

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515-6216
One Hundred Tenth Congress

March 8, 2007

The Honorable Alberto R. Gonzales
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

We write to follow up on the hearings held in the House and Senate Judiciary Committees this week concerning the forced resignations of six U.S. Attorneys. At these hearings, a number of important disclosures were made, several of which raise very troubling legal questions about the conduct of officials at the Justice Department. Because of these concerns, and in order to further our investigation, we ask that you make available to us certain officials at the Department for follow-up questioning next week and that you provide us with certain critical documents and information.

At our hearings we learned of a number of troubling matters. Among other things:

- Two of the fired U.S. Attorneys, Mr. Bogden and Mr. Charlton, testified that they were told by Mr. William Mercer, the Acting Associate Attorney General, that they were fired for political reasons in order to put others in those positions so they could build their resumes, contrary to the claim by Justice Department officials that they were fired for "performance related" reasons. Many of the rationales for the terminations offered by Mr. Moschella at our hearing do not appear to hold up to scrutiny. For example, Mr. McKay was allegedly terminated because of his promotion of an information sharing program, even though he was praised for this work and his program was selected to be a pilot program by the Department. Mr. Cummins was allegedly terminated in part because he was rumored to want to leave before his term was finished, even though he testified he had never told that to anyone at the Department prior to his resignation. Mr. Charlton was allegedly terminated because he wanted the FBI to tape the confessions of alleged child molesters to facilitate their convictions, even though the Deputy Attorney General's office had asked him not to resign over this issue and asked him to initiate a pilot program on this matter.
- Mr. Iglesias and Mr. McKay testified that there were several efforts made to influence their prosecutorial decisions. For example, Mr. Iglesias testified that he felt "leaned on" and "sickened" by *ex parte* congressional contacts, and Mr. McKay testified that he

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received a call from a congressional representative apparently intended to pressure him to pursue a criminal vote fraud investigation, and subsequently stated that he was asked during an interview with White House Counsel Harriet Miers to explain why he had "mishandled" that issue. This testimony raises serious issues concerning possible undue influence and obstruction of justice.

- Mr. Cummins testified that he received a call from Michael Elston, Mr. McNulty's Chief of Staff, who informed him that voluntary testimony to Congress by Mr. Cummins or any of his colleagues would be seen as "a major escalation of the conflict meriting some kind of unspecified form of retaliation." On its face, this testimony raises the possibility that the Department may have sought to obstruct Congress' efforts to ascertain the truth concerning these firings.

In order to further our investigation and resolve the many contradictions between statements by the Department and the terminated U.S. Attorneys, we need to interview several employees at the Department, and accordingly ask that you make them available to us to interview within the next week. These individuals include:

- Paul McNulty, Deputy Attorney General;
- D. Kyle Sampson, Chief of Staff to the Attorney General;
- Michael Elston, Chief of Staff to the Deputy Attorney General;
- Michael Battle, Director, Executive Office for U.S. Attorneys;
- Monica Goodling, Senior Counsel to the Attorney General and Liaison to the White House; and
- William Mercer, United States Attorney for Montana and Acting Associate Attorney General.

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We will also require that you provide to us information and documents next week as well.¹ Specifically, we request that you supply the following documents and information in accordance with the definitions enclosed with this letter:

- copies of all documents (including but not limited to e-mails), either within the Department of Justice or relating to communications between anyone at the Department and the White House or any other person or entity, concerning the termination of the six U.S. Attorneys who testified at our hearing and the selection of their replacements. This includes, but is not limited to, any materials relating to the meetings held within the Justice Department on the subject, communications from or to the White House on the subject, any lists of U.S. Attorneys to be replaced, any lists of replacement candidates for their positions, the Justice Department and Administration responses to the controversy over the firings, and post-termination communications with the fired U.S. Attorneys;
- copies of all documents relating to communications between the Justice Department and Members of Congress concerning any of the terminated U.S. Attorneys in advance of their terminations;
- copies of all documents relating to communications that the Justice Department had with the terminated U.S. Attorneys during their tenure in office concerning any failure in their performance, including any failure to comply with the Justice Department's priorities or directives;
- the names of any Members of Congress who were given advance notification of the terminated U.S. Attorneys by anyone in the Justice Department, together with the dates of any such notification; and
- the names of all individuals in the White House and Justice Department who were in any respect involved in the decision to seek the resignation of the terminated U.S. Attorneys, in addition to those identified by Mr. Moschella in his testimony.


