation with home-State Senators, on the selection, nomination and (hopefully) confirmation of a new United States Attorney. The appointment of United States Attorneys by and with the advice and consent of the Senate unquestionably is the appointment method preferred by the Senate and the one that the Administration follows.

Last year's amendment to the Attorney General's appointment authority was necessary and appropriate. Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in numerous, recurring problems. For example, some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments. In contrast, other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances. Because the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

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

every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or the Administration is working, in consultation with home-State Senators, to select candidates for nomination. Such nominations are, of course, subject to Senate confirmation.

Sincerely,

Richard A. Hertling
Acting Assistant Attorney General

Enclosure

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

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

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

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

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, there have been 11 new U.S. Attorney vacancies that have arisen. For five of the 11 vacancies, the First Assistant United States Attorney (FAUSA) in the district was selected to lead the office in an acting capacity under the Vacancies Reform Act, *see* 5 U.S.C. § 3345(a)(1) (first assistant may serve in acting capacity for 210 days unless a nomination is made). Those districts are:

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

- **Northern District of Iowa** – FAUSA Judi Whetstine is acting United States Attorney (Whetstine is not a candidate for nomination and is retiring this month, necessitating an Attorney General appointment; nomination is not yet ready);
- **Eastern District of North Carolina** – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting United States Attorney (Valdrini was not a candidate for presidential nomination; another individual was nominated and confirmed).

For six of the 11 vacancies, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) ("Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant"). Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned (Griffin has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division (Taylor has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court (Stecher has expressed interest in presidential nomination; nomination is not yet ready);
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned (Morford has expressed interest in presidential nomination; nomination is not yet ready); and
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned (Schlozman expressed interest in presidential appointment; someone else was nominated).

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

The Attorney General has exercised the authority to appoint interim United States Attorneys a total of nine times since the authority was amended in March 2006. In two of the nine cases, the FAUSA had been serving as acting United States Attorney under the Vacancies Reform Act (VRA), but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed that same

FAUSA to serve as interim United States Attorney. These districts include:

- **District of Puerto Rico** – Rosa Rodriguez-Velez (Rodriguez-Velez has been nominated); and
- **Eastern District of Tennessee** – Russ Dedrick (Dedrick has expressed interest in presidential nomination; nomination is not yet ready).

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

- **District of Alaska** – Nelson Cohen (Cohen is not a candidate for presidential nomination; nomination is not yet ready).

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

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned (Griffin has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division (Taylor has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court (Stecher has expressed interest in presidential nomination; nomination is not yet ready);
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned (Morford has expressed interest in presidential nomination; nomination is not yet ready); and
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned (Schlozman expressed interest in presidential appointment; someone else was nominated).

1/19/16
SM

United States Senate

WASHINGTON, DC 20510

January 9, 2007

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

Dear Attorney General Gonzales:

Recently, it has come to our attention that the Department of Justice has asked several U.S. Attorneys from around the country to resign their positions by the end of the month, prior to the end of their terms without cause. We also understand the intention is to have your office appoint interim replacements and potentially avoid the Senate confirmation process altogether.

We are very concerned about this allegation, and we believe, if true, such actions would be intemperate and ill-advised. We have asked our staffs to look into changing the law to prevent such actions and are introducing legislation today that will return the law to its previous language providing a district court with the authority to appoint an interim U.S. Attorney for the district in which a vacancy arises. Therefore, we ask that if such requests have been made that you desist from moving forward with these efforts and hold the requests in abeyance.

As you know, U.S. Attorneys around the country serve important functions bringing many of the most important and difficult cases. Our U.S. Attorneys are responsible for taking the lead on public corruption cases and many of the anti-terrorism efforts across the country. U.S. Attorneys also play a vital role in combating traditional crimes like narcotics trafficking, bank robbery, guns, violence, environmental crime, civil rights violations and fraud. U.S. Attorneys are also taking the lead on prosecuting computer hacking, Internet fraud and intellectual property theft; accounting and securities fraud and computer chip theft. Continuity in these positions is of utmost importance, and freedom from any inappropriate influences or the appearance of influence must be avoided at all costs.

Please provide information regarding all instances in which you have exercised the authority to appoint an interim United States Attorney. In addition, please provide us with information on whether any efforts have been made to ask or encourage the former or current U.S. Attorneys to resign their position.

We would appreciate your prompt attention to this matter and written answers prior to your appearance before the Judiciary Committee on January 18, 2007. Please contact us or Senator Feinstein's chief counsel, Jennifer Duck (202-224-6975), should you have any questions.

Sincerely yours,

Dianne Feinstein
United States Senator

Patrick Leahy
United States Senator

FEINSTEIN STATEMENT

Senator Feinstein Concerned over Resignations
of at Least Seven U.S. Attorneys Across the Country

- Senator Feinstein to question Attorney General Gonzalez
at Judiciary Committee Hearing later this week -

January 16, 2007

Washington, DC – *In a speech on the Senate Floor, U.S. Senator Dianne Feinstein (D-Calif.) today expressed concern about the fact that a number of U.S. Attorneys have been asked by the Department of Justice to resign their positions prior to the end of their terms and without cause.*

In a little noticed provision included in the Patriot Act reauthorization last year, the Administration's authority to appoint interim U.S. Attorneys was greatly expanded. The law was changed so that if a vacancy arises the Attorney General may appoint a replacement for an indefinite period of time – thus completely avoiding the Senate confirmation process

Senators Feinstein, Patrick Leahy (D-Vt.), and Mark Pryor (D-Ark.) last week introduced the Preserving United States Attorney Independence Act, which would prevent further circumvention of the Senate's constitutional prerogative to confirm U.S. Attorneys and restore appointment authority to the appropriate District Courts.

The full text of Senator Feinstein's floor statement follows.

Recent newspaper articles have detailed the circumstances surrounding the departure of several U.S. Attorneys across the country:

- **Politicizing Prosecutors:** "United States attorneys are so powerful that their impartiality must be beyond question. One way to ensure that is to require them to submit to questions from the Senate, and face a confirmation vote." *New York Times* – 1/15/07. www.nytimes.com/2007/01/15/opinion/15mon2.html?_r=1&oref=slogin

- **U.S. Attorney Vacancies Spark Concerns:** "As the Bush administration enters its last two years, a number of U.S. attorneys are departing, causing concern that some high-profile prosecutions may suffer. As many as seven U.S. attorneys. . . are leaving or being pushed out." *Wall Street Journal* – 1/16/07. http://online.wsj.com/google_login.html?url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB116891552371177295.html%3Fmod%3Dgooglenews_wsj

- **Lam is Asked to Step Down:** "The Bush administration has quietly asked San Diego U.S. Attorney Carol Lam, best known for her high-profile prosecutions of politicians and corporate executives, to resign her post, a law enforcement official said." *San Diego Union Tribune* – 1/12/07.
  http://weblog.signonsandiego.com/uniontrib/20070112/news_1n12lam.html

- **Nevada U.S. Attorney Given Walking Papers:** "The Bush administration has forced Daniel Bogden out of his position as U.S. attorney for the District of Nevada, Nevada's two senators said Sunday." *Las Vegas Review Journal* – 1/16/07.
  www.reviewjournal.com/lvrj_home/2007/Jan-15-Mon-2007/news/11980257.html

The following is a transcript of Senator Feinstein's floor speech:

"Mr. President, I have introduced an amendment on this bill which has to do with the appointment of U.S. Attorneys. This is also the subject of the Judiciary Committee's jurisdiction, and since the Attorney General himself will be before that committee on Thursday, and I will be asking him some questions, I speak today in morning business on what I know so much about this situation.

Recently, it came to my attention that the Department of Justice has asked several U.S. Attorneys from around the country to resign their positions – some by the end of this month – prior to the end of their terms not based on any allegation of misconduct. In other words, they are forced resignations.

I have also heard that the Attorney General plans to appoint interim replacements and potentially avoid Senate confirmation by leaving an interim U.S. Attorney in place for the remainder of the Bush administration.

How does this happen? The Department sought and essentially was given new authority under a little known provision in the PATRIOT Act Reauthorization to appoint interim appointments who are not subject to Senate confirmation and who could remain in place for the remainder of the Bush administration.

To date, I know of at least seven U.S. Attorneys forced to resign without cause, without any allegations of misconduct. These include two from my home State, San Diego and San Francisco, as well as U.S. Attorneys from New Mexico, Nevada, Arkansas, Texas, Washington and Arizona.

In California, press reports indicate that Carol Lam, U.S. Attorney for San Diego, has been asked to leave her position, as has Kevin Ryan of San Francisco. The public response has been shock. Peter Nunez, who served as the San Diego U.S. Attorney from 1982 to 1988, has said, 'This is like nothing I've ever seen in my 35-plus years.'

He went on to say that while the President has the authority to fire a U.S. Attorney for any reason, it is 'extremely rare' unless there is an allegation of misconduct.

To my knowledge, there are no allegations of misconduct having to do with Carol Lam. She is a distinguished former judge. Rather, the only explanation I have seen are concerns that were expressed about prioritizing public corruption cases over smuggling and gun cases.

