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EXECUTIVE SESSION
COMMITTEE ON THE JUDICIARY,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: MICHAEL ADRIAN BATTLE

April 12, 2007

Washington, D.C.

The interview in the above matter was held at 2138
Rayburn House Office Building, commencing at 1:47 p.m.

Appearances:

For U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON THE
JUDICIARY:

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FOR U.S. SENATE COMMITTEE ON THE JUDICIARY:

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ALSO PRESENT:

SAM SOKOL, PROFESSIONAL STAFF MEMBER

Mr. Reed. Good afternoon, everyone. We're here based on an authorized investigation pursuant to the House of Representatives Judiciary Committee as well as the Senate Judiciary Committee. Good morning, or good afternoon, to Mr. Mike Battle, formerly Director of the Executive Office of the United States Attorney's Offices. He is now with Fulbright & Jaworski.

Just for the record, my name is Robert Reed. I represent the Majority for the U.S. House of Representatives Judiciary Committee.

For the purposes of this interview, and before I begin, I would just like to put into the record three letters which, among other things, cover the confidentiality as well as scope, concerns negotiated by both the House as well as the Senate. We can mark these as Battle 1, 2 and 3. And again, just for the record, the first one will be a March 29, 2000, letter from Richard Hertling to Congressman John Conyers. The second one will be a March 29, -- excuse me. The first one will be a March 29, 2007, letter from Richard Hertling to the Honorable John Conyers as well as to the Honorable Patrick Leahy. Second one will be a March 29, 2007, letter to Richard Hertling from Mr. John Conyers. And the third one will be an April 10, 2007, letter to Mr. Richard Hertling from the United States Senate, that

being particularly Senator Charles Schumer. These, I think, were marked 1, 2 and 3 from yesterday. If you want copies, let us know on these.

[Exhibit Nos. 1, 2 and 3 were marked for identification.]

Mr. Reed. And so we're clear, for the record, again, there will be a limited number of people who will be asking questions and speaking today. Again, I will be the lead for the House Judiciary Majority side, and there will also be one counsel from the House Minority side, as well as one counsel each from the Senate Majority as well as the Senate Minority. And it would probably be a prudent time for those other counsel to identify themselves for the record so we know where they are and who they are.

Mr. Flores. Dana Flores, House Judiciary Republicans.

Mr. Bookbinder. Noah Bookbinder, Senate Judiciary Democrat.

Mr. Kemerer. Hannibal Kemerer, Senate Judiciary Republicans.

Mr. Reed. Mr. Battle, as I noted already, this, again, is pursuant to authorized investigation between the House and the Senate. Do you understand that a knowing and willful misstatement that you provide in your testimony, including any omission of material information that renders any statement misleading, would be a violation of section

1001 of Title 18 of the United States Code, which is a felony and could be prosecuted in Federal court?

Mr. Battle. Yes.

Mr. Reed. And again, I will try to be as clear as possible with the questions. If you don't understand a question, I am sure you are aware of this particular colloquy, please feel free to let me know, and I will rephrase. If you need a break, let us know at an appropriate time. And again, for transcript purposes, we need verbal answers. If we can avoid talking over each other, avoid the uh-huh, uh-uh.

EXAMINATION

BY MR. REED:

Q Let's start out with your stating your name for the record.

A Michael; middle name Adrian, A-D-R-I-A-N; Battle, B-A-T-T-L-E.

Q Where are you currently employed?

A The law firm of Fulbright & Jaworski.

Q And what is your address?

A The address is 801 Pennsylvania Avenue, Washington, D.C. 20004.

Q Is that the address for Fulbright & Jaworski as well?

A Yes.

Q I would like to start out with your telling us a little bit about your educational college as well as your legal education if you could.

A I graduated with a B.A. from Ithaca College; subsequently attended the State University of New York in Buffalo law school, graduated from there with a J.D. in law.

Q What did you do immediately after graduation from law school?

A I went directly to law school from undergrad; accepted a position at Legal Aid Society of New York, Civil Division, right out of law school, was there for several years; left that position and became an AUSA in western New York in Buffalo. The Legal Aid position was in New York City.

Q Prior to going to the U.S. Attorney's Office in Buffalo, did you also serve in the Federal Public Defender's Office as well in Buffalo?

A No. I served as a Federal defender after I was an AUSA.

Q Okay. And with regard to any service as judge on the Erie County Family Court, could you tell us a little bit about that and how long you served as the judge?

A So we don't forget, after I left the Federal Defender's Office, I was assigned as the attorney in charge of the Buffalo office of the New York State attorney

general. From there I was appointed and then elected to be a family court judge in western New York, Erie County, and then from there became a U.S. attorney.

Q Okay. And how long did you serve as a U.S. attorney?

A A little over 3 years.

Q Okay. And from the U.S. attorney position, where did you go?

A Became a Director of the Executive Office for U.S. Attorneys here at the Department of Justice in Washington.

Q Okay. I want to kind of focus a little bit more on your service as a U.S. attorney. And I believe you said you served about 3 years. Would it be safe to say from 2002 to 2005?

A That's correct.

Q Okay. How were you identified as a U.S. attorney candidate? Can you tell us a little bit about the process that went into your name being mentioned as a possible nominee for that position?

A Yes. I was contacted by Congressman Tom Reynolds, who asked me if I would be interested in being considered for the position, as a change in administration had occurred with the new election, and they were looking for potential candidates. He knew my background. I had known him for a number of years, and I was at --

Q Where had you known him from?

A I met him when I was an AUSA and when I became involved with the Republican Party in Erie County. I was a sitting judge at that time. At that point I had served about half of a 10-year term. It was a difficult decision for me to walk away from something like that. But I had been at AUSA, and I thought being a U.S. attorney would be a wonderful opportunity. I thought about it for a little while, and I told him that I would like to be considered. And, of course, I was familiar with the application and confirmation process.

Q You mentioned your involvement with the Republican Party area. Could you tell us a little bit about when that involvement began?

A I registered, I believe, probably '90, '91, just wanting to get involved in the local politics; decided to choose a party, had some friends in the party; met with the Congressman, talked about opportunities for someone -- at that time I was a lot younger, and I thought it was a good opportunity to at least learn about some things. So I joined the party and really didn't do a whole lot, just became active on a number of different levels.

Q What types of levels generally?

A Attend fundraisers because I had friends at that time who were emerging in the party for political office,

attorney general, judicial opportunities, so I would attend their fundraisers, purchase a ticket.

Q Okay. Would you host any?

A No.

Q Okay. With regard to the confirmation process, could you tell us a little bit about that part of the process for me?

A Once I was identified as a candidate, I think -- I don't know what happened in the interim, but ultimately I received paperwork from the Executive Office for the U.S. Attorneys, an extensive application. I think there was an application from, I think, the White House, the Senate, the FBI. I think there were three or four applications that I had to fill out. It took a long time. The information went back many years and required information, some of which I had forgotten about, and it took a long time for me to fill that out.

Once the application was submitted, I understood that that triggered an FBI background check, and then after that, the process of meeting with the home State Senators and then being considered for the confirmation that took place. That all started, I believe -- I want to say probably around February of '01.

Q Okay. And which Senators did you meet with, home State Senators?

A Ultimately I met with Senator Schumer in person and spoke with Senator Clinton by telephone.

Q Okay. All right. After you were ultimately confirmed for the position, do you recall at that period of time what the President's policies and priorities were for the U.S. attorney's offices in particular?

A Could I just go back a little bit about the confirmation?

Q Sure.

A Also there was extensive involvement by Governor Pataki's office by selecting or identifying candidates for U.S. attorney. I met with the Senator's legal staff -- the Governor's legal staff was part of that application process.

Could you repeat.

Q The next question was, after you were ultimately confirmed as a U.S. attorney, do you recall at that particular time the President's priorities, policies for U.S. attorney's offices in particular?