¹Pursuant to a letter delivered to Mr. Moschella on Monday, March 5, 2007, we had hoped to receive certain requested documents and information in advance of the hearing. For purposes of this letter, any reference to the Justice Department encompasses all components thereof, e.g., the Executive Office for United States Attorneys.

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We request that you provide the requested documentary materials and other information to us by 6:00 p.m. on Thursday, March 15, 2007, and we will be in touch with your office concerning the above individuals. Responses and questions should be directed to the Judiciary Committee office, 2138 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-3951; fax: 202-225-7680). Thank you for your cooperation in this matter.

Sincerely,


John Conyers, Jr.
Chairman


Linda T. Sánchez
Chairwoman, Subcommittee on Commercial
and Administrative Law

Enclosure

cc: Hon. Richard A. Hertling
Hon. Lamar S. Smith
Hon. Christopher B. Cannon

Definitions

1. The term “document” means any written, recorded or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, manuals, instructions, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazine or newspaper articles, interoffice and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, transcripts, diaries, analyses, summaries, minutes, comparisons, messages, correspondence, press releases, circulars, reviews, opinions, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), and electronic and mechanical records or representations of any kind (including without limitation, tapes, cassettes, disks, computer files, computer hard drive files, CDs, DVDs, memory sticks, and recordings) and other written, printed, typed or other graphic or recorded matter of any kind of nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, telexes, discussions, releases, personal delivery, or otherwise.



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 19, 2007

The Honorable John Conyers
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Linda T. Sanchez
Chairwoman
Subcommittee on Commercial and
Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman and Madam Chairwoman:

This supplements our previous responses to your letter, dated March 8, 2007, which requested documents and other information about the request for the resignations of eight United States Attorneys. Under the extraordinary circumstances of this matter, it is important for the Congress and the people it represents to understand both the reasons for our decisions to request these resignations and our efforts to provide testimony to Congress about this matter. It would be improper to remove a United States Attorney for partisan reasons in retaliation for bringing or failing to bring, or in an effort to prevent the U.S. Attorney from bringing, a particular prosecution or enforcement action – such as for failing to pursue a public corruption case. Because the American public must have confidence that such considerations of partisan gain did not factor into the decision to ask for the resignation of these eight federal prosecutors, we are providing the Subcommittee with confidential, deliberative documents that disclose the process through which the Department reached those decisions and prepared for testimony. The release of such deliberative materials is virtually unprecedented and reflects the Department's commitment to ensuring that all the relevant information underlying these decisions is available to Congress.

Enclosed are over 3,000 pages of documents responsive to your request. Consistent with our prior production, we will make unredacted copies of these documents available for review at the Department by Committee staff. The enclosed documents were located in the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, and the Executive Office for United States Attorneys. As indicated in our letter of March 13, 2007, we are

redacting personal information based upon individual privacy interests. Also redacted is information from multi-subject documents about other subjects, completely unrelated to the removal of any U.S. Attorneys; a few of these redactions concern non-public information about open criminal investigations, which will not be made available for review.