The most well-known case involves a U.S. Attorney in Arkansas. Senators Pryor and Lincoln have raised significant concerns about how "Bud" Cummins was asked to resign and in his place the administration appointed their top lawyer in charge of political opposition research, Tim Griffin. I have been told Mr. Griffin is quite young, 37, and Senators Pryor and Lincoln have expressed concerns about press reports that have indicated Mr. Griffin has been a political operative for the RNC.

While the administration has confirmed that 5 to 10 U.S. Attorneys have been asked to leave, I have not been given specific details about why these individuals were asked to leave. Around the country, though, U.S. Attorneys are bringing many of the most important and complex cases being prosecuted. They are responsible for taking the lead on public corruption cases and many of the antiterrorist efforts in the country. As a matter of fact, we just had the head of the FBI, Bob Mueller, come before the Judiciary Committee at our oversight hearing and tell us how they have dropped the priority of violent crime prosecution and, instead, are taking up public corruption cases; ergo, it only follows that the U.S. Attorneys would be prosecuting public corruption cases.

As a matter of fact, the rumor has it -- and this is only rumor -- that U.S. Attorney Lam, who carried out the prosecution of the Duke Cunningham case, has other cases pending whereby, rumor has it, Members of Congress have been subpoenaed. I have also been told that this interrupts the flow of the prosecution of these cases, to have the present U.S. attorney be forced to resign by the end of this month.

Now, U.S. Attorneys play a vital role in combating traditional crimes such as narcotics trafficking, bank robbery, guns, violence, environmental crimes, civil rights, and fraud, as well as taking the lead on prosecuting computer hacking, Internet fraud, and intellectual property theft, accounting and securities fraud, and computer chip theft.

How did all of this happen? This is an interesting story. Apparently, when Congress reauthorized the PATRIOT Act last year, a provision was included that modified the statute that determines how long interim appointments are made. The PATRIOT Act Reauthorization changed the law to allow interim appointments to serve indefinitely rather than for a limited 120 days. Prior to the PATRIOT Act Reauthorization and the 1986 law, when a vacancy arose, the court nominated an interim U.S. Attorney until the Senate confirmed a Presidential nominee. The PATRIOT Act Reauthorization in 2006 removed the 120-day limit on that appointment, so now the Attorney General can nominate someone who goes in without any confirmation hearing by this Senate and serve as U.S. Attorney for the remainder of the President's term in office. This is a way, simply stated, of avoiding a Senate confirmation of a U.S. Attorney.

The rationale to give the authority to the court has been that since district court judges are also subject to Senate confirmation and are not political positions, there is greater likelihood that their choice of who should serve as an interim U.S. Attorney would be chosen based on merit and not manipulated for political reasons. To me, this makes good sense.

Finally, by having the district court make the appointments, and not the Attorney General, the process provides an incentive for the administration to move quickly to appoint a replacement and to work in cooperation with the Senate to get the best qualified candidate confirmed.

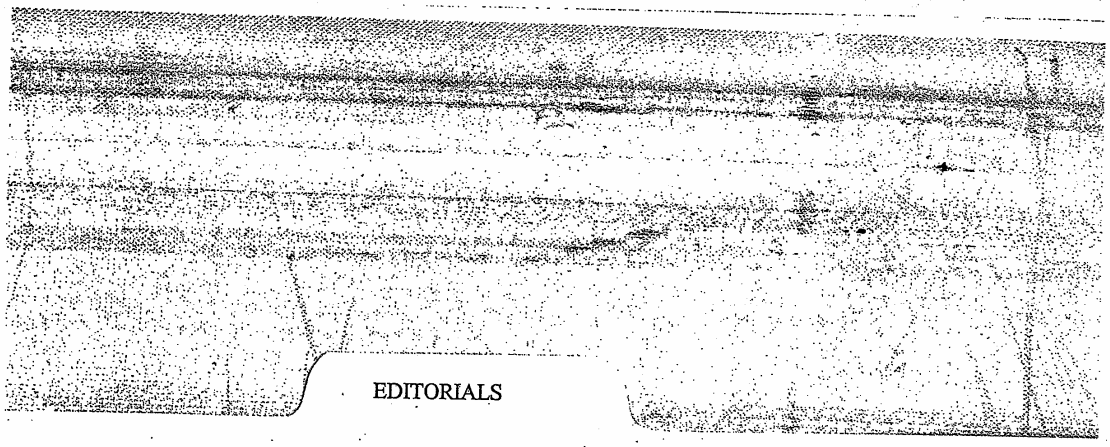
I strongly believe we should return this power to district courts to appoint interim U.S. Attorneys. That is why last week, Senator Leahy, the incoming Chairman of the Judiciary Committee, the Senator from Arkansas, Senator Pryor, and I filed a bill that would do just that. Our bill simply restores the statute to what it once was and gives the authority to appoint interim U.S. Attorneys back to the district court where the vacancy arises.

I could press this issue on this bill. However, I do not want to do so because I have been saying I want to keep this bill as clean as possible, that it is restricted to the items that are the purpose of the bill, not elections or any other such things. I ought to stick to my own statement.

Clearly, the President has the authority to choose who he wants working in his administration and to choose who should replace an individual when there is a vacancy. But the U.S. Attorneys' job is too important for there to be unnecessary disruptions, or, worse, any appearance of undue influence. At a time when we are talking about toughening the consequences for public corruption, we should change the law to ensure that our top prosecutors who are taking on these cases are free from interference or the appearance of impropriety. This is an important change to the law. Again, I will question the Attorney General Thursday about it when he is before the Judiciary Committee for an oversight hearing.

I am particularly concerned because of the inference in all of this that is drawn to manipulation in the lineup of cases to be prosecuted by a U.S. Attorney. In the San Diego case, at the very least, we have people from the FBI indicating that Carol Lam has not only been a straight shooter but a very good prosecutor. Therefore, it is surprising to me to see that she would be, in effect, forced out, without cause. This would go for any other U.S. Attorney among the seven who are on that list.

We have something we need to look into, that we need to exercise our oversight on, and I believe very strongly we should change the law back to where a Federal judge makes this appointment on an interim basis subject to regular order, whereby the President nominates and the Senate confirms a replacement"


EDITORIALS

Politics and prosecutors
Chicago Tribune
January 22, 2007

EDITORIAL

The appointment of federal prosecutors is not normally a subject that generates much controversy. But some 11 U.S. attorneys have left in the last 10 months, some of them at the request of the Justice Department, and critics charge the White House is purging the ranks for political reasons, while installing administration cronies in their place.Lending credence to these charges is a change in the law made last year that allows the attorney general to install successors without going through Senate confirmation. Sen. Dianne Feinstein (D-Calif.) accuses President Bush of "pushing out U.S. attorneys from across the country under a cloak of secrecy and then appointing indefinite replacements."

We enjoy a good conspiracy theory as much as anyone, but in this case, the evidence is pretty thin. Keep in mind that the prosecutors being replaced are themselves Bush appointees--which casts doubt on the idea that political motivations are at work. U.S. attorneys serve at the pleasure of the president, and it's not unusual for them to leave because they have other career plans--or for the attorney general to relieve prosecutors whose performance he finds unsatisfactory. As for trying to operate without Senate approval, Atty. Gen. Alberto Gonzales did all he could to dispel that fear when he appeared Thursday before the Senate Judiciary Committee.

"I am fully committed, as the administration's fully committed, to ensure that, with respect to every United States attorney position in the country, we will have a presidentially appointed, Senate-confirmed United States attorney," he said. When Feinstein said she thinks the Senate should get to review all appointments, he replied, "I agree with you." The Justice Department also notes that since the law was changed, the president has sent 15 nominees to the Senate. So much for the charge of plotting to circumvent the usual process.

Whether the administration has made sound appointments is subject to debate. Critics are particularly suspicious of Timothy Griffin, a former aide to the Republican National Committee, who was named to the job in the Eastern District of Arkansas. But Griffin has also served as an Army prosecutor and a special assistant U.S. attorney. If he is shown to be unsuitable for the job for one reason or another, the Senate can vote him down.

Another alleged victim of the purge is Carol Lam of San Diego, who prosecuted GOP Rep. Randy "Duke" Cunningham of California for bribery. But her dismissal may have something to do with the sharp drop in the number of prosecutions during her term, or with the complaints of Border Patrol agents that she gives low priority to prosecuting illegal immigrants.

Senators are free to pursue issues like these during confirmation and oversight hearings. But for the moment, the administration deserves better than the presumption of guilt.

Los Angeles Times editorial
January 26, 2007

The rumor bill

Sen. Dianne Feinstein's concerns about the departure of a high-profile U.S. attorney are premature.

IT'S NEVER A good idea to write legislation in response to a rumor, yet that's exactly what Sen. Dianne Feinstein appears to have done in the case of Carol Lam. Lam is the U.S. attorney in San Diego who oversaw the prosecution of former Rep. Randy "Duke" Cunningham, who pleaded guilty to receiving $2.4 million in bribes from military contractors and evading more than $1 million in taxes. Lam is one of half a dozen U.S. attorneys, including one in San Francisco, who are stepping down.