A As part of the interview process, there was a meeting scheduled which was at the tail end of the process with then-Attorney General Ashcroft. And during that meeting he laid out the priorities of the administration. He called it an interview, but he did all the talking.

Q Were all the U.S. attorneys in the meeting, or was it --

A Each of us individually at a certain point in the process.

Q Okay. All right. Who else was there besides John Ashcroft?

A Larry Thompson and, I think, David Higbee.

Q Okay. And do you recall what the priorities or policies were that he specifically identified?

A I believe at that time narcotics and violent crime were the top priorities. Immigration continued to be a priority. Corporate fraud was emerging as a priority. This was pre-9/11. So counterterrorism was in there, but it wasn't number one, but it was there.

I am trying to remember what else. I think there were five or six. PSN, Project Safe Neighborhoods, came up later on, but that was emerging with narcotics and violent crime, which seemed to be number one.

Q And at that particular time, aside and apart from John Ashcroft and Larry Thompson, did you get a sense of who else was involved, possibly, in constructing these priorities?

A No. But I would have suspected the AG in charge, Mike Chertoff.

Q Okay. During your service as a U.S. attorney, do you recall how you were evaluated, and specifically if you can mention any other instances besides EARS reports in

particular of how you were or your office was evaluated?

A The only method that I was aware of was the evaluation and review system, which was EARS.

Q Okay. Did you ever get any calls directly from the Department of Justice officials regarding the operation of your office?

A No.

Q Did you ever get any calls from White House officials, to your knowledge?

A No.

Q Letters or e-mails, for that matter, from either DOJ, Department of Justice, or White House officials?

A Regarding --

Q Regarding the performance of your office in particular.

A No.

Q Okay. After your service as a U.S. attorney, you went directly to Director of Executive Office for the United States Attorneys?

A Yes.

Q Okay. And could you describe the process of how you were selected for that particular position?

A I was -- in late spring of '04, just prior to the election, I was approached by Chuck Rosenberg, who was chief of staff for Jim Comey, the Deputy Attorney General at the

time, who asked me if I would like to be considered for a vacancy in the Director's position at EOUSA because the current Director had decided to move on. This was -- this conversation took place at the U.S. attorneys' conference in San Diego. I was flattered by that. It was late in the week when Chuck made that request, and I asked him if I could just kind of get through the conference and think about it because it would necessitate a move from Buffalo, and I wasn't sure if I was ready to do that.

I thought about it over the weekend. I talked to my wife after I got back, and we agreed that I would not do that. I wasn't sure what I was going to do, but, hoping that the President would be elected, that I might at least want to be a U.S. attorney for a little longer.

Subsequent to the election, my wife and I had prior to that talked about what we wanted to do with our future. We have two grown daughters, both of whom had finished college, one living in Boston, one living here in Washington, and a young son who was about to enter high school, and we had talked about living someplace other than Buffalo at some point in our lives. And we had lived in New York for a number of years, and we had lived in Buffalo for the balance of our married lives, and we had talked about maybe moving to Washington. We talked about it again after the election, and I told her I might find a way to do that, and I

contacted Mr. Rosenberg, I think, in January of 2005 and told him that if the current Director, who was Mary Beth Buchanan, but who was wearing two hats, was not going to consider holding that position longer, that I would like to be considered for the position, and I would resign my position as U.S. attorney to do that.

Q Did you know how many candidates' or possible candidates' names were floating about at that time?

A I did not, no. And he indicated to me he was happy to hear I was interested, and he would get back to me.

Q What was your relationship like with Mr. Rosenberg prior to that time?

A Chuck was on staff, I think, in the DAG's office, and we were -- you know, we had a good friendship. We had done some work together on some cases, not really case-specific, just policy stuff, and I had a good relationship with him.

Q I wanted to just take you back once more to your service as a U.S. attorney and get your views on this. What is your view on the degree to which a U.S. attorney has to balance the national priorities and policies which I referred to earlier and those policies and procedures that are relevant to the actual jurisdiction within which you serve?

A My understanding as a U.S. attorney was that the

Department would be deferential to the U.S. attorney, needs to be responsive to the local needs and the local interests, and give the U.S. attorneys some room to perhaps prioritize those things, and maybe on a national level not necessarily ignore other things, but maybe not give them as much priority, because we had districts that at least didn't think at the time they had much counterterrorism, so to speak, activity, but they might have more of a focus or a need for a focus on guns and drugs. The Department would give them room to put their resources there. So it was a healthy balance on a case-by-case basis.

Q Okay. So just hypothetically speaking, if there was a certain Congressman in your jurisdiction who might be engaging in fraud or bribery or whatever the case may be, and that particular national priority for that matter was immigration or whatever the case may be, certainly to the degree to which facts came to light and you were aware of the fact that this was ongoing, wouldn't that office, the U.S. Attorney's Office, have an obligation to at least that particular type of case even despite the fact that it may not have been a national priority?

A Yes. U.S. attorneys were given a lot of leeway to respond to their local needs and the criminal activity they identify occurring in their district.

Q Okay. With regard to your role as Director of the

EOUSA, what generally were your responsibilities in that position?

A I guess the short description is to act as a liaison between the Department of Justice and the 94 offices and the 93 U.S. attorneys. One of the things I learned was that my role was a lot more administrative than I thought it was going to be, which was a good thing because I had learned a lot about budget, management and personnel and those issues which I find really is very much part of the meat and potatoes of the office, because the U.S. attorney's responsibility is managing people, and learning how to do that and do it well is something that is very important.

So I had, I think, I had a lot of different roles, but my role was really to make sure that the U.S. attorney's offices had the resources to do what they needed; to make sure that their budgets were in shape and in order; to give them opportunities to hire, to deal with personnel issues, to deal with EEO issues; to make sure they had facilities that were appropriate to do the work, and a whole lot of stuff in between.

Q I will pass to you what we can mark as Battle Exhibit Number 4. Take a moment to look at that if you could.

[Exhibit No. 4 was marked for
identification.]

BY MR. REED:

Q This is a printout from the actual Web site of the Executive Office for U.S. Attorneys offices. Does this look familiar to you?

A I can't say I have seen this particular document, but trust me, I know a lot about these responsibilities.

Q Have you had a chance to review all three pages of that document?

A Right now I have, yes.

Q And just generally looking at the document, are these fair and accurate representations of the role of both the Executive Office of U.S. Attorneys as well as the Director thereof?

A Yes.

Q Okay. I am going to come back to this in a second. Specifically, what is your role as Director of EOUSA, or what was it, for that matter, in responsibilities pertaining to the resignation of U.S. attorneys generally, the ordinary resignation procedure?

A We -- let me -- if a U.S. attorney wanted to resign, my experience as Director was -- and I don't know what it was for any previous Directors, and not that my suggesting it was any different -- was the U.S. attorneys whom I knew very well would call me and they would tell me that they were thinking about moving on, and then they would, you

know, tell me how they wanted to handle going public with their departure. And I would then be in a position to congratulate them and wish them well.

And then the next step, of course, was to make sure that they understood the technical requirements on how to resign. So I would contact one of my deputies who was responsible for that portfolio and advise him that I had gotten the call and have him contact the U.S. attorney and send out what we call the resignation guidance to them to make sure they had it specifically for this U.S. attorney. That is generally what my experience was.

Q During your tenure as Director, how would you describe your relationship with the U.S. attorneys across the country?

A It was very good.

Q Were some closer than others? How would you describe that?

A Maybe I spent more time with some, but the U.S. attorneys communities is a very close-knit community, and even people that you don't spend a lot of time with, there's just a lot of collegiality across the board.

Q Could you identify a few that you had a closer relationship with than others?

A It's hard to say that, because when I was U.S. attorney, I served on subcommittees, and so when you serve

on subcommittees, you will get to know people better than you get to know others because you spend time with them. When I got -- when I became part of the AGAC, it was a larger group that I got to know a little bit better. But as Director, that relationship just got better because now I had to talk to them more often.

