



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 13, 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 responds to your letters, dated March 8, 2007 and March 12, 2007, and subsequent correspondence, as well as the House Committee's subpoena, dated April 10, 2007, concerning the Committees' oversight investigations regarding the resignations of U.S. Attorneys.

Let me begin by emphasizing that the Department remains committed to working with the Committees to reach appropriate arrangements for providing the Committees with the information they need to review the U.S. Attorney resignations, in a manner that is consistent with the important institutional interests of the Department and the Executive Branch that we have identified. We have already made an extraordinary accommodation of the Committees' needs by providing internal deliberative documents concerning the decision to request the resignations of the eight U.S. Attorneys and the preparation of congressional testimony on this matter. We have also made available for review the unredacted versions of documents that were produced to the Committees in redacted form.

We continued that cooperation today by producing an additional 2,394 pages of documents. Included in today's production are unredacted versions of some of the documents that we previously produced in redacted form while making the unredacted copies available for review by Committee Members and staff, as set forth in our March 19th letter. Staff from both Committees have now reviewed the unredacted documents, and we have considered the Committees' specific expression of need to receive copies of unredacted documents containing information about individuals who may have been considered prior to December 7, 2006, for appointment to replace the eight dismissed U.S. Attorneys. In light of your articulated need to explore the possible relationship of the consideration of replacement appointments to the requests for resignation, and as a further accommodation of the Committees' information needs,

we produced this morning unredacted documents containing that information that were created prior to the requests for resignation on December 7, 2006.

We also understand that you have expressed a similar interest in receiving copies of unredacted documents that identify U.S. Attorneys, other than the final eight, who were also listed at certain times for possible replacement but who were not asked to resign. In our view, the balancing of interests regarding this request is very different from your request regarding potential candidates to replace the U.S. Attorneys. The unredacted versions of these documents have been available for review by Committee Members and staff from the beginning of our production, and Committee staff have in fact reviewed them at the Department. Accordingly, the information about these U.S. Attorneys, who were not asked to resign, has been produced on a confidential basis in response to your oversight request.

The further step of producing these documents for public disclosure, however, would raise significant concerns that are not presented by the provision of information regarding potential replacement candidates because the reputations of those individuals would not be materially harmed by public disclosure of the fact that they were considered for appointment. By contrast, as we have repeatedly stressed, the public disclosure that there was consideration about asking for the resignation of a U.S. Attorney would cause substantial harm to his or her reputation, as well as an acute negative impact on the functioning of the Department and our U.S. Attorney offices. As stated in our March 27th letter to the Senate Committee, "it would be fundamentally unfair to these individuals, particularly sitting U.S. Attorneys, to reveal publicly internal Executive Branch deliberations regarding their performance. They had no involvement in this controversy and their reputations should not be unnecessarily maligned. The disclosure of the redacted information also would significantly compromise, for no public gain, the continuing relationships between Main Justice and U.S. Attorneys who continue to serve."

Under these circumstances, we do not believe there would be any public interest in the public disclosure of their identities that outweighs the corresponding public interest in their continued effective service as U.S. Attorneys. We, of course, remain interested in discussing this issue with staff for your Committees if you believe we have failed to consider any important interest that would be served by the public disclosure of this information.

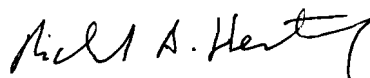
We understand that you have asked questions about the process by which the Department has identified documents responsive to the Committees' requests. Our document productions have been the result of an extensive search and review process that we have conducted on an expedited basis in an effort to accommodate your information needs. We have at all times sought to provide documents identified as responsive to your requests, limited only by our available resources and the urgency of your requests. As we have advised Committee staff, we would be pleased to arrange a meeting at your earliest convenience to discuss our process and respond to your questions.

Finally, the Committees have requested copies of all of the Department's documents that fall within the category of documents "generated for the purpose of responding to the congressional (and media) inquiries." This is a category of documents that were all created after the date, December 7, 2006, of the request for the United States Attorney resignations. Thus, as "after-the-fact" documents, they are not part of the "document trail" leading up to the Department's decision to request the resignations. Moreover, as we have previously stated, we believe that there would be a substantial inhibiting effect on future informal communications within the Executive Branch and between agencies and congressional representatives if records of such informal communications during the conduct of an oversight investigation were to be produced in the normal course of congressional oversight.

Notwithstanding this strong overarching concern, we have produced to you a subset of this category because we recognize that you have articulated a compelling and particularized need for documents that relate to instances in which we believe Department officials may have provided incomplete or inaccurate information about this matter to Congress. We do not believe that the remaining documents in the overall category are relevant to that need, but in light of the Committees' continuing interest, we are prepared to confer with you about the development of a type of log of these documents. Our goal would be to create a document that would provide you with additional information, consistent with your interests in this information and your timing needs. We also believe that the information in such a document would be helpful in clarifying our concerns about the chilling effect of producing the underlying documents. Of course, we would be prepared to respond to questions or expressions of interest regarding particular documents identified on the log document.

My Office will be contacting the staff of both Committees to discuss possible forms this log might take, as well as to schedule a meeting to discuss the Department's process for searching and producing documents to the Committee. As always, please do not hesitate to contact this Office if you would like to confer about any of the matters addressed in this letter.

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