Feinstein at least acknowledges that she is responding to a rumor that Lam is being forced out not because of policy or personality differences with her superiors but because she is preparing other cases that might ruffle influential feathers. Lam's office has been investigating a politically connected defense contractor who was described as an unindicted co-conspirator in the Cunningham case.

This conspiracy theory has another strand: a suddenly controversial provision in the Patriot Act that allows the attorney general to name an acting U.S. attorney who can serve until the Senate confirms a new nominee. Feinstein has proposed a bill that would restore the previous arrangement, in which local federal judges named U.S. attorneys on an interim basis.

The Justice Department persuasively argues that it hasn't abused its new authority to bypass the usual Senate confirmation process. Even after they are confirmed by the Senate, U.S. attorneys still serve at the president's pleasure, and they can be removed if they are underperforming or if their priorities conflict with the administration's.

A further problem with the conspiracy theory is that it is not easy, as even Watergate demonstrated, for an administration to stymie a criminal investigation. If the Bush administration has been scheming to prevent the prosecution of prominent Republicans, it has been remarkably unsuccessful: Just ask Cunningham, former Rep. Bob Ney or I. Lewis "Scooter" Libby.

Where politics undeniably plays a role — and not just in this administration — is in the selection of U.S. attorneys, who often are prominent members of the president's party. Yet precisely because these positions are political plums, professionals in the Justice Department and the FBI traditionally exert huge influence in prosecution decisions. Those same professionals are likely to blow the whistle on improper interference.

Feinstein and other senators certainly should keep their ears pricked for any such alarm. They also should press Atty. Gen. Alberto R. Gonzales to explain the personnel changes

(in closed session if necessary) and to abide by his commitment to the Judiciary Committee that the names of new U.S. attorneys be submitted expeditiously to the Senate. But cries of a conspiracy are premature, and so is Feinstein's legislation.

The Pot Calling the Kettle "Interim"
Democrats with short memories rail about Bush's removal of U.S. attorneys.
By Andrew C. McCarthy

In lambasting the Bush administration for politicizing the appointment of the nation's United States attorneys, Democrats may be on the verge of redefining *chutzpah*.

The campaign is being spearheaded on the Judiciary Committee by Senator Dianne Feinstein. She contends that at least seven U.S. attorneys — tellingly, including those for two districts in her home state — have been "forced to resign without cause." They are, she further alleges, to be replaced by Bush appointees who will be able to avoid Senate confirmation thanks to a "little known provision" of the Patriot Act reauthorization law enacted in 2006.

Going into overdrive, Feinstein railed on the Senate floor Tuesday that "[t]he public response has been shock. Peter Nunez, who served as the San Diego U.S. Attorney from 1982 to 1988 has said, 'This is like nothing I've ever seen in my 35-plus years.'"

Yes, the public, surely, is about as "shocked, shocked" as Claude Raines's Captain Renault, and one is left to wonder whether Mr. Nunez spent the 1990s living under a rock.

One of President Clinton's very first official acts upon taking office in 1993 was to fire *every* United States attorney then serving — except one, Michael Chertoff, now Homeland Security secretary but then U.S. attorney for the District of New Jersey, who was kept on only because a powerful New Jersey Democrat, Sen. Bill Bradley, specifically requested his retention.

Were the attorneys Clinton fired guilty of misconduct or incompetence? No. As a class they were able (and, it goes without saying, well-connected). Did he shove them aside to thwart corruption investigations into his own party? No. It was just politics, plain and simple.

Patronage is the chief spoil of electoral war. For a dozen years, Republicans had been in control of the White House, and, therefore of the appointment of all U.S. attorneys. President Clinton, as was his right, wanted his party's own people in. So he got rid of the Republican appointees and replaced them with, predominantly, Democrat appointees (or Republicans and Independents who were acceptable to Democrats).

We like to think that law enforcement is not political, and for the most part — the day-to-day part, the proceedings in hundreds of courtrooms throughout the country — that is

true. But appointments are, and have always been political. Does it mean able people are relieved before their terms are up? Yes, but that is the way the game is played.

Indeed, a moment's reflection on the terms served by U.S. attorneys reveals the emptiness of Feinstein's argument. These officials are appointed for four years, with the understanding that they serve at the pleasure of the president, who can remove them for any reason or no reason. George W. Bush, of course, has been president for six years. That means every presently serving U.S. attorney in this country has been appointed or reappointed by this president.

That is, contrary to Clinton, who unceremoniously cashiered virtually all Reagan and Bush 41 appointees, the current President Bush can only, at this point, be firing *his own appointees*. Several of them, perhaps even all of them, are no doubt highly competent. But it is a lot less unsavory, at least at first blush, for a president to be rethinking his own choices than to be muscling out another administration's choices in an act of unvarnished partisanship.

Feinstein's other complaint, namely, that the Bush administration is end-running the Constitution's appointment process, which requires Senate confirmation for officers of the United States (including U.S. attorneys), is also unpersuasive.

As she correctly points out, the Patriot Act reauthorization did change prior law. Previously, under the federal code (Title 28, Section 546), if the position of district U.S. attorney became vacant, it could be filled for up to 120 days by an interim appointee selected by the attorney general. What would happen at the end of that 120-day period, if a new appointee (who would likely also be the interim appointee) had not yet been appointed by the president and confirmed by the senate? The old law said the power to appoint an interim U.S. attorney would then shift to the federal district court, whose appointee would serve until the president finally got his own nominee confirmed.

This was a bizarre arrangement. Law enforcement is exclusively an executive branch power. The Constitution gives the judiciary no role in executive appointments, and the congressional input is limited to senate confirmation. U.S. attorneys are important members of the Justice Department — the top federal law enforcement officers in their districts. But while the attorney general runs the Justice Department, U.S. attorneys work not for the AG but for the president. They are delegated to exercise executive authority the Constitution reposes only in the president, and can thus be terminated at will by the president. Consequently, having the courts make interim appointments made no practical sense, in addition to being constitutionally dubious.

The Patriot Act reauthorization remedied this anomaly by eliminating both the role of the district courts and the 120-day limit on the attorney general's interim appointments. The interim appointee can now serve until the senate finally confirms the president's nominee.

Is there potential for abuse here? Of course — there's no conceivable appointments

structure that would not have potential for abuse. Like it or not, in our system, voters are the ultimate check on political excess.

So yes, a president who wanted to bypass the Constitution's appointments process could fire the U.S. attorney, have the attorney general name an interim appointee, and simply refrain from submitting a nominee to the senate for confirmation. But we've also seen plenty of abuse from the Senate side of appointments — and such abuse was not unknown under the old law. Though the president can nominate very able U.S. attorney candidates — just as this president has also nominated very able *judicial* candidates — those appointments are often stalled in the confirmation process by the senate's refusal to act, its imperious blue-slip privileges (basically, a veto for senators from the home state of the nominee), and its filibusters.

But that's politics. The president tries to shame the senate into taking action on qualified nominees. Senator Feinstein, now, is trying to shame the White House — making sure the pressure is on the administration not to misuse the Patriot Act modification as an end-around the confirmation process.

Why is Feinstein doing this? After all, the next president may be a Democrat and could exploit to Democratic advantage the same perks the Bush administration now enjoys.

Well, because Feinstein is not going to be the next president. She is still going to be a senator and clearly intends to remain a powerful one. Aside from being enshrined in the Constitution, the confirmations process is a significant source of senatorial power no matter who the president is. Practically speaking, confirmation is what compels a president of either party to consult senators rather than just peremptorily installing the president's own people. Over the years, it has given senators enormous influence over the selection of judges and prosecutors in their states. Feinstein does not want to see that power diminished.

It's worth noting, however, that the same Democrats who will be up in arms now were mum in the 1990s. President Clinton not only fired U.S. attorneys sweepingly and without cause. He also appointed high executive-branch officials, such as Justice Department civil-rights division chief Bill Lann Lee, on an "acting" basis even though their positions called for senate confirmation. This sharp maneuver enabled those officials to serve even though it had become clear that they would never be confirmed.

Reporting on Lee on February 26, 1998, the *New York Times* noted: "Under a Federal law known as the Vacancy Act, a person may serve in an acting capacity for 120 days. But the [Clinton] Administration has argued that another Federal law supercedes the Vacancy Act and gives the Attorney General the power to make temporary law enforcement assignments of any duration."

What the Clinton administration dubiously claimed was the law back then is, in fact, the law right now. Yet, for some strange reason — heaven knows what it could be — Senator Feinstein has only now decided it's a problem. Like the public, I'm shocked.

— Andrew C. McCarthy is a senior fellow at the Foundation for the Defense of Democracies.

Politics and the Corruption Fighter
The New York Times
January 18, 2007

EDITORIAL

Abstract: Editorial scores Bush administration for removing several United States attorneys from their jobs; cites removal of US Atty Carol Lam, prosecutor who was investigating Rep Jerry Lewis

In its secretive purge of key United States attorneys, the Bush administration is needlessly giving comfort to any number of individuals now under federal investigation. Most prominently, there is Representative Jerry Lewis, the California Republican whose dealings as appropriations chairman have been under scrutiny in the continuing investigation of lawmakers delivering quid pro quo favors for contractors and lobbyists.