So I guess what I'm saying to you is the progression of my relationship with them got better and better over time because I had to spend more time with more of them as part of my responsibility as Director. So I would say that maybe there are a handful -- Kevin O'Connor and I, from Connecticut, got to be pretty good friends; Glenn Suddaby from northern New York because he was so close; Don Washington, Louisiana; Roscoe Howard. But we all felt fairly close to everybody, and I got closer to others as I visited their districts as Director.

Q Okay. You mentioned that you typically would send out guidance to the U.S. attorneys with regard to their resignations.

Mark this as Battle Number 5.

[Exhibit No. 5 was marked for
identification.]

BY MR. REED:

Q If you could take a look at that document for me. Did you have an opportunity to review Exhibit Number 5?

A I have.

Q And does that comport to what you referred to earlier in your testimony regarding guidance memorandum on resignations of United States attorneys?

A Now, this document here would have been a document that went out across the board.

Q Right.

A But it's similar to the document we send out specifically to the U.S. attorney who would have placed a call indicating their intent to resign.

Q Okay. Aside from you, as the Director of EOUSA, and the particular U.S. attorney involved in the resignation or other individuals involved in facilitating the resignation process --

A I'm sorry, I didn't get --

Q Aside from you as the Director of EOUSA as well as a U.S. attorney him or herself who was trying to resign, were other individuals either in EOUSA also involved in facilitating the resignation process?

A No. Again, since our office was assigned to handle it and gather all the documents from them, it would be one of my deputies who was assigned that responsibility.

Q Okay. What about regarding responsibilities with regard to the ordinary either firing or termination of U.S. attorneys? Were there specific procedures outlined in your

office for how to handle that?

A That would be a little bit different because it would depend on how that would come about.

Q What are the different circumstances that would -- that that would depend on?

A In my experience as Director, without getting into specific cases, there may have been occasion where a U.S. attorney was alleged to have engaged in behavior that could be identified or defined as misconduct. And there would be a certain point that I would become aware of that, but it might not be at the very beginning. Either OPR or OIG might have gotten involved a lot earlier than EOUSA was notified about it.

But whatever form a complaint or whatever came in, that could trigger an investigation by either of those two entities that we were then given notice of. We might be kept apprised over time as to the status of the investigation, and ultimately we would get a report as to the findings of the investigation.

On the occasions when I was involved in that, and we got the final report, then the Deputy Attorney General's Office or -- I think they either got a report directly or we give them a report, and then a decision was made as to what type of action to take either based on the recommendations in the report or some other process.

Q Okay. Aside from a misconduct issue, would there be any other circumstances as well that would drive the process of firing or terminating a U.S. attorney?

A Was there any other process? Not that I was aware of.

Q Okay. So it all would typically go through OPR first?

A If it was misconduct, something of that nature.

Q Okay. Okay. With regard to Exhibit Number 5, the resignation guidance memo, do you recall specifically why you had to draft this?

A Yes. When I first came in as Director -- pardon me -- my first several months on the job, a number of U.S. attorneys resigned for all kinds of reasons, new opportunities, whatever, and that was something that I predicted would happen again and again, just because of where we were in the administration. So just on occasion, every few months we just would sort of tickle ourselves and know to make sure that everybody had the guidance, make sure there were no issues. I am not sure how much activity we had prior to this going out, but, you know, we anticipated as we got further along more and more people would start thinking about moving on. And quite honestly, I knew I was thinking about moving on. So we wanted to make sure everybody had the information.

Q And you mentioned -- it looks like this document went out October 5, 2006. You mentioned that you were -- you had been thinking about moving along.

A Right.

Q Could you elaborate on that last statement?

A Sure. I at that point was in the process of interviewing. At that point I had just been -- I had been interviewed, I think, in August of '06 to be considered for a vacancy on the New York State Court of Appeals, and I was in the process of interviewing with about five private law firms in Washington, Buffalo, and Rochester, New York.

Q And this would have been around what period of time?

A The interview process began in, I think, April or May of '06.

Q Okay.

A At this point I was in the thick of it.

Q I want to at least delve deeper in the role on the Attorney General Advisory Committee. Was that something you were automatically a member of by virtue of your service as Director of EOUSA, or how was that --

A I wasn't a member of the AGAC. You have to be a U.S. attorney to do that, and I wasn't a two-hatter. But I reported to them when they had their meetings in Washington on matters relative to EOUSA, the most important of which was management and budget.

Q Okay. And how many U.S. attorneys were on that committee?

A I'm going to guess, but I think about 15.

Q Okay. Do you recall which ones they were?

A That's a good one because it rotates. People rotate on, and people rotate off. I will just take a stab. Paul Perez of Florida; David from northern Georgia. Roslynn Mauskopf comes from New York; Tom Moss from Idaho; Kevin O'Connor; Mike Sullivan. Kevin is from Connecticut. Michael is from Boston. David Nahmias is from northern Georgia; Karin Immergut from Oregon. Let's see. I am just closing my eyes so I can remember. Johnny Sutton was the chair from Texas; Susan Brooks from Indiana. We had a representative from Oklahoma. The first assistant would sit in place as a U.S. attorney; Alice Martin from Alabama; a young lady whose name I can't remember from North Carolina, but I can see her face. I am sure I am leaving someone out. But this was probably the third or fourth rotation of that, and others had been on it. Comey had been on it. Fitzgerald had been on it. I was on it.

Q And during your time with EOUSA as the Director itself, what was your interaction specifically with David Margolis?

A More often than not when I saw David, it was during the interview process of incoming U.S. attorneys who were

being considered for appointment at any number of different levels, either as interims, actings or permanents. And I had a monthly meeting -- I'm sorry, weekly meeting with the DAG's staff to report on EOUSA matters, and Dave was always at that meeting.

Q Okay. Who else would have been at that meeting?

A Mike Elston when Bill Mercer was the pay DAG, he was there. Moschella took over later. And there would be my staff; myself; John Nowacki my principal deputy, Steve Perren, the deputy in charge of budget; and John Kelly, my chief of staff.

Q Okay. I want to take you back momentarily to Exhibit Number 4, if you still have a copy of that in front of you, the Web site printout for EOUSA. And just focus in on a few of the bullet points on the major functions of EOUSA and get you to elaborate on those.

Where it says, the second one down under the heading, The Major Functions of the EOUSA, evaluate the performance of the offices of the United States attorneys, making appropriate reports and taking corrective action where necessary, could you elaborate specifically on what that entails aside from anything else you may have mentioned from reports from OPR, for example?

A Yeah. As far as I know, that was part of the evaluation and review process.

Q Okay. Facilitate coordination between the Offices of the U.S. Attorneys and other organizational units of the Department of Justice. What would that typically entail?

A On occasion -- let me see if I can use an example. On occasion, like I think with the -- sometimes the Criminal Division, when we had the Katrina situation, a determination was made to put up a task force to deal with any potential fraud that would follow whatever activity was occurring down there in the gulf. And so my office sort of acted as a liaison between the U.S. attorney's offices in the Eastern District of Louisiana and the Western District of Louisiana and the Middle District of Louisiana and getting people involved with the task force in the Criminal Division so we would get involved at that level, and that could happen with other components of the Department.

Q Okay. And you mentioned this, I think, briefly already. I think it's about the fourth or fifth one down: Provide support to the Deputy Attorney General regarding United States attorney appointments.

Was that what you were referring to with regard to David Margolis, or does that encompass something of that --

A Yes. I suspect David was on that interview committee for that reason. He represented the Deputy Attorney General's Office.

Q Okay. With regard to how U.S. attorneys typically

learn of any issues they have, the administration of their office, again, is it mainly through OPR, or is it through you directly? And I guess specifically what I'm referring to is do you have a meeting with them, call with them detailing what their issues are, and taking directive actions?