Additionally, we are redacting information that would identify other U.S. Attorneys who were considered for possible removal but ultimately were not asked to resign, and information about candidates to replace those who were removed unless that information played a role in the removal decision. We also have made a few redactions of information about consideration of candidates for judicial appointments. In making the redactions, we are seeking to preserve the privacy and professional viability of those who are continuing to serve as U.S. Attorneys as well as individuals who have been considered but not selected as nominees for that position. While we appreciate the Committee's interest in confirming the character of these redactions, we are unaware of any value in publicly disclosing the unredacted documents that would outweigh the damage to the individuals involved and their ability to function effectively as U.S. Attorneys or professionals in other roles. It would be patently unfair to the individuals and also risk destruction of the trust and collegiality that is critical to the Department's relationship with these and all other U.S. Attorneys. We are, of course, prepared to respond to Committee staff questions about particular redactions in these records.

We have identified three categories of documents that raise such significant confidentiality and privacy interests that we need to limit our response to making the documents available for Committee staff review at the Department or your personal review at your office. One category consists of documents relating to a request by the U.S. Attorney for the Western District of Michigan for an Office of Professional Responsibility (OPR) investigation into a leak of information about an ongoing OPR investigation regarding the conduct of an Assistant U.S. Attorney in that office. The second category consists of documents relating to the U.S. Attorney's Office in the Northern District of California, including internal management issues and a special EARS investigation. These documents include communications confidentially submitted to Department officials by career attorneys, and we believe that preservation of their confidentiality is important to preserving the candor of such communications in the future. As you may recall, we have previously produced the final EARS reports for the offices of the U.S. Attorneys who testified before the Subcommittee. The final category consists of recommendation memoranda submitted in connection with Attorney General decisions on whether to seek the death penalty in individual cases, which are extremely sensitive law enforcement deliberative materials.

As described above, we have made the full disclosure of deliberative documents leading up to the Department's decision to request the U.S. Attorney resignations because we recognize the Committee's interest in obtaining information about the motivation and reasons for that decision. And consistent with that rationale, we have also provided documents relating to our communications with those U.S. Attorneys both before and after December 7, 2006, the date the resignations were requested.

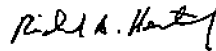
Our response regarding the remaining documents generated after December 7th is based on different considerations. We are providing another category of documents generated after that date, but are doing so to satisfy another legitimate Committee purpose: its interest in examining the Department's provision of incomplete information to Congress. We are providing deliberative documents concerning the preparation of the congressional testimony by Department officials in order to clarify the integrity of our process for preparing the testimony.

Except as previously indicated and consistent with long-standing Executive Branch practice, however, we are not providing other documents generated within the Executive Branch for the purpose of responding to the congressional (and media) inquiries about the resignations. The appropriate functioning of the separation of powers requires that Executive Branch officials preserve the ability to communicate confidentially as they discuss how to respond to inquiries from a coordinate branch of government. Such robust internal communications would be effectively chilled, if not halted, if they were disclosed, which could substantially impede any agency's ability to respond to congressional oversight requests. That result would be detrimental to the operations of both the Branches and serve no useful purpose.

Finally, although we have made available documents that concern our identification of replacement candidates for the U.S. Attorney positions prior to December 7th – because that information may have relevance to the decision to request the resignations, we are not releasing information about the Department's ongoing, confidential consideration of candidates to fill these positions, which began after December 7th. That consideration is integral to the exercise of the President's constitutional authority to appoint Executive Branch officials, and it implicates significant privacy interests for the individuals who may be, or may have been, subject to consideration for these positions.

We believe that the provision of the enclosures completes our response to your document request, although we will certainly supplement this response if we identify additional responsive documents. We hope that this information is helpful and would appreciate the opportunity to confer further with the Committee if you have further questions about this matter.