U.S. Attorney Carol Lam of San Diego is one of a number of prosecutors (there's no official tally) being forced from office without the courtesy of an explanation. A career professional, Ms. Lam ran a first-rate investigation of Randy Cunningham, the former Republican congressman from California, who admitted taking more than $2.4 million in bribes.

Ms. Lam then turned her attention to Mr. Lewis as she plumbed Congress's weakness for "earmarks" -- legislation that lawmakers customize on behalf of deep-pocketed campaign contributors. The focus moved to Mr. Lewis -- who has denied any wrongdoing -- after the disclosure that one of his staff aides became a lobbyist and arranged windfall contracts worth hundreds of millions.

Stymied by the previous Republican Congress, Ms. Lam was negotiating with the new Democratic leadership to obtain extensive earmarks documentation for her investigation when the administration forced her resignation.

Legal professionals are defending Ms. Lam, with the F.B.I. chief in San Diego asking: "What do you expect her to do? Let corruption exist?" It's especially alarming that the White House can use a loophole in the Patriot Act to name a successor who will not have to face questions or confirmation by the Senate. The administration owes the nation a full explanation of a move that reeks of politics.

Surging And Purging

The New York Times
January 19, 2007

EDITORIAL

Abstract: Paul Krugman Op-Ed column says dismissals of several federal prosecutors show Bush administration is trying to protect itself from corruption investigations by purging independent-minded US attorneys; cites sudden replacement of Arkansas prosecutor Bud Cummings by J Timothy Griffin, Republican operative for Karl Rove; notes list also includes Carol Lam, who successfully prosecuted congressman Duke Cunningham; sees purges as pre-emptive strike against gathering forces of justice and mocks Atty Gen Alberto Gonzales's denials (M)

There's something happening here, and what it is seems completely clear: the Bush administration is trying to protect itself by purging independent-minded prosecutors.

Last month, Bud Cummins, the U.S. attorney (federal prosecutor) for the Eastern District of Arkansas, received a call on his cellphone while hiking in the woods with his son. He was informed that he had just been replaced by J. Timothy Griffin, a Republican political operative who has spent the last few years working as an opposition researcher for Karl Rove.

Mr. Cummins's case isn't unique. Since the middle of last month, the Bush administration has pushed out at least four U.S. attorneys, and possibly as many as seven, without explanation. The list includes Carol Lam, the U.S. attorney for San Diego, who successfully prosecuted Duke Cunningham, a Republican congressman, on major corruption charges. The top F.B.I. official in San Diego told The San Diego Union-Tribune that Ms. Lam's dismissal would undermine multiple continuing investigations.

In Senate testimony yesterday, Attorney General Alberto Gonzales refused to say how many other attorneys have been asked to resign, calling it a "personnel matter."

In case you're wondering, such a wholesale firing of prosecutors midway through an administration isn't normal. U.S. attorneys, The Wall Street Journal recently pointed out, "typically are appointed at the beginning of a new president's term, and serve throughout that term." Why, then, are prosecutors that the Bush administration itself appointed suddenly being pushed out?

The likely answer is that for the first time the administration is really worried about where corruption investigations might lead.

Since the day it took power this administration has shown nothing but contempt for the normal principles of good government. For six years ethical problems and conflicts of interest have been the rule, not the exception.

For a long time the administration nonetheless seemed untouchable, protected both by

Republican control of Congress and by its ability to justify anything and everything as necessary for the war on terror. Now, however, the investigations are closing in on the Oval Office. The latest news is that J. Steven Griles, the former deputy secretary of the Interior Department and the poster child for the administration's systematic policy of putting foxes in charge of henhouses, is finally facing possible indictment.

And the purge of U.S. attorneys looks like a pre-emptive strike against the gathering forces of justice.

Won't the administration have trouble getting its new appointees confirmed by the Senate? Well, it turns out that it won't have to.

Arlen Specter, the Republican senator who headed the Judiciary Committee until Congress changed hands, made sure of that last year. Previously, new U.S. attorneys needed Senate confirmation within 120 days or federal district courts would name replacements. But as part of a conference committee reconciling House and Senate versions of the revised Patriot Act, Mr. Specter slipped in a clause eliminating that rule.

As Paul Kiel of TPMmuckraker .com -- which has done yeoman investigative reporting on this story -- put it, this clause in effect allows the administration "to handpick replacements and keep them there in perpetuity without the ordeal of Senate confirmation." How convenient.

Mr. Gonzales says that there's nothing political about the firings. And according to The Associated Press, he said that district court judges shouldn't appoint U.S. attorneys because they "tend to appoint friends and others not properly qualified to be prosecutors." Words fail me.

Mr. Gonzales also says that the administration intends to get Senate confirmation for every replacement. Sorry, but that's not at all credible, even if we ignore the administration's track record. Mr. Griffin, the political-operative-turned-prosecutor, would be savaged in a confirmation hearing. By appointing him, the administration showed that it has no intention of following the usual rules.

The broader context is this: defeat in the midterm elections hasn't led the Bush administration to scale back its imperial view of presidential power.

On the contrary, now that President Bush can no longer count on Congress to do his bidding, he's more determined than ever to claim essentially unlimited authority -- whether it's the authority to send more troops into Iraq or the authority to stonewall investigations into his own administration's conduct.

The next two years, in other words, are going to be a rolling constitutional crisis.

No way to appoint justice
THE SAN FRANCISCO CHRONICLE
January 25, 2007

EDITORIAL

THE RECENT resignation of Kevin Ryan as U.S. attorney for the Northern District of California probably didn't happen because Ryan wasn't partisan enough. Unfortunately, given the rush of U.S. attorneys' resignations during the last few months, there's no way to be sure.

Curious things are afoot in the Justice Department, thanks to an overlooked provision of the renewed Patriot Act, which allows U.S. Attorney General Alberto Gonzales to indefinitely appoint new U.S. attorneys without Senate confirmation. Michael Teague, communications director for Arkansas Sen. Mark Pryor, said that when it came up for discussion, senators were told that the power would only be used in case of emergencies -- such as if a U.S. attorney was killed in a terrorist attack, for example, and a quick substitute was necessary.

It hasn't worked out that way.

In Arkansas, a well-respected and effective U.S. attorney has been replaced with a political partisan whose qualifications seem thin. In New Mexico, the U.S. attorney said he was asked to leave without explanation. In Nevada, the recently resigned U.S. attorney cited "political" reasons for his departure. That same week in California, saw the departures of not just Ryan, but also the U.S. attorney in San Diego -- who had been criticized for not prosecuting enough gun and immigration violations. Most of their successors have not been named, but if Arkansas is any indication, things look nasty for justice in America.

With U.S. attorneys responsible for so many crucial prosecutions -- including terrorism, violent crime and civil rights -- they should be held to the highest standards. If they aren't, the fallout will be tremendous -- in Arkansas, a defense attorney has filed a motion against the new appointee, declaring his appointment unconstitutional. If we can't believe in the credibility of our U.S. attorneys, how can we believe in the credibility of the courts?

Sen. Dianne Feinstein, D-Calif., is co-sponsoring a bill to restore appointment authority to the U.S. District Courts, thereby removing politics altogether. We couldn't agree more.

Politics v. Justice
St. Louis Post-Dispatch (MO)
January 23, 2007

Editorial

Last October, when Harry E. "Bud" Cummins III, the U.S. attorney for the Eastern District of Arkansas, closed his investigation into the way Missouri Gov. Matt Blunt's administration handled Missouri's license fee offices, he emphasized, "This office does not intend to elaborate further about this closed matter."

We hope that now will change. Mr. Cummins was identified last week as one of at least nine U.S. attorneys around the country who had been asked by the Bush administration to resign so they could replaced by new political appointees. Among the nine are prosecutors who had been pursuing corruption cases against Republican office-holders and contributors.

The message, spoken or unspoken, in the requests for resignations, was "back off of our pals."

Mr. Cummins, who was replaced last week by J. Timothy Griffin, a former operative for White House political director Karl Rove, said that he'd been asked to step down in June. That would have been the time when the fee office investigation was in full swing.

The investigation followed news reports that young staffers and politically connected friends of Mr. Blunt had created management companies to benefit from the sale of drivers licenses and license plates. Another aspect of the story, one never mentioned when the investigation was dismissed, was that Mr. Blunt's office had steered state agencies to politically connected lobbyists.

Among the other U.S. attorneys asked to resign were Carol Lam in San Diego and Kevin Ryan in San Francisco. Ms. Lam sent former Republican Rep. Randy "Duke" Cunningham to prison for bribery and now is investigating Rep. Jerry Lewis, R-Calif., the former chairman of the House Appropriations Committee. Mr. Ryan made the infamous BALCO steroid cases and kicked off a national investigation of corporate stock option fraud. Like Mr. Cummins, Ms. Lam and Mr. Ryan are Republicans appointed to their jobs by President George W. Bush.

Politics and justice are inextricably intertwined. The 93 U.S. attorneys around the country and their staffs prosecute federal crimes, but the U.S. attorneys themselves often are not experienced prosecutors. They usually are chosen for their political connections, swept in or out with every change of administration. Even so, because political corruption is a top priority for their offices, they are supposed to be above politics.