A Generally speaking, more often than not, if there is an issue with an office, we learn about it through the evaluation and review process. On occasion perhaps someone might have -- I think the policy was if someone is going to talk to the press, that it be sort of vetted through the Office of Public Affairs, and I agreed to act as their liaison. So if someone wanted to have a press conference on a case or whatever, one of the U.S. attorneys should know, call us and let us know you're going to do that. And that was my practice as U.S. attorney. I don't think I ever talked to the press without running it through OPA. On occasion, someone would not do that, and, of course, we would be watching FOX News or something and see it, and somebody would go, oops. And so they would say, Mike, call up so and so and say, hey, what happened? How come you didn't let us know? That might be a situation where it happened. But other than that, anything else would be evaluation and review.

Q Now, the evaluation and review, the EARS reports for

short, don't those typically refer to those in general management, administration of the office?

A I don't know that they leave any stone unturned. Generally speaking, yes. But they look at management from a number of different levels. They look at the legal side of the house and the administrative side of the house. But what they will typically talk to U.S. attorneys about is how they're doing, how they're doing in terms of reporting requirements, how they're doing in terms of docketing with how their relationship is viewed by the court. They talk to all the stakeholders that deal with the U.S. attorneys' offices. So you really get a full picture of how the U.S. Attorney's Office is viewed and how it is getting along with its partners.

Q Okay. So, for example, if there were conflicts with the national priorities or policies of the administration, would that always be factored into an EARS evaluation?

A The EARS evaluation will mention, yes, that the U.S. attorneys' offices -- and we will go down each priority and evaluate how they're doing, how their programs are standing up, and how well they're doing, and whether or not they lack resources, needed resources, giving attention to things of that nature. Yes, they will.

Q With regard to any connections that you had as Director of EOUSA to the White House, would you often

receive any guidance or opinions from the White House as it related to the operation of certain specific U.S. attorneys' offices?

A No.

Q Monica Goodling's role with regard to a liaison between the Department of Justice and the White House was part of her portfolio at EOUSA, to your knowledge?

A I don't -- that's a good -- I don't recall. It might have been, but I'm not sure because we didn't -- yeah, I don't know that we typically -- to this extent, yes. To the extent of the appointments process, that might have been it, because typically in our interview sessions, there was someone from White House Counsel's Office, at least one or two people who were assigned to that region, so that she might have had to be in concert with them during that period.

Q Okay. Now, I know at one point -- and I don't know if your knowledge is the same. At one point Ms. Goodling was at EOUSA; is that correct?

A Yes.

Q Did you all ever overlap?

A When I became the Director, she was on staff at that point.

Q And how long did you overlap; do you recall?

A She was with me for a period shorter than my first

year. I don't know exactly when she left, but it wasn't very long. I think -- I'm just guessing, but she might have been gone by the end of the year.

Q Okay. Do you recall what her role was at EOUSA when you were there?

A She was a Deputy Director, and she had two roles. I can't -- counsel to the Director.

Q Counsel to the Director? And do you recall what her duties typically were in those roles?

A Each of my directors and deputies had a portfolio of responsibilities. I am just going to guess, but I think appointments was a big part of hers. We had a unit called Counsel to the Director. These were attorneys on detail to my office who worked on a number of different legal issues with all the U.S. attorneys' offices, they were sort of the point of contact for a number of different issues. Just to give you an example, we have someone on staff who is responsible for PSA so that all the U.S. attorneys' offices coordinate a deal with them. Someone on staff was in charge of all immigration issues. Someone was in charge of Project Safe Childhood. I think we have three or four attorneys on staff who did this. She was in charge of that unit. Let's see, who else did she have? I think she had -- what else? Each of them had about five or six things in their portfolios.

Q And what was her role? You mention appointments. What specifically was her role with regard to appointments, if you can elaborate briefly on that?

A Coordinate the appointments process. In other words, when someone was identified as a candidate, at some point they had to be interviewed and vetted through EOUSA. So she would set up the contact with the prospective appointee, make sure they had the requisite paperwork was in order, set up the interview time, make sure they got there. We interviewed them, and then wherever the information from the interview went to where it was communicated after that, she and the person subsequent to their position, that was their responsibility.

Q And you would, as Director, typically sit in on the interviews?

A Yes. I was in on all the interviews that I was available for.

Q And what types of questions were typically asked in those interviews?

A Uh, mostly background questions. David Margolis -- David Margolis did the balance of the questions, and he asked things like, why do you want the job? Some people -- and he would ask that for different reasons. Some people, like me, were judges. Why would you walk away from a judgeship to be a U.S. attorney? You know, maybe at the

point where somebody was in their career. He did a couple of hypotheticals to see how they thought on their feet about grand jury issues and notification issues and things of that nature. Let's see.

Q Would there ever be any questions along the lines of the loyalty to the party?

A There would be a question about whether or not they had any knowledge of the priorities of the Department, and they were given an opportunity to list the priorities that they knew. He would ask them what, if anything, they did to help the President get elected in 2000 and 2004, and they would respond to that question.

Q Okay. And was Monica Goodling also typically involved in asking questions, or was it --

A Everybody in the room was able to ask a question.

Q How much contact did you generally have with Ms. Goodling during the time which you overlapped with her at the EOUSA?

A When she was at EOUSA?

Q When she was at EOUSA.

A As with all my deputies, probably daily contact.

Q Okay. Just your opinion as Director and as her supervisor, how would you describe her competence and/or professionalism?

A Diligent, very hard work. Most nights I couldn't

get her to go home. Very responsive to the needs of EOUSA and the Department. She is a very hard worker.

Q With regard to -- since we mentioned some of this line of questioning already, questions about what certain candidates did to facilitate the President getting elected, for example, with that as a background, I just want to move forward briefly.

What is your knowledge of -- with regard to interim USAs, U.S. attorneys, having the ability to hire line, assistance line AUSAs for career personnel in the office without or with going through EOUSA for that matter?

A There was a requirement that if you were an acting or an interim, you had to notify EOUSA that you wanted to make that appointment, and that had to be approved by EOUSA.

Q And it did have to be approved by EOUSA?

A Yes.

Q And especially now after Ms. Goodling left, do you know if she was involved in this process of the approval of any hires by interim U.S. attorneys?

A At which point?

Q At the time of -- in her role as liaison from DOJ to the White House?

A Just so I understand it, while she was at EOUSA or after she left?

Q After she left.

A Um, what I would typically do is when a U.S. -- interim U.S. attorney would contact me and ask me if they could hire, first thing I would do before I did anything was make sure they had the money to do it. So I would run it through my deputy, because I didn't want those guys getting into any more trouble than they were in. Once we determined they had the money to hire, I would then inform my principal deputy John Nowacki that the interim one could make an appointment, and I believe he would communicate that information to Ms. Goodling.

Q Okay. And what about when Ms. Goodling was at the EOUSA?

A When she was at EOUSA?

Q Yes. How did the process work?

A I am trying to think. I don't know -- that information was communicated to her, and I don't know where it went from there.

Q And while she was at EOUSA, though, was she also responsible for interviewing some of these hires, new hires, pursuant to an interim U.S. attorney?

A It would depend on the situation. If, you know -- sometimes yes; sometimes I would do it alone. Sometimes we would do it by VTC, videoconferencing. But typically she would have been involved.

Q Okay.

A Yeah. Sometimes if I was on travel, they did it, but generally speaking the interim had to be interviewed by someone on my staff.

Q And I know you have already mentioned general questions that were usually asked at these interviews; i.e., what did you do for the President? When you were specifically in the interviews, do you remember what questions Ms. Goodling specifically asked?

Mr. Hunt. Could you clarify the question? Because I believe, if I'm not mistaken, when he was speaking about those questions, it was with respect to U.S. attorney candidate interviews. But I thought you were now talking about interviews for AUSA?

Mr. Reed. Right. We can break it down. Thank you for the clarification.