Sincerely,



Richard A. Hertling
Acting Assistant Attorney General

cc: The Honorable Lamar Smith
Ranking Minority Member
Committee on the Judiciary

The Honorable Christopher B. Cannon
Ranking Minority Member
Subcommittee on Commercial and
Administrative Law

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515-6216
One Hundred Tenth Congress

March 22, 2007

The Honorable Alberto R. Gonzales
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

We are writing with respect to the documents that the Justice Department has continued to withhold in response to our March 8 letter requesting the production of documents and witnesses concerning the troubling U.S. Attorney controversy. Although a large volume of documents has been provided, the Department has continued to withhold unredacted versions of many of these documents despite our repeated requests for them. In order to fulfill the pledge you made to the American people on national television to truly get to the bottom of this growing controversy, we ask that you agree to provide these documents to us voluntarily by 1:00 p.m. tomorrow, or we will have no alternative but to pursue appropriate legal redress to secure their production, as was authorized yesterday by the Subcommittee on Commercial and Administrative Law.

As was made clear to Assistant Attorney General Hertling when documents were initially produced on March 13, we are not interested in personal details such as social security numbers and telephone numbers, and do not object to your redacting that information. To carry out our oversight responsibilities, however, it is important to obtain access to the two other categories of information that are being withheld: the names of U.S. Attorneys who were being considered for termination, and the names of replacement candidates, particularly for the U.S. Attorneys who were actually terminated. Repeated e-mails and oral requests from our staff have stated specifically that we could not accept those conditions and have renewed our request for full, unredacted copies. The only response, however, has been a March 19 letter from the Department reiterating these unacceptable restrictions. The only concessions—permitting staff review, only at the Department, with no note-taking permitted concerning the redacted material, and allowing Member-only review in their offices—are unacceptable.

Mr. Hertling's March 19 letter also states that the Department is withholding altogether another category of documents crucial to our oversight efforts: some Department and Executive Branch documents "generated for the purpose of responding to the congressional (and media) inquiries" about the firing of U.S. Attorneys. Yet the letter itself acknowledges Congress's

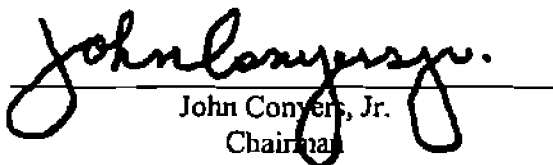
The Honorable Alberto R. Gonzales
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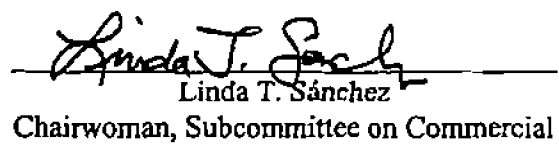
legitimate interest in examining the Department's incomplete and inaccurate responses and testimony to Congress on this subject, and selected documents on this subject have in fact already been provided. Oral requests by our staff for more specific information on this withholding, including an explanation as to why some documents were withheld and others provided or even for a report of the number of documents withheld, have gone unanswered.

This conduct is unacceptable and does not facilitate meaningful oversight. As you should be aware, this matter is of utmost seriousness, requiring answers to Congress and the American people. Serious allegations exist that the White House and the Department of Justice interfered in the administration of justice for political purposes. Evidence has emerged that improper criteria may have been used not only for firing U.S. Attorneys, but also in deciding to retain U.S. Attorneys, those your former Chief of Staff described as "loyal Bushies." These allegations strike at the integrity of our judicial system and, if proven, constitute a grave violation of the public trust.

We request again that you immediately provide complete and unredacted copies of these documents to us. Congress must find out what happened, so we can restore confidence in the administration of justice.

Sincerely,


John Conyers, Jr.
Chairman


Linda T. Sánchez
Chairwoman, Subcommittee on Commercial
and Administrative Law

cc: Hon. Lamar S. Smith
Hon. Christopher B. Cannon
Hon. Richard A. Hertling



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 26, 2007

✓ The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Linda T. Sanchez
Chairwoman
Subcommittee on Commercial and
Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman and Madam Chairwoman:

This responds to your letter, dated March 22, 2007, seeking production of a variety of Department documents, including those that have been made available for your review. We request that the Committee defer any action to issue subpoenas relating to these materials until we have an opportunity for meaningful discussion about our concerns regarding public disclosure of these documents.