Mr. Cummins, for example, got the task of investigating the Missouri fee office scandal because both of the U.S. attorneys in Missouri at the time had political conflicts.

But with last year's renewal of the U.S.A. Patriot Act, one of the key safeguards against political interference with the U.S. attorneys offices was removed. A new provision allows the attorney general to name replacements for U.S. attorneys when they resign instead of having the president name new ones. This gets around the time-consuming requirement of Senate confirmation, which ostensibly would help in the war on terror.

Instead, it looks like it's being used to get around the war on political corruption.

U.S. Attorney General Alberto Gonzales adamantly denied that last week, but Democratic Sens. Mark Pryor of Arkansas, Dianne Feinstein of California and Patrick Leahy of Vermont want Congress to take a second look at the law that allows appointees to skirt Senate confirmation.

That's an excellent idea. We look forward to hearings on the issue, and trust Mr. Cummins will be asked to testify about the reasons for his dismissal.

You're fired: Furtive Justice Department boots attorneys
Sacramento Bee
January 22, 2007

Editorial

Since the November elections, the Justice Department has asked an unknown number of U.S. attorneys around the country, including two in California, to resign before the end of their terms. As Sen. Dianne Feinstein, D-Calif., has said, these are forced resignations in districts that have major ongoing cases.

Last week at the Senate Judiciary Committee hearing, Feinstein asked Attorney General Alberto Gonzales how many U.S. attorneys were being fired, but he would not give a number.

One Californian departing is Carol Lam, the U.S. attorney in San Diego who is pursuing corruption related to the prosecution of Rep. Randy "Duke" Cunningham, now in prison, thanks to her. The other is Kevin Ryan, the U.S. attorney in San Francisco who is in the middle of investigating whether 25 companies illegally withheld information about lucrative stock options for top executives.

It is customary that U.S. attorneys are prepared to leave office when a new president is elected. At the beginning of their terms, presidents have the discretion to name the 93 U.S. attorneys, who then must be confirmed by the Senate. They typically serve until the president leaves office. These midterm U.S. attorney firings are unusual, particularly because there are no allegations of misconduct.

Feinstein is alarmed that a little-known, last-minute change to the USA Patriot Act Reauthorization in March 2006 allows the attorney general to replace U.S. attorneys without Senate confirmation. The change was not in the original bills approved by the House and Senate, and thus never got a hearing. At the request of the Justice Department, Sen. Arlen Specter, R-Pa., added the provision during a House-Senate conference committee, which reconciles House and Senate bills for a final vote.

Under the old law, the attorney general could name an interim U.S. attorney for 120 days and when that term expired, the U.S. District Court would name a replacement until a presidential nominee was confirmed by the Senate. Feinstein has introduced a bill to restore the old law.

Presidential appointment with Senate confirmation remains an important check and balance in our system of government. The Senate and the House should approve Feinstein's bill immediately to prevent an unwarranted tilt toward presidential power.

A CASE OF JUSTICE THAT STINKS
Roanoke Times, The (VA)
January 21, 2007

EDITORIAL

This is a new old story, about one of those "little-noticed" provisions in complex legislation that draws attention only when it starts to stink.

The complex law is the Patriot Act. The smelly provision -- one of many, but a noticeable one of late -- is an innocuous-seeming change in the way the executive branch makes interim appointments of U.S. attorneys.

In effect, the change allows the attorney general to replace federal prosecutors without Senate approval.

The Bush administration seems to be using this new power, in part, to rid the Justice Department of prosecutors deep into political corruption investigations and to put political hacks in their place.

Congress should act quickly to strip the law of a provision so ripe for abuse.

Distressingly, lawmakers passed the change without debate last year when the GOP-dominated Congress approved the USA Patriot Improvement and Reauthorization Act.

The political blog TPMmuckraker.com reports that a spokesman for one of the bill's Republican managers, Rep. James Sensenbrenner, said then-Senate Judiciary Chairman Arlen Specter slipped the new language into the bill at the last minute. Separate measures passed earlier in both houses did not include the change.

U.S. attorneys are appointed by the president and approved by the Senate. When appointees leave, voluntarily or not, the attorney general can make an interim appointment that is not subject to a Senate vote.

Formerly, such an appointment could last up to 120 days, after which a local federal district court would name a replacement until the vacancy was filled. Now interim appointments can last indefinitely, at least until the end of a president's term, a process that circumvents the Senate's check on executive power.

That change began stinking after a series of forced resignations that includes the impending departure of Carol Lam, the U.S. attorney for San Diego. Lam focused her office's efforts on successfully prosecuting former Rep. Duke Cunningham for corruption.

The head of the FBI's San Diego office bemoans Lam's ouster, saying it will jeopardize a continuing investigation that has touched several Republican lawmakers. He and several former federal prosecutors say her firing smells of politics.

Not so, Attorney General Alberto Gonzales insists. He testified at a congressional hearing Thursday, assuring Democratic Sens. Dianne Feinstein and Patrick Leahy that U.S. attorneys are never removed to retaliate for or interfere with an investigation or court case.

"Sources" suggest other reasons for Lam's firing, from her pursuit of public corruption and white-collar crime at the expense of drug smuggling and gun cases to a poor track record for convictions. Suspicions that politics underlies all would be hard to prove -- but they are also hard to dismiss.

One of Gonzales' interim appointments, after all, is J. Timothy Griffin, since late December the interim U.S. attorney for the Eastern District of Arkansas. His career up to then was spent largely doing "opposition research" -- digging up dirt on Democrats -- for the Republican Party and, from 2005 to 2006, for Karl Rove.

The Justice Department forced Griffin's predecessor to resign.

Such examples illustrate, at the least, the potential for putrefying politics to corrupt the Justice Department's use of truly awesome powers.

Feinstein and Leahy have filed a bill to restore the district court's authority to make interim appointments. Gonzales' protestations of high principle do not persuade. The senators should press on.

Dropping like flies: Resignations of U.S. attorneys raise suspicion of politically motivated Justice Department purge.

The Houston Chronicle

January 25, 2007

Editorial

IN the past year 11 U.S. attorneys have resigned their positions, some under pressure from their Justice Department superiors and the White House, even through they had commendable performance records.

Democratic senators are concerned that the high turnover is linked to an obscure, recently passed provision of the Patriot Act. The provision allows the Bush administration to fill vacancies with interim prosecutors for the remainder of the president's term without submitting them to the Senate for confirmation. Previously, interim appointments were made by a vote of federal judges in the districts served by the outgoing U.S. attorneys.

U.S. Sen. Mark Pryor, D-Ark., contends that in his state U.S. Attorney Bud Cummins was improperly ousted in favor of a protégé of Bush political adviser Karl Rove. Likewise in California, U.S. Attorneys Carol Lam of San Diego and Kevin Ryan of San Francisco were forced from their positions. Sen. Diane Feinstein, D-Calif., alleged that Lam fell out of favor with her Washington bosses for spearheading the bribery prosecution and conviction of Republican Congressman Randy "Duke" Cunningham last year. Lam reportedly had other politicians in her sights.

"I am particularly concerned because of the inference ... that is drawn to manipulation in the lineup of cases to be prosecuted by a U.S. attorney," Feinstein stated. "In the San Diego case, at the very least, we have people from the FBI indicating that Carol Lam has not only been a straight shooter but a very good prosecutor."

U.S. Attorney General Alberto Gonzales denied political motives figured in the multiple resignations of top prosecutors, and pledged that all interim appointments would be submitted to the Senate for confirmation. He reiterated that U.S. attorneys serve at the pleasure of the president and can be removed for a number of reasons, including job performance and their standing in their districts. That isn't good enough for Feinstein and her Democratic colleagues, who have introduced legislation to reinstate the appointment of interim prosecutors by federal judges.

Gonzales is correct that the president is vested with the power to appoint U.S. attorneys. Unfortunately, the Patriot Act change eliminated the ability of the Senate to exercise its constitutional oversight of those nominations to make sure they are qualified and not simply political plums handed out to supporters in the waning years of the administration.

The attorney general's pledge to bring the wave of interim appointees before the Senate for confirmation is welcome, providing it is done in a speedy fashion. Still, the Patriot Act needs to be amended to restore judicial appointment of interims.

No president should be able to fire top government prosecutors from their positions for political reasons and then install successors without a thorough vetting by the constitutionally charged legislative body.