BY MR. REED:

Q With regard to U.S. attorney interviews, do you remember specifically what Ms. Goodling asked in those interviews?

A Can I clarify, have we talked about AUSA interviews yet?

Q We have not. We briefly touched on it, but I'm going to get to that after the U.S. attorneys.

A Because everything I have been responding to has been in relation to U.S. attorneys. Could you repeat the

questions?

Q With regard to the U.S. attorney interviews, what specifically -- to the degree of which you recall Ms. Goodling asking in those particular interviews, i.e., political-related questions?

A Political?

Q Right.

A My recollection is she didn't ask those questions. David tended to ask that question. We got to the point where everybody kind of had a set of questions that they asked, and it just kind of evolved that way. We never sat down and said, you ask this, you ask that. At least I never did. The question that she would ask the most is, what can you tell us about your understanding of the President's priorities? And we just wanted -- she just wanted to see what the candidate knew about what those priorities were. I think there were six or eight priorities.

Q Do you recall any other questions aside from that general one?

A She might ask a specific question about -- if she was aware that there was an issue in the district, she might point out, ask the person if they're aware of the issue. And if the person was -- how do you feel about walking in and dealing with that sort of thing? She would ask that type of question. I don't recall her asking any of the

questions like I mentioned earlier about political loyalty, things of that nature.

Q Let's now transition from U.S. attorneys to line USAs, U.S. attorneys. Do you recall being in these interviews with Ms. Goodling?

A AUSAs?

Q Right.

A I was never part of any AUSA interviews.

Q Okay.

A I did U.S. attorneys. To the extent that we might have interviewed management staff to be considered for interims and actings, if that is what you were talking about, I was in some of those interviews, but not people who were going to be appointed as AUSAs on the line.

Q Let's take the management staff. To the degree which you were in those interviews, do you recall specifically the questions that Ms. Goodling asked of those candidates?

A On occasion if we were considering a criminal chief to be an interim on acting or a first assistant, typically in those interviews the questions we would -- she would ask, and the questions would be directed toward management of the office, what the person could tell us about the current state of the office, how that person felt about dealing with issues if there were issues that they could identify. Or if

we were aware of issues, we might tell them that we heard something and ask them if they were aware of it and then give them an opportunity to respond. Basically that was it. When you interviewed an interim or an acting candidate, the questioning was much smaller. It was more -- it was -- it pointed more in the direction of the actual state of the office.

Q You mentioned that you were typically not involved in the interviews of the line assistants; is that correct?

A I don't recall that I was.

Q But it's safe to assume then that Ms. Goodling would have been there?

A I don't know, because when I hired AUSAs, most of the interviewing for that took place in the field, and I think the Office of Training, Recruitment and Management was the one that dealt with the U.S. attorneys' offices. I never know that we ever -- again, I can't say I did, but I don't think I ever interviewed any AUSA position.

Q And to the degree to which you would have -- or just hypothetically speaking, you would agree to asking politically sensitive questions like what you've done for the President probably would be inappropriate for a line assistant; would you agree with that?

A I will talk to my lawyer. Could you repeat the question?

Q Sure. With regard to interviews of line assistants, for example, you would not agree that, indeed, asking political questions like what you've done for the President, how you facilitated the election or whatever, the campaign of the President, would probably be an inappropriate question to ask in a line system?

A As U.S. attorney I would never ask anybody that question.

Q So you would agree that would be a bad policy?

A Yes.

Q I want to transition a bit to any role that you may have played in discussions relating to the provision of the PATRIOT Act that affected internal appointments. Do you recall playing any type of role in those particular discussions?

A I don't recall.

Q Okay. Do you recall who was involved in that?

A No, I don't. I mean, I -- no, I don't.

Q Do you recall ever being aware of discussions related to that PATRIOT Act provision?

A Vaguely, yes. You know, off line, nothing formal.

Q And who was typically involved? Where did you get your information?

A I am trying to think. I think I may have heard about it around the time that it was being considered in

Congress, and I was -- just remember being surprised that something like that could be in the PATRIOT Act.

Q What about particular individuals within the Department of Justice? Did you know of any specifically who were involved in the discussion?

A No, I don't.

Q Okay. Just for the record, Exhibit Number 6 is DAG 2013.

[Exhibit No. 6 was marked for identification.]

BY MR. REED:

Q Mr. Battle, have you had an opportunity to review Exhibit Number 6?

A Mm-hmm.

Q It appears as though it's e-mail traffic ultimately ending between you and Mr. William Moschella regarding a couple of instances in which a chief judge refused to appoint an interim United States attorney. Do you recall that e-mail or that discussion?

A I don't recall the specific e-mail, but I do recall being asked about instances where judges refuse to appoint U.S. attorneys.

Q Okay. And do you recall knowing the background or backdrop of that line of questioning?

A Yes. This -- yes, it does refresh my recollection.

I do now.

Q Besides Mr. Moschella, do you recall anyone else contacting you about that, that Acosta issue that is mentioned in the e-mail traffic?

A Maybe Natalie. She may have asked me if I could recall situations where this happened.

Q And by Natalie you mean Natalie Voris?

A Voris, mm-hmm.

Q And what was her position?

A She, I think, was my principal deputy at the time.

Q And with regard to later down on that document, the last entry for that matter on the document, amendment was floated by one of our friends. Do you see that particular reference? Do you know anything about that reference?

A I really don't, no. I mean, I probably saw it before.

Q Doesn't ring a bell?

A No.

Q Okay. All right. Let's move to a dismissal of the eight U.S. attorneys in particular. Do you recall when you first learned of a particular plan to terminate a specific number of U.S. attorneys post-2004/2005?

A A specific plan?

Q Right.

A Shortly after I became Director, I'd say within a

few months, Monica Goodling told me that the administration -- now that we were in a new term, sometimes the administration likes to give people an opportunity to serve as U.S. attorney. They're coveted positions, and they might want to think about making some changes in any particular district. She didn't give me any particular district, but they might want to make some changes. And she says, so if you have any, you know, any districts that you can identify where there might be concerns or things of that nature, would you let me know?

Q Okay. And when was that again specifically?

A It started June -- I am thinking probably the fall of '05.

Q Fall of '05?

A Probably. Maybe sooner.

Q And did she communicate to you by phone, e-mail, letter?

A I saw her in the area of my office, and she came in and talked to me about it.

Q Okay.

A You know what? Maybe it was in her office. I don't know, but it was somewhere. The reason I know that is because I then went to my secretary and said, give me a printout of all the U.S. attorneys, take a look at it.

Q Did Ms. Goodling mention who, if anyone else, was

involved in compiling this data?

A No.

Q What did you do in response to her request to identify certain U.S. attorneys and/or districts?

A I basically wondered about the request. I had my secretary print out a list of all the U.S. attorneys just to see if I could look at the list and see if there was anybody on there who may have been involved in some issues of misconduct or things of that nature that somebody maybe didn't know about, and I could report that to someone. I looked at the list. Nobody jumped out at me. I put the list away.

Q What, if anything else, did you do aside from printing out and looking at a list to answer her question?

A Nothing.

Q Okay. Were you ever approached by Mr. Kyle Sampson around that same period of time, '05 or fall of '05, regarding a particular plan?

A No.

Q Okay. With regard to the plan to terminate the eight U.S. attorneys that are at issue, when -- and specific -- did you learn about that plan?

A Specific eight? Are you talking about the plan or these specific eight?

Q The plan.

A I want to make sure that I'm clear.

Q Okay.

A In other words, are you asking me when did I learn that eight U.S. attorneys who have been identified, being asked to resign?

Q Right.

A And the specific eight?

Q Is there a difference?

A I want to make sure I understand this. Are you asking -- I know we're here talking about eight U.S. attorneys who have been asked to resign.

Q Right.

A And are you asking me when did I learn that eight specific U.S. attorneys were going to be asked to resign?