Our fundamental concern about producing the unredacted documents is that it would be deeply unfair to the U.S. Attorneys who were not asked to resign to publicly disclose the Department's internal deliberations over their possible replacement. These dedicated public servants, who continue to serve in their offices, were not in fact asked to resign and had no involvement in the current controversy. They do not deserve to have their reputations maligned unnecessarily by public disclosure as they attempt to continue to tackle the Department's law enforcement mission. In light of the fact that the Department has offered Members and staff the opportunity to review the unredacted documents privately, we ask you to consider the damage that such disclosures would cause to individual U.S. Attorneys and the Department.

Consistent with the extraordinary circumstances of this matter, we have offered access to information that is virtually never disclosed outside of the Department. As set forth in our previous correspondence, we have furnished you with more than 3,100 pages of documents in the past week, from which we have redacted information that implicates individual privacy interests

and significant institutional equities of this Department. We have offered you access to the complete and unredacted versions of those same documents at the Department (or on the Hill for individual Members), with a separate collection set aside for the majority and the minority in each Committee so that your respective staffs can mark and tag documents as they see fit. To date, Committee staff have reviewed only the first 143 pages of unredacted documents on March 19, 2007; no staff or Members have accepted our offer to review the far larger number of unredacted pages and other documents that are now available for your review.

While we understand that you may disagree with the Department's decisions relating to the requested resignations of the eight United States Attorneys, we trust that you have no interest in damaging the Department's ability to serve the Nation as the federal Government's primary law enforcement and litigating agency. Under those circumstances, we believe it is important that we work together to develop an accommodation of your information needs that is consistent with the Department's law enforcement and litigation responsibilities. Some of the particular requests set forth in your letter would materially and adversely affect the Department's operations in ways that serve no useful purpose. Most importantly, disclosure of the names of U.S. Attorneys who were considered for replacement but ultimately not asked to resign would only compromise, for no public gain, the Department's effective relationships with them and do substantial harm to their reputations and their ability to do their jobs effectively. The relevance of such information is attenuated because their resignations were not in fact requested, and disclosing such internal deliberations would also discourage the robust exchanges of views that are important to the Department's management of its leadership resources.

We have not, of course, redacted information about candidates for U.S. Attorney if their consideration was related to the decision to seek a particular resignation. We have redacted names of candidates whose consideration was not related to that decision, and the basis for your further request for such information remains unclear. If the candidate was irrelevant to the U.S. Attorney's resignation, then the relevance of information concerning that individual to your oversight interest is unclear. Moreover, the public identification of such individuals implicates their privacy interests and would chill the internal deliberative process that remains on-going within the Department to select replacements.

Your letter also asks about our withholding of a category of documents "generated for the purpose of responding to the congressional (and media) inquiries." You have suggested that this category is "crucial to [y]our oversight interests." Although we agree that Congress has a "legitimate interest in examining the Department's [assertedly] incomplete and inaccurate responses and testimony to Congress on this subject," it is only a small sub-set of this category that addresses that interest – and we have already produced those documents. As we stated in our March 19th response, we have provided our "deliberative documents concerning the preparation of the congressional testimony by Department officials in order to clarify the integrity of our process for preparing the testimony." These documents included preparatory materials related to congressional briefings. We believe that production, together with the interviews our officials will provide, should satisfy that oversight interest.

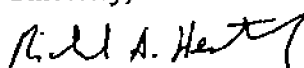
In producing those documents, we made a careful and reasonable exception in these unique circumstances, based on the particularized need relating to the assertedly incomplete testimony, to our longstanding position that it is in the interests of neither the Legislative nor the Executive Branch for agencies to be required to produce their informal communications – whether with Members of Congress or their staff or within the Executive Branch – regarding matters under inquiry by Congress. The withheld documents in this category do not relate to possible inaccuracies or misrepresentations in congressional testimony, but instead reflect the myriad of confidential communications that arise in the course of responding to inquiries about matters being reviewed by Congress.