FEINSTEIN LETTER RE USA
CAROL LAM

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 23, 2006

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

Dear Senator Feinstein:

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

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

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

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

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

There are few if any matters that are more deeply felt than the relationship between parent and child, and we understand and fully empathize with the enormity of the loss being felt by Mr. Smith. We very much appreciate your interest in this matter as well. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

William E. Moschella

William E. Moschella
Assistant Attorney General

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

Cases & Defendants -- Filed, Pending, & Terminated

Fiscal Year[2]	Cases Filed	Percent Change	Defendants Filed	Percent Change	Average # of Defendants Per Case Filed	Cases Pending	Percent Change	Defendants Pending	Percent Change	Average # of Defendants Per Case Pending	Cases Terminated	Percent Change	Defendants Terminated	Percent Change	Average # of Defendants Per Case Terminated
93	330		357		1.08	217		264		1.31	308		340		1.10
94	272	-17.6%	290	-18.8%	1.07	137	-36.9%	191	-32.7%	1.39	345	12.0%	378	10.6%	1.09
95	851	212.9%	884	204.8%	1.04	155	13.1%	221	15.7%	1.43	829	140.3%	850	126.1%	1.03
96	1,347	58.6%	1,425	61.2%	1.04	227	46.5%	300	35.7%	1.32	1,291	55.7%	1,341	57.8%	1.04
97	1,853	35.6%	1,949	36.8%	1.05	259	14.1%	352	17.3%	1.36	1,819	40.9%	1,892	41.1%	1.04
98	1,918	3.5%	2,093	7.4%	1.09	479	84.9%	626	77.8%	1.31	1,665	-8.5%	1,811	-4.3%	1.07
99	1,664	-13.2%	1,778	-15.1%	1.07	448	-6.5%	566	-9.6%	1.26	1,667	-0.5%	1,837	1.4%	1.09
00	2,114	27.2%	2,223	25.0%	1.05	601	34.2%	710	25.4%	1.18	1,981	18.2%	2,070	12.7%	1.05
01	1,907	-9.8%	1,988	-10.6%	1.04	496	-17.5%	580	-18.3%	1.17	2,008	2.3%	2,112	2.0%	1.05
02	1,921	0.7%	2,059	3.6%	1.07	634	27.8%	761	31.2%	1.20	1,782	-11.2%	1,877	-11.1%	1.05
03	2,463	28.2%	2,558	24.2%	1.04	738	16.5%	818	7.5%	1.11	2,359	32.4%	2,497	33.0%	1.06
04	2,527	2.6%	2,632	2.9%	1.04	816	10.4%	918	12.2%	1.13	2,506	6.2%	2,588	3.6%	1.03
05	1,441	-43.0%	1,514	-42.5%	1.05	645	-21.0%	714	-22.2%	1.11	1,626	-35.1%	1,732	-33.1%	1.07
06	1,432	-0.6%	1,580	4.4%	1.10	672	4.2%	776	8.7%	1.15	1,412	-13.2%	1,492	-13.9%	1.06
Average	1,578	22.1%	1,666	21.6%	1.06	466	13.1%	556	11.4%	1.20	1,545	18.4%	1,630	17.4%	1.05

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

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

OAG000000550

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

Sentencing								
Fiscal Year[2]	Defendants in Cases Filed	Defendants in Cases Terminated	Total Defendants Guilty	Number of Guilty Defendants Not Sentenced To Prison	Percent Change	Number of Guilty Defendants Sentenced To Prison	Percent Change	Percent of Guilty Defendants Sentenced To Prison
93	357	340	324	18		306		94.4%
94	290	378	357	22	22.2%	335	9.5%	93.8%
95	884	850	841	50	127.3%	791	136.1%	94.1%
96	1,425	1,341	1,318	190	280.0%	1,128	42.6%	85.6%
97	1,949	1,692	1,852	302	58.9%	1,550	37.4%	83.7%
98	2,093	1,811	1,741	156	-48.3%	1,585	2.3%	91.0%
99	1,778	1,637	1,737	82	-47.4%	1,655	4.4%	95.3%
00	2,223	2,070	1,942	62	-24.4%	1,880	13.6%	96.8%
01	1,988	2,112	1,977	80	29.0%	1,897	0.9%	96.0%
02	2,059	1,877	1,759	74	-7.5%	1,685	-11.2%	95.8%
03	2,558	2,497	2,395	92	24.3%	2,303	36.7%	96.2%
04	2,632	2,568	2,406	36	-60.9%	2,370	2.9%	98.5%
05	1,514	1,732	1,551	49	36.1%	1,502	-36.6%	96.8%
06	1,580	1,492	1,372	40	-18.4%	1,332	-11.3%	97.1%
Average	1,806	1,630	1,541	90	28.5%	1,451	17.5%	93.9%

Sentencing																
Fiscal Year[2]	Number of Guilty Defendants Sentenced To Prison	Defendants Sentenced to Prison 1-12 Months	Percent of Defendants Sentenced to Prison 1-12 Months	Defendants Sentenced to Prison 13-24 Months	Percent of Defendants Sentenced to Prison 13-24 Months	Defendants Sentenced to Prison 25-36 Months	Percent of Defendants Sentenced to Prison 25-36 Months	Defendants Sentenced to Prison 37-60 Months	Percent of Defendants Sentenced to Prison 37-60 Months	Defendants Sentenced to Prison 61+ Months	Percent of Defendants Sentenced to Prison 61+ Months	Defendants Sentenced to Life in Prison	Percent of Defendants Sentenced to Life in Prison	Defendants Sentenced to Death	Percent of Defendants Sentenced to Death
93	306	63	20.6%	223	72.9%	10	3.3%	5	1.6%	5	1.6%	0	0.0%	0	0.0%
94	335	41	12.2%	281	83.9%	4	1.2%	4	1.2%	5	1.5%	0	0.0%	0	0.0%
95	791	54	6.8%	704	88.9%	6	0.8%	16	2.0%	11	1.4%	0	0.0%	0	0.0%
96	1,128	146	12.9%	904	80.1%	16	1.4%	45	4.0%	17	1.5%	0	0.0%	0	0.0%
97	1,550	457	29.5%	994	64.1%	26	1.8%	32	2.1%	39	2.5%	0	0.0%	0	0.0%
98	1,585	404	25.5%	718	45.3%	340	21.5%	67	4.2%	56	3.5%	0	0.0%	0	0.0%
99	1,655	374	22.6%	474	28.6%	629	38.0%	100	6.0%	78	4.7%	0	0.0%	0	0.0%
00	1,880	755	40.2%	573	30.5%	496	26.4%	42	2.2%	14	0.7%	0	0.0%	0	0.0%
01	1,897	931	49.1%	580	30.6%	323	17.0%	50	2.6%	13	0.7%	0	0.0%	0	0.0%
02	1,685	747	44.3%	561	33.3%	326	19.3%	38	2.3%	13	0.8%	0	0.0%	0	0.0%
03	2,303	1,035	44.9%	785	34.1%	418	18.2%	52	2.3%	13	0.6%	0	0.0%	0	0.0%
04	2,370	896	37.8%	745	31.4%	592	25.0%	116	4.9%	21	0.9%	0	0.0%	0	0.0%
05	1,502	338	22.5%	512	34.1%	329	21.9%	246	16.4%	77	5.1%	0	0.0%	0	0.0%
06	1,332	384	28.8%	444	33.3%	186	14.0%	276	20.7%	42	3.2%	0	0.0%	0	0.0%
Average	1,451	473	32.8%	607	41.8%	265	18.2%	78	5.4%	29	2.0%	0	0.0%	0	0.0%

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

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

DIANNE FEINSTEIN
CALIFORNIA

COMMITTEE ON APPROPRIATIONS
COMMITTEE ON ENERGY AND NATURAL RESOURCES
COMMITTEE ON THE JUDICIARY
COMMITTEE ON RULES AND ADMINISTRATION
SELECT COMMITTEE ON INTELLIGENCE

United States Senate

WASHINGTON, DC 20510-0504
http://feinstein.senate.gov

June 15, 2006

Honorable Alberto Gonzales
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Gonzales:

During our meeting last week you asked if I had any concerns regarding the U.S. Attorneys in California. I want to follow up on that point and raise the issue of immigration related prosecutions in Southern California.

It has come to my attention that despite high apprehensions rates by Border Patrol agents along California's border with Mexico, prosecutions by the U.S. Attorney's Office Southern District of California appear to lag behind. A concern voiced by Border Patrol agents is that low prosecution rates have a demoralizing effect on the men and women patrolling our Nation's borders.

It is my understanding that the U.S. Attorney's Office Southern District of California may have some of the most restrictive prosecutorial guidelines nationwide for immigration cases, such that many Border Patrol agents end up not referring their cases. While I appreciate the possibility that this office could be overwhelmed with immigration related cases; I also want to stress the importance of vigorously prosecuting these types of cases so that California isn't viewed as an easy entry point for alien smugglers because there is no fear of prosecution if caught. I am concerned that lax prosecution can endanger the lives of Border Patrol agents, particularly if highly organized and violent smugglers move their operations to the area.

Therefore, I would appreciate responses to the following issues:

- Please provide me with an update, over a 5 year period of time, on the numbers of immigration related cases accepted and prosecuted by the

U.S. Attorney Southern District of California, particularly convictions under sections 1324 (alien smuggling), 1325 (improper entry by an alien), and 1326 (illegal re-entry after deportation) of the U.S. Code.

- What are your guidelines for the U.S. Attorney's Office Southern District of California? How do these guidelines differ from other border sectors nationwide?