Q Right. Let's start with that question.

A Yes. If I get my dates right, it was at the meeting in November, this past year.

Q 2006?

A I think it was at the meeting of the 27th. I think it was after Thanksgiving because I seem to recall that I learned about the meeting while I was traveling at home in Buffalo and just checked my schedule when I was getting ready to go back to Buffalo and saw a meeting on my calendar scheduled for that Monday morning, I believe, which I always did when I was traveling because I go back to Buffalo

frequently because my family is there. I had to see where I was going to be first thing in the morning.

RPTS BINGHAM

DCMN ROSEN

[2:47 p.m.]

BY Mr. REED:

Q Okay, so around November 26, 2006?

A I think so. If it was after Thanksgiving, I am pretty sure it was after Thanksgiving.

Q Again, how did you learn about that specific plan?

A I got an e-mail.

Q And from whom?

A I think it was from Kyle Sampson.

Q And do you recall what, if anything, that particular e-mail said?

A All it did was note that there was a meeting and time and place.

Q Okay. At that particular time, did you know who was on the list, or did you just know specifically that eight had been targeted?

A I didn't know -- I didn't even know what the meeting was about. And I didn't want to call my secretary who always had access to my calendar on Sunday to bother her, so I figured -- I think the meeting was scheduled for later in the morning, 10:00 or 11:00 I am not sure. So I knew that I get into the office fairly early, I would ask her if she knew what the meeting was about. She was in town while I

was on the travel. So maybe she get a note that I didn't. She knew me well enough to know if it was something of urgency, she would let me know. So I got in that morning and I said, I have this meeting scheduled. Do you know what it is about? She did not know.

Q Did you ultimately go to this meeting?

A I did go to the meeting.

Q And who was at the meeting?

A Paul McNulty was there. I don't remember for sure but I think Moschella might have been there. Monica Goodling was there. Kyle Sampson was there, and AG Gonzalez came in. I am not sure if Tasia Scolinos was there, I don't recall.

Q And how long was the AG there? Did he stay for the whole meeting?

A Most of the meeting.

Q Okay, and what in particular do you recall being discussed within that meeting?

A I think was it, as Kyle or Monica handed out a document. And that document, I think it was one or two documents. One had a list of names on it. And I am not sure if it had a caption on it, or if somebody said what it was, but it became immediately clear to me that these were eight U.S. attorneys who were going to be asked to resign. I don't want to give the number, but a number of U.S.

attorneys were going to be asked to resign.

Q And to your knowledge, was that the final list or was there any discussion as to whether the list was fluid?

A There was no discussion about whether it was fluid or final. I got the sense that it was final.

Q Okay. Before I get to the documents, Mr. Battle, just step back briefly with regard to your initial interaction with Ms. Goodling. I think you said 05, is that correct?

A Yes.

Q And just flush out a little bit more regarding her initial request for any that you had cited or you might cite as U.S. attorneys to replace. Again, if you can be specific about was there a certain identified number that she was aiming for? Was it just a general, we are targeting whoever you cite? If you could elaborate generally a little bit more specifically on that?

A There was no specific number mentioned, no specific persons mentioned. She wasn't asking me to cite anyone, just provide any information I might have about how anybody was doing, was basically it, perhaps that might contribute to the decision-making process.

Q Okay. And that was your entire interaction with Ms. Goodling regarding that particular issue?

A Yes, at that time.

Q Did you have any other follow-up interactions aside from Ms. Goodling on that issue of possibly replacing a set or all U.S. attorneys?

A I saw Ms. Goodling, as I said, frequently, during the appointments process. And I think maybe one other occasion I asked her -- or she asked -- informed me that the process was still on track, but didn't know where it was, sort of a passing comment.

Q Did you ask her what she meant?

A No, because I understood that the administration -- what I understood it to mean was this the administration was still thinking about giving other people an opportunity to serve. But she didn't indicate specifically that something was going on or something of that nature.

Q Okay. Again, no one else besides Ms. Goodling that you had discussions with regarding that replacement issue?

A My recollection is that I only had those two conversations.

Q So, is it safe to assume that from those limited conversations with Ms. Goodling until you were called into this meeting that you didn't have any other discussions with any other DOJ officials regarding any type of replacement plan?

A Plan?

Q Or an idea to replace and/or get rid of certain U.S.

attorneys?

A Well, in between my first conversation with her and probably a year, less than a year later, was when I talked to her about making a call to Bud Cummins.

Q And that would have been around June of 2006?

A Yes.

Q Okay. If you could describe the process or the circumstances involved in that particular call, when did you first learn about replacing Bud Cummins?

A My principal deputy at that time, Natalie Voris, came in to see me and told me that I was going to be given guidance to contact Bud Cummins and seek his resignation as U.S. Attorney for the, I think the Eastern district of Arkansas. And I was a little surprised, as was she. And I had just visited Bud's district, I think, a few months before that. And he was -- like a lot of U.S. attorneys, a friend. And I said okay, well, I will just wait and see.

Q And how was his district performing, to your knowledge?

A I don't recall the various review report, but I spent 2 days in that district meeting with the management staff, and with Bud, and from all indications, he was doing fine. His staff liked him. They were performing at a high level. Everybody seemed to be happy.

Q I am going to show you what I am marking as Number

7, and have you take a look at that. That is OAG 570. I know you are not on this particular detail e-mail, but looking at the date, June 13, 2006, is that close to the time you remember being incorporated into the plan to call Mr. Cummins?

A Probably. I know it was June, July, of that year.

Q And if you could describe the call that you had with Mr. Cummins?

A Sure. I called Mr. Cummins, and I -- as is often the case with U.S. attorneys because of my relationship with them, we chatted about a number of different things. As I indicated, I had just visited his district, and gone out to dinner, just had a chance to enjoy our time together. And I thanked him again for a good visit, asked him how things were going. I said, Bud, listen, I got to talk to you about something. It is pretty important, and he and I had a good relationship. And I said, I have been advised by the administration to call you and to ask you to submit your resignation as U.S. attorney and to do so I think I said by the close of business, 30 days from now. Something of that nature.

Q Do you recall what his reaction was?

A He was quiet. And then he said, what is going on? Did I do something wrong? And I said, Bud, I am not aware that you have, I am not really in a position to discuss

anything else with you, but, again I was advised to make this call.

Q Were you provided with certain talking points prior to making the call to Mr. Cummins as to what you could and could not say?

A Let me add that I am pretty sure I said to him, sometimes as we know we serve at the pleasure. And sometimes the administration may want to go ahead in a different direction and give somebody else a chance to serve. We all come in to these jobs knowing we could be asked to move on. And he indicated that he understood that.

Q And again, were you provided with any talking points by any members or officials rather than in the Department of Justice?

A Not in writing but that was sort of the guidance that was given to me by Ms. Goodling.

Q Did the administration give you any reason as to why Mr. Cummins was being replaced?

A No.

Q And what was your knowledge of Tim Griffin at that point in time?

A I can't say that I had never met Tim. I don't want to go that far. I can't say that I had never heard his name. But during that conversation, Mr. Cummins indicated to me that he was aware that he might -- and he didn't say

the circumstance, that he might move on as U.S. attorney before the term ended. But he was aware that Tim Griffin might, at some point, become the U.S. attorneys of the district. He knew Tim. They were friends. He liked Tim. And so he felt that if he moved on that might likely happen.

Q Did you ever participate in an interview with Mr. Griffin?

A For?

Q For the interim position there in the Eastern District of Arkansas.

A I interviewed Mr. Griffin by myself. It wasn't for -- I am trying to think of what I interviewed him for. It was some interim position somewhere. And I don't remember where it was. I am not sure if I was in the interview when he was interviewing for the interim position. I can't remember because I might have been on travel. I am not sure though.

Q I will just pass around the document. See if we can clarify. This will be 8, POUSA1 is the Bates number. Take a look at that. See if that might refresh any recollection.