We believe that there would be a substantial inhibiting effect on future informal communications between agencies and congressional representatives, both majority and minority, if informal communications – to use hypothetical examples, a suggested response for a Member to make to a constituent's inquiry about the matter under review or a candid communication from a Member's staff regarding the Member's view of the matter – were to be produced in the normal course of congressional oversight. This would be especially problematic in this era of emails and Internet posting.

We also hope that you will appreciate our concern with respect to the internal Executive Branch communications in this category. A common sub-category of documents in this category consists of emails and drafts of letters responding to committee requests for documents or information. These draft or informal documents are analogous to documents recording communications between committee staff and Members regarding the drafting of the committee requests themselves. Just as the confidentiality of communications between congressional staff and their principals is essential to the conduct of the public business, so too it is essential for the Executive Branch. Moreover, it would introduce a significantly unfair imbalance to the oversight process if committees were able to obtain internal Executive Branch documents that are generated in order to assist Executive Branch officials in determining how to respond to an inquiry by the very committee seeking the documents or other information.

We earnestly hope that you will accept our offer to review the redacted documents before taking further action. We are available to confer with you about these matters at your convenience.

Sincerely,



Richard A. Hertling
Acting Assistant Attorney General

cc: The Honorable Lamar Smith
The Honorable Christopher B. Cannon

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515-6216
One Hundred Tenth Congress

March 28, 2007

The Honorable Alberto R. Gonzales
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

We are writing concerning our repeated requests for documents that the Justice Department has continued to withhold in response to our March 8 letter request for documents concerning the troubling U.S. Attorney controversy, and to propose a solution that we believe will meet your concerns regarding the appropriate protection of sensitive information.

Although Assistant Attorney General Hertling's latest letter, of March 26, asks for meaningful discussions with respect to your concerns about providing us with those documents, our staffs have had several such discussions, both before and after the March 26 letter, and we have made clear our willingness to take steps to accommodate any legitimate concerns. Yet the Department has not altered its position, and continues to refuse our requests. We have also sought to meet with you personally to resolve these matters, also without success. Further delay can only harm the process of getting to the truth in this important matter, as you have pledged to do.

Two categories of information are being withheld despite our requests. The first consists of information redacted from a large number of documents produced by the *Department* concerning the names of U.S. Attorneys who were considered for termination but not fired, and the names of replacement candidates, at least for those U.S. Attorneys who were terminated. The importance of such information to our oversight efforts is clear. In light of the evidence already suggesting that at least some U.S. Attorneys were terminated at least in part for political reasons, including decisions to prosecute or not prosecute cases against Republican or Democratic elected officials, and the evidence that the Administration sought to retain only "loyal Bushies," as your former Chief of Staff put it, the reasons that U.S. Attorneys initially suggested for termination were instead retained is an important part of our efforts to probe concerns about politicization of the hiring, firing, and other decision-making concerning U.S. Attorneys.

Similarly, since the Department has already admitted that a U.S. Attorney in Arkansas was fired for political reasons to make room for a former Karl Rove aide as his successor, information on replacements considered for the other terminated U.S. Attorneys is also relevant.

The Honorable Alberto R. Gonzales
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Unfortunately, we cannot rely on the March 26 letter's assertion that candidate names were not relevant to the other terminated U.S. Attorneys, when precisely that previous claim by the Department with respect to the Arkansas U.S. Attorney has already proven false.

The March 26 letter, however, continues to insist that this information can be made available only to Members, with no staff assistance, or to staff only if no copies or even notes about the redacted information leave the room at the Department where they are located. As we have previously explained, this is unacceptable. Even from the review of a mere 140 pages of redacted material earlier this month, it is clear that there is significant relevant information in the redacted material that, without having copies in their possession, our staff cannot possibly use effectively to further our oversight efforts.

