



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 29, 2007

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

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Messrs. Chairmen:

This confirms conversations with your staffs regarding the Committees' interest in interviewing six current and two former Department employees in connection with your oversight inquiry about the recent resignations of U.S. Attorneys. We understand that the Committees would like to conduct these interviews on the record in order to learn more about the roles of these individuals in the decisions to seek the resignations of eight U.S. Attorneys.

We are prepared to make the requested Department of Justice employees available on a voluntary basis for interviews, in accordance with our discussions with Committee and Subcommittee staff. These employees include Paul McNulty, William Moschella, Michael Elston, William Mercer, David Margolis, and Monica Goodling, although we understand that Ms. Goodling has declined to be interviewed based upon advice from her private attorney. We understand that, after these interviews, the Committees may wish to interview selected additional employees. We also are prepared to make former employee Michael Battle available and we are advised that he has agreed to be interviewed on the same terms as current Department employees, as described below. Similarly, we have no objection to a Committee staff interview of former Department employee Kyle Sampson on the same terms as current employees, although we understand that Mr. Sampson has retained private counsel with whom the Committee should consult regarding his position.

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In accordance with our discussions, the interviews would be conducted jointly by one staff member each for the majority and the minority of the House Judiciary Committee and the majority and minority of the Senate Judiciary Committee. In other words, each individual may be questioned serially by up to four designated staff members, with a court reporter present, on a mutually convenient date for a reasonable period of time. Other Committee staff may be present, but no more than designated four will ask questions. Current employees of the Department may be accompanied by two individuals whom the Department will designate and any private counsel they may select. Former employees may choose to be accompanied by private counsel and one Department representative. We hope that by clarifying the scope of these interviews in advance, the role of Department representatives will be limited to assisting the interviewees and protecting other Executive Branch interests. Since these are recorded interviews, rather than depositions, we do not expect that they will note objections to the form of questions or other conventional litigation objections.

The Committees will employ a commercial court reporter to record the proceedings, and authorize the reporter to supply the Department with a transcript on the same terms as it may be acquired by the Committees. The Department will be responsible for payment to the reporter for its transcripts. The Committees and the Department will maintain the confidentiality of the transcripts and they will be deemed to be Committee Confidential documents that will be not disclosed except after consultation with the Department and, thereafter, pursuant to notice from the relevant Committee that the Chairman has removed the Committee Confidential designation. The Department will be responsible for ensuring that information concerning the substance of any interview or the transcript thereof is not disclosed to other Department interviewees who have not yet been interviewed. If information relating to the substance of an interview is publicly disclosed, all the parties reserve the right to disclose relevant portions of the transcript to correct any misinformation.

We expect that the interviewees will be asked about their knowledge of actions that led to the Department's request for the resignations of the eight U.S. Attorneys. The interviews may encompass queries about their knowledge of a) whether any resignation request was related to concerns about acts or omissions of a U.S. Attorney with regard to office management, law enforcement priorities, policies, and/or particular law enforcement matters; b) whether any resignation was requested in order to facilitate the appointment of particular replacements; and c) the provision of incomplete or inaccurate information to the Committees about the requested resignations. Except as described above, questions about their knowledge of other matters, such as the judicial-nominee selection process, the Department's deliberations on responding to congressional and media inquiries on this matter, and pending law enforcement investigations and litigation, would be beyond the scope of these interviews.

Until resolution of the larger issue of the redactions in Department-produced documents, we would ask that the interviewees not be asked for information about other U.S. Attorneys or

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candidates to replace the eight who were asked to resign, unless the information about those candidates played a role in the decision to seek the resignations of the eight. This is consistent with our non-disclosure of such unrelated information from the documents that we have produced to the Committees, although we appreciate that this remains an unresolved issue subject to continuing discussion. If the resolution of the issue results in the production of additional documentary material that is relevant to the interview of a particular witness, we are prepared to make such a witness available to respond to staff questions regarding the newly released material.

We hope that our commitment to make the requested Department employees available to the Committee voluntarily is sufficient, and we assure you that we remain available to confer with staff to address issues that may arise. We also intend to make appropriate Department witnesses available on a voluntary basis for any future hearing into this matter. Please do not hesitate to contact this Office if you would like to confer further about this matter.

Sincerely,



Richard A. Hertling
Acting Assistant Attorney General

cc: The Honorable Lamar Smith
The Honorable Arlen Specter
The Honorable Charles Schumer
The Honorable Jeff Sessions
The Honorable Linda Sanchez
The Honorable Chris Cannon