A It does. I am pretty sure I think I did participate in the VTC interview with Mr. Griffin, because I remember during this conversation saying to him, haven't we met before? Yes.

Q And again, just for the record, the e-mail says, it

looks like from U.S.A. EO candidates to Mr. Tim Griffin, and John Nowacki?

A Nowacki. Depends on where you come from.

Q There is a CC on that, initial e-mail says "Dear Tim, Representatives from the U.S. Department of Justice would like to interview you for the position of interim United States attorney for the Eastern District of Arkansas. The interview will last about 1 half hour scheduled on Friday, December 8th, via video teleconference and your interview will be conducted by Monica Goodling, David Margolis and Michael Battle."

So you said you were present at that meeting?

A I am pretty sure I was because like I said, I know I met Tim prior to that. I can't say it was prior to calling Bud because I know I met him because when I saw him on the screen I recognized him. And I remember saying to him, didn't I talk to you about something and I can't remember what it was.

Q Do you recall whether Mr. Goodling and Mr. Margolis were at that interview as well?

A They could have been. I didn't know. I know I didn't do by myself.

Q Do you recall any questions in particular that Mrs. Goodling asked Mr. Griffin at that interview?

A It was the usual stuff, again, because of an

interim, it is a little bit smaller questioning than for a presidentially appointed so it would have been the usual questions about state of the office. David would focus a lot on that how things were going, what kind of changes do you think you are going to make in terms of priorities, or how you are going to focus on priorities, what do you know about the office, things of that nature, so I am sure all the questioning centered around that.

Q Did each one of you ask questions, Mr. Margolis, you and Ms. Goodling?

A Mr. Margolis, generally in all the interviews, did the balance of the question. I am sure I asked a few and I am sure Ms. Goodling did too.

Q I want to go back now to fast forward.

A You are going to go back fast forward?

Q Exactly, fast forward, if you will, to I think you said, it was November 27, 2006?

A Don't lock me down to a date, but I know it was after Thanksgiving but I don't have a calendar.

Q With respect to that particular meeting where you said the AG was also involved or was there, could you be a little bit more specific about the AG's role and/or participation in that meeting?

A From what I recall, most of the talking was done by Mr. Sampson. I don't know that the AG spoke very much. I

don't recall that. Mr. McNulty, I think, may have had some questions. And there may have been some discussion about whether or not anybody had any questions about any of the people that were on the list. There was then discussion about -- and there being no questions, I didn't ask any, I don't know that anybody else did, there being no questions the following questions did come up. How is the -- how is it going to be executed? Prior to that being resolved, I had been notified that I was going to be asked to make the calls.

Q When you say prior to that, do you mean prior to the November?

A No. Prior to the discussion.

Q Within the same meeting?

A Yeah, prior to the discussion about how to execute, first plan was here is the list, these are the people on the list, anybody have any questions about anybody on the list? There being no questions --

Q Again, who asked that question?

A Again, I think the balance of that was Mr. Sampson. Okay, Mike Battle, you are going to make the calls.

Q How did you feel about that?

A Don't take this the wrong way. You look at my resume, I have done a lot of stuff. I was a family court judge for 5 years. You know, it hardens you a little bit.

I didn't like it, but sometimes you do the job.

Q And have you been involved at all in the compilation of the ultimate list of 8?

A No. Not at all.

Q No one sought any input from you from the Department of Justice at all?

A Other than those two prior conversations, no.

Q With Ms. Goodling?

A No.

Q And did that seem odd to you, given the fact that you are director of EOUSA, and presumably have oversight over the 93 U.S. Attorney's Offices and U.S. attorneys, did it seem odd that you had not been consulted on the ultimate compilation of that list of eight?

A Not really, because the U.S. attorneys don't just have relationship with me. These are people who are politically savvy, they are very bright. And they have a lot of contacts. So they have a relationship with the deputy attorney general that is separate from their relationship with me so I don't know whatever that might have brought to bear upon this. Some of them have relationships with the Attorney General. They have relationships with all kinds of people.

What I am saying to you is there may have been things that went into this consideration that I would not have been

privy to or aware of. So, if I looked at it from an evaluation review process the answer would be yes. But I was not one that knew everything.

Mr. Flores. Could I interject? In the preceding question you had asked Mr. Battle if no input had been sought from the Department of Justice. I am sure you must have meant to say from EOUSA to make sure the record was clear.

BY Mr. REED:

Q What I was asking really was did the Department of Justice officials, aside from the Monica Goodling contacts that you had, request any input from you regarding that specific list of eight?

A No. That is the way I understood the question.

Mr. Reed. Does that clarify?

Mr. Flores. Yes.

Mr. Reed. Okay, no problem.

And this is DAG 18 with the Bates number.

A Okay I reviewed it.

Mr. Kemerer. DAG 2023.

Mr. Battle. I have 2023 also.

Mr. Kemerer. Does everyone have 2023 at this point?

BY Mr. REED:

Q Again, jumping to the top entry from Kyle Sampson to you and Mr. McNulty, does this again refresh your memory of

your role in the plan?

A Yes. It does.

Q And your role again was to?

A Make the calls.

Q Make the calls at noon?

A Yeah, because the balance of people that I would call was on the west coast, so I knew if I tried them earlier, they wouldn't be there.

Q And that was Thursday, December 7th?

A That is what it was agreed at the close of the meeting.

Q Let me mark this as 10.

[Exhibit No. 10 was marked for identification.]

Mr. Battle. Can I go back for a moment.

BY Mr. REED:

Q Sure.

A When you asked me a question, I didn't finish my answer when we talked about execution. This refreshes my recollection, the discussion was there, the sequence of calls, in other words, the Senators would be called first, and then I would get notification to make the call.

Q With regard to that same meeting where these discussions occurred as to the execution of the plan, do you recall the Attorney General saying anything about any choices he had for the list or individuals he would like to

remove from the list?

A I don't recall him saying anything of that nature.

Q Okay. Did you get a copy of Exhibit 10 and if you have, a chance to review that?

A I reviewed it.

Q Does this comport with effectively the final plan that you saw and the names on the list of the plan?

A Yes.

Q With regard to the list of U.S. attorneys who were going to be terminated when you looked at the list again, were you at all surprised as to anyone on the list given your interactions with U.S. attorneys' offices and your role of director of the EOUSA?

A The only two U.S. attorneys on this final list that I would expect would have a problem were Carol Lam and Kevin Ryan.

Q And why is that?

A About a year before, Carol -- I don't want to say a whole year, but some time before that, we had gotten an allocation for additional positions to handle immigration cases in the Southwest border. And I can't remember but there were a number of positions that would yield extra FTE for the U.S. attorneys to hire because the Southwest border was always have trouble dealing with those cases. And we were very happy to be able to roll out some FTE because all

the news budgetwise had been bad for so long.

Q Just for the record, FTE stands for?

A Full time equivalent. So I was very happy to roll that out, otherwise I was going to, in my tenure of the director, was the guy who took more than he gave. And I didn't want that to happen.

And the reason I mentioned that was there was some discussion about the number of FTE that were going to particular offices, and I do recall a discussion about people being, some of the people being concerned that Carol, her numbers were down for a district that had as many immigration crossings as she did, and somehow trying to reconcile or resolve that.

Q Just to stop you briefly, sorry to interrupt. You said you got the impression from different people. Can you tell us who those people were?

A Vaguely, I recall a discussion with, I think, Mike Elston, at one point maybe, Bill Mercer, there was concern that the DAG's office with Carol's numbers.

Q And how did they communicate those concerns to you if you recall?

A I think when we -- Mr. McNulty wanted to make sure that the allocation was fair. They sought input from me and my staff on how we thought the allocation should go because we had the statistics. And they would either sign off on

what we presented with them or make changes based on what we requested. We did it purely by numbers.