We appreciate your concerns about the sensitivity of some of this information, and your desire that it be handled with appropriate care to protect it from unnecessary disclosure. Our staff has made clear, and we reiterate, that we are prepared to accommodate your concerns about publicizing sensitive information in such redactions. Specifically, we would agree that only one copy of any unredacted document will be maintained respectively by the Majority and Minority of the Subcommittee, and that the confidentiality of the redacted information will be maintained as if they were received in Executive Session, and will not be disclosed more broadly except after consultation with the Department and pursuant to a vote by the Subcommittee. Even these proposed safeguards, however, were rejected without explanation by the Department. Given that our Committee is customarily given responsibility to retain classified national security documents in our offices, we cannot understand why you would not permit us to retain copies of these far less sensitive documents, sensitive though they may be within the Department.

A second category of documents has been withheld altogether: a vaguely defined category of documents "generated for the purpose of responding to the congressional (and media) inquiries" concerning the U.S. Attorney firings. The Department's letters have conceded Congress's legitimate interest in examining the Department's incomplete and inaccurate responses to the public and to Congress on this subject, and some documents in this area have been provided. But the March 26 letter continues to do no more than assert that the Department has produced the "sub-set" of documents that "addresses" that interest, without any specific log or other information explaining any proper legal basis for withholding particular documents, or even a report of the number of documents withheld, despite our requests. In light of the Department's woeful record of misrepresentations to the public and Congress thus far concerning this controversy, the current bare assertion that it has given us everything properly relevant simply cannot be accepted.

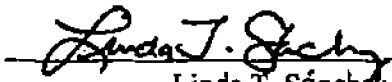
The Honorable Alberto R. Gonzales
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March 28, 2007

We remind you again of your pledge to the American people to truly get to the bottom of this growing controversy. To fulfill our obligation to do the same, and to restore the public's confidence in the administration of justice, we again ask that these withheld documents be provided to us immediately.

If the proposal outlined above is satisfactory to you, please let us know by 1 p.m. tomorrow, by contacting us at the Judiciary Committee office, 2138 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-3951; fax: 202-225-7680). If not, we will unfortunately be left with few options other than to pursue appropriate legal recourse to allow us to get to the bottom of this matter.

Sincerely,


John Conyers, Jr.
Chairman


Linda T. Sánchez
Chairwoman, Subcommittee on Commercial
and Administrative Law

cc: Hon. Richard A. Hertling
Hon. Lamar S. Smith
Hon. Christopher B. Cannon

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515-6216
One Hundred Tenth Congress
April 2, 2007

The Honorable Richard A. Herdling, Esq.
Acting Assistant Attorney General
Department of Justice
Washington, D.C. 20530

Dear Mr. Herdling:

I have reviewed the redacted, incomplete set of documents that the Department of Justice has supplied to the Committee in response to my original requests relating to the recent termination of several United States Attorneys. My review, plus troubling developments since my original request, compel me not only to reiterate my requests for the full, unredacted version of all of the documents originally requested, but also to enhance my request to ensure that I have all of the relevant electronically stored information in the manner that it is required to be preserved and produced under the revised Federal Rules of Civil Procedure. Presumably, the Department is well aware of these requirements, with which it deals routinely in federal civil litigation.

As you know, originally the Department provided no explanation to the eight United States Attorneys who were advised of their termination on December 7, 2006. Thereafter, both the Attorney General and the Deputy Attorney General suggested that there were "performance-based reasons" for each of the terminations. Your office also advised that White House Counselor, Karl Rove, had nothing to do with the terminations. Subsequent explanations have contradicted these earlier statements. On March 6, 2007, Mr. Moschella, the Principal Associate Deputy Attorney General, testified before the Commercial and Administrative Law Subcommittee of the House Judiciary Committee and provided yet other explanations for several of the firings. However, several of his explanations are not borne out by the documents that I have reviewed and some are not consistent with the statements made under oath before the Senate Judiciary Committee by Mr. Kyle Sampson, the former Chief of Staff to the Attorney General. Most recently, I have been informed that a key participant in this process, Ms. Monica Goodling, the liaison between the Justice Department and the White House, intends to invoke her Fifth Amendment privilege rather than answer questions of the House and Senate Committees investigating these matters. This latest development raises the additional question of what the Department's position is with respect to this apparent decision by Ms. Goodling and her attorneys.