By way of example, based on numbers provided to my office by the Bureau of Customs and Border Protection and the U.S. Sentencing Commission, in FY05 Border Patrol agents apprehended 182,908 aliens along the border between the U.S. and Mexico. Yet in 2005, the U.S. Attorney's office in Southern California convicted only 387 aliens for alien smuggling and 262 aliens for illegal re-entry after deportation. When looking at the rates of conviction from 2003 to 2005, the numbers of convictions fall by nearly half.

So I am concerned about these low numbers and I would like to know what steps can be taken to ensure that immigration violators are vigorously prosecuted. I appreciate your timely address of this issue and I look forward to working with you to ensure that our immigration laws are fully implemented and enforced.

Sincerely,

Dianne Feinstein
U.S. Senator

BELL/MEADOR IN JOURNAL
OF LAW AND POLITICS

FROM VOLUME 9 of THE JOURNAL OF LAW AND POLITICS, beginning at page 247 (1992-1993)
By Former Attorney General Griffin Bell and Daniel J. Meador, Assistant Attorney General in the Carter Administration

The major concern of the Attorney General in relation to U.S. Attorneys is to see to it that the government is represented effectively in every district by competent attorneys of integrity who are responsive to policies formulated by the Attorney General. The best way to achieve this is for the Attorney General to be able to select such persons and to have them serve only as long as they perform effectively and carry out those policies.

Reasonable minds, all equally dedicated to improving the process, can differ as to what method would produce the best results. In our view, placing the appointing power in the President alone or in the Attorney General alone would probably be an improvement over the present process. All things considered, however, we believe that the method most likely to produce the best results in the long run is to place the power of appointment and removal of U.S. Attorneys solely in the Attorney General. This method seems more promising than any other to assure high quality in the appointees, to minimize the stigma of political patronage surrounding these appointments, and to foster effective departmental management.

This conclusion rests on the legal and practical realities of the situation. ... the Attorney General discharges a large part of that responsibility ["take care that the laws be executed faithfully"] through the ninety-four U.S. Attorneys throughout the country. They must be persons in whom the Attorney General has complete confidence and who in turn are responsible to the Attorney General alone. U.S. Attorneys are major arms of the executive branch, and they should be entirely accountable to the constitutionally and stautorily ordained superior executive officers. Giving the Attorney General the power to hire and fire these subordinates provides the best guarantee of consistent and effective administration and enforcement of federal laws.

Goodling, Monica

From: Chiara, Margaret M. (USAMIW)
Sent: Friday, November 04, 2005 11:01 PM
To: MGoodling@usa.doj.gov
Subject: Greetings from WDMI

Attachments: tmp.htm

tmp.htm (753 B)

I understand that you have transitioned from EOUSA to the Office of the Attorney General. Know that I enjoyed working with you on the implementation of the AG Guidelines. I hope that you will be able to see the project through to completion. Best wishes on your new assignment.
MMC

Goodling, Monica

From: Scolinos, Tasia
Sent: Friday, April 14, 2006 1:09 PM
To: Goodling, Monica
Subject: FW: DOJ evaluators rap SF U.S. Attorney's management

Attachments: tmp.htm

tmp.htm (10 KB)

FYI - thought since others were included on this email chain you should see it too

-----Original Message-----
From: Talamona, Gina
Sent: Friday, April 14, 2006 12:13 PM
To: Smith, Kimberly A; Scolinos, Tasia; Roehrkasse, Brian; Sierra, Bryan
Subject: FW: DOJ evaluators rap SF U.S. Attorney's management

FYI...

-----Original Message-----
From: Barnes, Christopher (USAOHS) EARS
Sent: Friday, April 14, 2006 10:00 AM
To: Talamona, Gina; Margolis, David; Battle, Michael (USAEO); Kelly, John (USAEO); Edwards, William (USAOHN); Anderson, Jeff (USAWIW); Tait, David (USAEO)
Subject: FW: DOJ evaluators rap SF U.S. Attorney's management

FYI Chris

> _____
> From: Colthurst, Tom (USATNW)
> Sent: Thursday, April 13, 2006 8:07 AM
> To: Barnes, Christopher (USAOHS) EARS
> Subject: DOJ evaluators rap SF U.S. Attorney's management
>
>
> The Recorder
>
> April 7, 2006 Friday
>
> SECTION: NEWS; Pg. 1 Vol. 130 No. 68
>
> LENGTH: 597 words
>
> HEADLINE: DOJ evaluators rap Ryan's management;
> NEWS
>
> BYLINE: Justin Scheck
>
> BODY:
>
> It was a just a matter of time before the longstanding complaints
> about U.S.
> Attorney Kevin Ryan's management style made their way to Washington.
>
> That was the takeaway from a presentation last Friday by Justice
> Department
> evaluators to managers in Ryan's office.

>
> The reviewers spent last week auditing the office.
>
> In presenting their criticisms, they said Ryan was inaccessible to
> his
> subordinates and has a detached management style that engenders low
> morale among
> assistant prosecutors, said sources with direct knowledge of the
> meeting.
>
> Such reviews are performed every three years on each federal
> prosecutor's
> office by the Executive Office of the U.S. Attorney.
>
> The process is known as EARS because it's administered by the
> executive
> office's Evaluation and Review Staff.
>
> Once an EARS review is concluded, evaluators are required to
> verbally present
> their negative findings to managers before preparing a written report.
>
> It was at that verbal presentation that the EARS team read off a
> list of
> relatively minor administrative complaints -- recommending, for
> example, that
> certain open jobs be filled -- in addition to harsh criticisms of the
> U.S.
> attorney that surprised everyone in the room, Ryan included, said
> sources
> familiar with the meeting.
>
> The reviewers did preface the critique by saying that positive
> aspects of
> office performance would be outlined in the final EARS report, said
> sources
> familiar with the meeting, in addition to a Ryan spokesman.
>
> The presentation echoed criticisms that have been leveled against
> Ryan and
> top deputy Eumi Choi over the past few years by disgruntled assistant
> prosecutors.
>
> The reviewers said Ryan is perceived as unapproachable, has little
> interaction with subordinates, and that a lack of confidence among his
> employees
> in his oversight of the office has resulted in continuing low morale
> in the
> criminal division, sources said.
>
> They recommended several management changes, including that Ryan
> grant more
> open access to assistants, and that one of Choi's two job titles --
> criminal
> division chief and first assistant -- be delegated to another
> attorney.
>
> The reviewers did not criticize the office's handling of individual
> cases, or
> the number of cases it has brought.
>
> In a Thursday e-mail, Ryan said he would take the EARS suggestions
> into
> account.
>
> "Given the size of this office and its three branches in San
> Francisco, San

> Jose and Oakland, and other competing work demands, I do not always
> get the
> chance to interact with our prosecutors and staff as much as I would
> like," he
> wrote.
>
> "However, as with any other matter, I am open to suggestions for
> improvement."
>
> Ryan further noted that the evaluation team "acknowledged many
> positive
> accomplishments by the office.
>
> "The evaluation process is not complete since the final report has
> yet to be
> written. We look forward to the full report, but until we receive it,
> it is
> premature to discuss whether any specific changes would be adopted."
>
> Rory Little, a professor at Hastings College of the Law -- and a
> former
> prosecutor who often represents lawyers in the San Francisco U.S.
> attorney's
> office -- said he expects Ryan to take the criticisms seriously.
>
> "It's not good news," said Little, who is generally supportive of
> Ryan and
> Choi.
>
> Little said that while he's generally confident in the EARS
> process, he
> wonders if Justice Department critics in D.C. who objected to Ryan's
> appointment
> are influencing the findings.
>
> "It's hard to say whether it's substantively legitimate or if there
> are
> people in Washington who don't like Kevin Ryan," he said.
>
> Reporter Justin Scheck's e-mail address is jscheck@alm.com.
>
> LOAD-DATE: April 10, 2006
>

Goodling, Monica

From: Goodling, Monica
Sent: Tuesday, May 09, 2006 5:49 PM
To: Sampson, Kyle
Subject: RE: AGAC

David Dugas has the Environment Working Group officially (Judy Beeman sent him a letter per your instructions). Judy also says Chiara is calling herself the chair of the NAIS, but Judy is checking her email to see who authorized it or how that happened. Perhaps she just assumed it was hers after Tom left...

-----Original Message-----
From: Sampson, Kyle
Sent: Tuesday, May 09, 2006 2:18 PM
To: Goodling, Monica
Subject: FW: AGAC

I think the answer to Bill's below questions is no -- 99 percent sure. Could you confirm for me?

-----Original Message-----
From: Mercer, Bill (ODAG)
Sent: Tuesday, May 09, 2006 12:20 AM
To: Sampson, Kyle
Subject: AGAC

1. Have you filled the NAIS chairmanshop? Chiara was Tom's vice, but she has limitations.

2. Have you filled the Environment Working Group chairmanship formerly held by Burgess?

Sent from my BlackBerry Wireless Handheld

Tracking:

Recipient	Read
Sampson, Kyle	Read: 5/9/2006 6:23 PM

Goodling, Monica

From: Goodling, Monica
Sent: Tuesday, May 09, 2006 6:25 PM
To: Sampson, Kyle
Subject: RE: AGAC

Will do.