Mr. Richard A. Hertling
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Based on these and other developments, the Committee believes that it needs prompt access to all of the electronic information, including embedded data and metadata, relevant to our inquiry concerning the terminations of the United States Attorneys and the Department's development of responses to our inquiries about this topic. I need to see exactly when the lists for termination were developed and modified, who had input into those determinations and the reasons they ascribed to their recommendations, and when and who suggested the changing explanations for these decisions to the public and to our Committee. I also need to see which individuals received blind carbon copies of e-mails, information which is not available on the e-mail printouts that you have provided. At the very least, I need to have assurances in writing that the Department has taken every reasonable precaution to preserve and secure any and all documents or data in its possession, custody or control that may be relevant to the issues currently under consideration by the Committee. The Committee also believes that the Department should offer similar assurances that all potential record custodians have been informed of their obligation to preserve relevant material and that they have been put on notice not to delete, overwrite or otherwise alter or destroy any documents or data in their possession.

In an effort to identify adequately the type of material that needs to be preserved and produced with regard to this investigation, the Committee fully expects that the Department's document production will include, but not be limited to, all documents, data and/or other electronically stored information that has been created using, or is otherwise maintained on, the following digital repository and/or electronic media: personal computers, office workstations, laptops, hard drives, handheld devices (such as Palm, Treo or Blackberry), phones (office, mobile and/or home), removable electronic storage devices (such as CDs, DVDs and USB or thumb drives), shared network drives and servers (including email and/or file servers) and back-up tapes (or other disaster recovery/archiving data). All of these required data should include the computers and other records of the individuals who worked on this matter but have since left the Department or who are on administrative leave, including but not limited to Mr. Sampson, Mr. Battle and Ms. Goodling.

Further, in light of recent disclosures revealing that key record custodians involved in the controversy utilized non-governmental email accounts to conduct official governmental business, the Committee urges the Department to image forensically the

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work stations, laptops and/or other personal computers of key custodians at the White House likely to have material regarding the controversy surrounding the dismissals. The Committee also encourages immediate action on behalf of the Department to secure potential evidence and proposes that the forensic images be maintained by a neutral and unbiased third-party intermediary at a mutually agreed upon location until it is determined whether or not the Committee will need to access the images for deleted or other potentially purged material relevant to the controversy.

In order to provide all pertinent information relevant to the Committee's investigation, facilitate my review and minimize document processing and other expenditures, the Committee requests that the Department make all document and data file productions, whether from word processing, spreadsheet, email and/or instant messaging applications or other electronic data repositories, in native file format so that the metadata accompanies each electronic document and/or data file. In the alternative, should the Department object to native file production for all of the documents relevant to the Committee's investigation, the Committee is prepared to negotiate similar document production formats that would maintain the integrity of the document and deliver the metadata that is likely to be deemed essential to this investigation.

As I have told you previously, I appreciate the Department's concerns about the sensitivity of some of the information, including its potential to embarrass individuals involved, and your desire that it be handled with appropriate care to protect it from unnecessary disclosure. I continue to be willing to work with you to develop and implement procedures that protect the sensitivity of the information while still providing the Committee and its staff access to the needed information for our continuing investigation.

Once I obtain these materials and are able to give them meaningful review, I will be in a better position to determine the next steps to proceed expeditiously as appropriate to ascertain the facts. I look forward to your timely compliance with the Committee's request.

Sincerely,

JOHN CONYERS, JR.
Chairman

cc: Honorable Lamar S. Smith