-----Original Message-----
From: Sampson, Kyle
Sent: Tuesday, May 09, 2006 6:24 PM
To: Goodling, Monica
Subject: RE: AGAC

Hmmm. I have no recollection of designating Dugas. Zero. Could you ask Judy to check the authorization for this also? Thx.

-----Original Message-----
From: Goodling, Monica
Sent: Tuesday, May 09, 2006 5:49 PM
To: Sampson, Kyle
Subject: RE: AGAC

David Dugas has the Environment Working Group officially (Judy Beeman sent him a letter per your instructions). Judy also says Chiara is calling herself the chair of the NAIS, but Judy is checking her email to see who authorized it or how that happened. Perhaps she just assumed it was hers after Tom left...

-----Original Message-----
From: Sampson, Kyle
Sent: Tuesday, May 09, 2006 2:18 PM
To: Goodling, Monica
Subject: FW: AGAC

I think the answer to Bill's below questions is no -- 99 percent sure. Could you confirm for me?

-----Original Message-----
From: Mercer, Bill (ODAG)
Sent: Tuesday, May 09, 2006 12:20 AM
To: Sampson, Kyle
Subject: AGAC

1. Have you filled the NAIS chairmanshop? Chiara was Tom's vice, but she has limitations.

2. Have you filled the Environment Working Group chairmanship formerly held by Burgess?

Sent from my BlackBerry Wireless Handheld

Tracking:

Recipient	Read
Sampson, Kyle	Deleted: 5/9/2006 7:36 PM

Goodling, Monica

From: Goodling, Monica
Sent: Tuesday, May 09, 2006 7:48 PM
To: Beeman, Judy (USAEO)
Subject: RE: NAIS Listing

Please call me about this tomorrow. Thanks.

-----Original Message-----
From: Beeman, Judy (USAEO)
Sent: Tuesday, May 09, 2006 6:34 PM
To: Goodling, Monica
Subject: FW: NAIS Listing

FYI.

> _____
> From: Wichtman, Karrie S. (USAMIW)
> Sent: Thursday, March 23, 2006 9:46 AM
> To: Beeman, Judy (USAEO)
> Cc: Hagen, Leslie A. (USAEO); Chiara, Margaret M. (USAMIW)
> Subject: RE: NAIS Listing
>
> Good Morning Judy,
>
> Thank you for the information. Yes, Margaret is the new chair. She
> is in the process of organizing members into work groups to address
> NAIS priority areas. During this process we have discovered that USA
> Chuck Larson has withdrawn as a member. Additionally, Margaret is
> extending an invitation to new USAs with a substantial Indian Country
> population in their districts. We hope to have an updated list to you
> by the end of March.
>
> Karrie S. Wichtman
> Assistant to the United States Attorney
> and First Assistant United States Attorney
> Western District of Michigan
> Phone: 616-456-2404
> Fax: 616-456-2890
>
>
> _____
> From: Beeman, Judy (USAEO)
> Sent: Wednesday, March 22, 2006 4:46 PM
> To: Chiara, Margaret M. (USAMIW); Wichtman, Karrie S. (USAMIW)
> Subject: NAIS Listing
>
> Margaret if you are the new chair, please let me know. Thanks. Judy
>
> Native American Issues
> Chair: TBA
> Vice Chair: Margaret Chiara (W/MI)
> Sheldon Sperling (E/OK)
> David O'Meilia (N/OK)
> Paul Charlton (AZ)
> James A. McDevitt (E/WA)
> Thomas E. Moss (ID)
> David Iglesias (NM)
> Michael G. Heavican (NE)
> Matt Mead (WY)
> Bill Mercer (MT)
> Daniel Bogden (NV)
> Drew Wrigley (ND)

> Dunn Lampton (S/MS)
> McGregor W. Scott (E/CA)
> Glen Suddaby (N/NY)
> Karin Immergut (OR)
> Kevin O'Connor (CT)
> Gretchen Shappert (W/NC)
> Donald W. Washington (W/LA)
> Chuck Larson (N/IA)
> Deborah Rhodes (S/AL)
> John Richter (W/OK)
> Michelle G. Tapken (SD)
> Leslie Hagen (W/MI) (EOUSA Staff Liaison)
>
>
>

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

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HOUSE POLICY COMMITTEE

May 24, 2006

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

Dear Ms. Lam:

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

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

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

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

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

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

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

Sincerely yours,

Darrell Issa
Member of Congress

Goodling, Monica

From: Goodling, Monica
Sent: Tuesday, May 30, 2006 8:05 PM
To: Beeman, Judy (USAEO)
Subject: RE: Margaret chiara

Can Johnny handle when he calls to say that they don't have any money for a subcomm mtg by just mentioning that he knows the AG is thinking about who to appoint, but that he knows she's on the list? Then you can send out your memo. Thanks.

-----Original Message-----
From: Beeman, Judy (USAEO)
Sent: Thursday, May 25, 2006 11:16 AM
To: Goodling, Monica
Subject: Margaret chiara

Monica, I am sending out the agac summary memo in the next couple of days. Since Margaret made a presentation, I need to include her title. I could go ahead and put in the memo, Acting Chair, NAIS. If I do this I suspect she may call me. What I could say if she calls is that "technically she is really acting chair until the AG makes official appointment of a new chair."

This might solve our problems without confronting it head on???? Your thoughts.

Goodling, Monica

From: Goodling, Monica
Sent: Friday, June 09, 2006 4:56 PM
To: Cummins, Bud (USAARE)
Subject: RE: Resumes needed

You too! Thanks.

-----Original Message-----
From: Cummins, Bud (USAARE)
Sent: Friday, June 09, 2006 3:50 PM
To: Goodling, Monica
Subject: RE: Resumes needed

Just to let you know, I have not ignored this. I invited a select few of our real racehorses to consider it. I doubt I will have any takers due mainly to their domestic situations with kids, etc., but some are still thinking I think. I will let you know if I come up with someone, but I didn't want you to think I ignored the email. Have a good weekend. Bud

---

From: Goodling, Monica
Sent: Monday, June 05, 2006 5:42 PM
To: Goodling, Monica
Subject: Resumes needed

I'm sending this email to a smaller group of United States Attorneys, with the hope that you can provide assistance. In my new hat as the White House Liaison for the Justice Department, I am in the search of AUSAs (or former AUSAs) who would be good fits for leadership positions or the leadership offices here in D.C. In past years, Main Justice has had some fantastic talent come from the USAOs. This has benefited the field by helping ensure that the policy decisions made here reflect real life experience in the USAOs -- and also opened the door to some fantastic opportunities for some of these individuals. I am now trying to identify a group of people we could talk to about upcoming appointee positions. I know that no one likes to give up their "best and brightest," but I'm hopeful that you can help me identify some people who would be enthusiastic about joining the team here in D.C. Consider it your chance to potentially help recognize/reward the AUSA who is incredibly loyal, recognizes the Department's priorities, puts in long hours to carry them out and does a great job, but who isn't the self-promoter type.

I'm happy to do the legwork, and to reach out to the people you identify and chat, if you just want to give me some names. Please give me a call if you have questions about what I'm looking for. Hope all's well.

Best, Monica

****
Monica M. Goodling
White House Liaison & Senior Counsel to the Attorney General
Department of Justice
950 Pennsylvania Ave N.W.
Washington, D.C. 20530
202.353.4435 (phone)
202.305.9687 (fax)

"[W]e rededicate ourselves to the ideals that inspired our founders. During that hot summer in Philadelphia more than 200 years ago, from our desperate fight for independence to the darkest days of a civil war, to the hard-fought battles of the 20th century, there were many chances to lose our heart, our nerve, or our way. But Americans have always held firm, because we have always believed in certain truths: We know that the freedom we defend is meant for all men and women, and for all times. And we know that when the work is hard, the proper response is not retreat; it is courage." - President George W. Bush, July 4, 2005

Goodling, Monica

From: Goodling, Monica
Sent: Tuesday, June 13, 2006 7:06 PM
To: Voris, Natalie (USAEO); Courtwright_S@who.eop.gov
Subject: RE: Pre-Nom ED/AR

Natalie gets all the credit.

-----Original Message-----
From: Voris, Natalie (USAEO)
Sent: Tuesday, June 13, 2006 6:59 PM
To: Courtwright_S@who.eop.gov
Cc: Goodling, Monica
Subject: RE: Pre-Nom ED/AR

Susan:

As requested, attached is the pre-nomination paperwork for John Timothy Griffin (ED/AR). At your direction, I have not included the WH Form ("snp" document). I do not have a photo for Mr. Griffin. Please let me know if you need anything else. I have included a past WH Questionnaire to provide you with additional information about Mr. Griffin.

Thank you,

Natalie

Goodling, Monica

From: Goodling, Monica
Sent: Tuesday, June 13, 2006 7:06 PM
To: Sampson, Kyle
Subject: EDAR

Susan has the pre-nomination paperwork she needs. I'll talk to Mike Battle in the a.m. about calling Cummins and will make sure ODAG knows that we are now executing this plan (I did tell them this was likely coming several months ago).

Let me know if there is anything else you need while you're gone - have a great trip.

Tracking:

Recipient	Read
Sampson, Kyle	Read: 6/13/2006 7:08 PM