And I had a weekly meeting with the DAG's office. And I don't know if it took place at any particular meeting, but I suspect that there may have been a discussion about changing the allocations for Carol Lam because they were trying to reconcile with her why her numbers were so low. But they didn't want to shortchange her. Just wanted to try and get that resolved. I didn't know how big a deal that was or how big a problem that was. But that was just something I had heard during that time. But throughout the balance of my time as director, Kevin Ryan was embattled in his district with the Judiciary and everybody under the sun who was questioning his leadership qualities. And we were hearing from everybody from the Judiciary, law enforcement and every newspaper in town that he was just an awful leader.

Q And when you say we were hearing?

A People on my staff was hearing about it. In fact, John Kelley, who is my chief of staff, was getting calls from people in the district that he knew who worked there AUSAs.

Q Do you recall what sort of time period you started receive these calls?

A Oh, my goodness, I became director in June. We had

a year's evaluation scheduled for Kevin that fall and everybody was warning me that -- before I even came on board -- that Kevin's district was just, he was embattled. He was like in a siege and everybody was angry with him. He was losing AUSA's left and right. People who had left the office were coming back and telling me horror stories about the district and things of that nature. I had no prior knowledge of this.

And so when my EARS team was getting ready to go out and Kevin called me and asked for an extension. And I gave it to him. Some people were angry at me for doing that. But I wanted Kevin to put his best foot forward. And I extended it a couple more times until I got to the point that I realized that Kevin was just stalling. And I was now starting to hear stories and reading reports in San Francisco papers about claims that people were making about the office.

Our evaluation and review process which ultimately took place in Kevin's office with a review and a specialty review, in the spring and summer of 2006, bore out there were some real problems in that district. So I knew that the Deputy Attorney General's office was aware of those problems. I didn't know how much the Attorney General's office knew about it. I had not put it in the report. In fact, I think that whole process is still going on. But

needless to say, I sent some of my best evaluators out there and they came back and the report was not good. So I wasn't surprised that people were aware that Kevin had major problems. That was the most embattled district I dealt with when I was director.

Q How soon after you and your office started receiving calls about Mr. Ryan did you communicate to him that there was issues that he had to rectify, if at all?

A When Kevin first called me to ask for the extension, I told him, I said Kevin, I hear you have major problems out there. I am going to give you an opportunity to put your best foot forward but you have to work with me. And he said I will, I will. And I worked with him over time and we extended it I think from the fall. And we finally got him evaluated in the spring.

Q Aside from those two, looking at the rest of the list of U.S. attorneys, did you see any names on there that you thought should not be on the list given your supervision of the offices and what you heard about them?

A I didn't think it was my place to determine who should not be. But you know there were names on there that if they had problems, I wasn't aware of them.

Q Okay. Why did you think it wasn't your place?

A Because I felt that U.S. attorneys being presidentially appointed, it is up to the administration to

decide who gets appointed and who gets removed.

Q I am going to go back for a second to that November 27, 26 meeting. And we haven't put a firm date on it. You mentioned that a couple of documents, I think, were handed out at that meeting?

A [Nods.]

Q One of which included the list?

A Yes.

Q Do you recall if there were any other -- what was the other one, if you recall?

A I think -- again I am pressing my recollection, but I think a document similar to this one, which had the, they had talking points for me, and things in relationship to what it says on here, step 2, step 3, step 4, I think -- I am not sure -- there might have been a separate one-page document that just had the list of names. But I am not sure. It could have been just this whole document.

Q And do you recall any aside and apart from those 2 documents any other documents that were handed out at that meeting?

A No. No.

Q Looking at exhibit Number 10, second page there, where it has Battle informs the U.S. attorneys as follows. With regard to that list of three questions or three statements, where were those, to your knowledge, devised?

Were they devised in that November 27th or so meeting?

A What are you directing me to?

Q Directing you to your talking points at the top page. I am sorry, at the second page at the top.

A They were already in the document when I was at the meeting.

Q So you personally had no input on what you were going to say to each one of the U.S. attorneys when you made that call?

A No, not at all.

Q Do you know who, if anyone, was responsible for developing your particular talking points?

A I don't.

Q Lets take each call for that matter in turn starting with --

A Can I take a break for a minute? This is going to take a while.

Q Do you want to take a 5 minute break? Let's just take a 5-minute break.

[Recess.]

BY Mr. REED:

Q I think we broke with beginning to go through each U.S. attorney phone call.

Back on the record, I think we are going to start by just going through each U.S. attorney individually so you

can describe the substance of each call to the best of your recollection. So let's begin with Paul Charlton. Do you recall your conversation with Mr. Charlton, in particular, if you could tell us the specifics of that, please.

A I called Paul -- as I indicated, I have relationships with all these folks. And we would talk periodically about any number of issues, personnel, budget, things of that nature, and we were friends. So I called Paul and I said, I devised a spiel that I would use. And I said Paul, I need to talk to you about something. It is important. And he said sure, Mike, what is it. I said Paul, listen, listen, I have been asked by the administration to call you and to request that you submit your resignation as U.S. Attorney for your district by the close of business on the 31st January of next year.

Do you want to know his response?

Q Yes. I didn't know if you were finished I am sorry.

A His response was, who authorized this? I said, Paul, I am not in a position to talk to you about that.

He said I will call you back and he hung up.

Q How long had you and Mr. Charlton been friends?

A Since 2002 when I came on board.

Q And how did it make you feel that you were unable to provide him with a justification for his firing?

A It was awkward.

Q How do you mean?

A At the November 27th meeting, I asked that question, what am I going to say when they ask me why? And the guidance I was given was, just if you have to remind them that we serve the pleasure and we don't keep these positions forever and thank him for his service. I never got to say that to Paul. If I would have had more conversation with him that is probably what I would have said.

Q And I know you weren't integrated into compiling the list of eight itself, could you say, where you are today, provide any guesses as to why he may have been on the list?

A No. Again, he was on the list. I was not privy to how you got on the list or why he was on the list. He was presidentially appointed. That is someone else's problem.

Q When you were actually in that November 27th, again, no firm date, meeting, did you at all inquire as to why any of these eight were on the list?

A No.

Q Did you, at all, object to any of the eight being on the list?

A Because I understood or believed that that decision was made at a level beyond me, I didn't feel it was my place to question it.

Q To what -- let's proceed to Carol Lam for now. Do you recall the substance of your conversation with Ms. Lam

on December 7th?

A I called Carol Lam, and I, again, used salutations how you doing, how are things, how are things in the district, chatted for a little bit and I knew every conversations was going to start out that way.

Q Just to stop you. Again, had you been friends with Ms. Lam prior to this call on December 7th?

A Since 2002, and I had visited her district a couple of times also. And I had actually visited Mr. Charlton's district in August of 2006. I said Carol, listen, I need to speak to you about something very important. She said sure, what is it? I said, Carol, I have been asked by the administration to call you and to request that you submit your resignation as U.S. attorney by the close of business on 31st of January of next year. She said why? And I said Carol, I am not in a position to talk to you about that. She said have I done something wrong? I said, Carol, I am not in a position to talk to you about that.

Q How did that make you feel with Ms. Lam?

A It was awkward. I said -- she said have I done something wrong? I said Carol, I am not in a position to talk to you about that. She said who can I call? I said I am not going to discourage you from calling anybody. She said should I call the Deputy Attorney General? I said I think you should call the deputy Attorney General. She said

I will call you back. I said okay, if you need anything give me a call. She hung up.

Q Did you suggest anyone else she said call besides the Deputy Attorney General?

A No.

Q Since we are on this Lam, had mentioned an issue earlier, and I think you mentioned Ms. Lam and Mr. Ryan as to you weren't necessarily surprised about being on the list; do you recall that --

A Yes.

Q -- in your earlier testimony?

A I do. Mmh hmm.

Q With regard to allocation of resources for the immigration issues, do you recall that?

A Yes.

Q What, if anything, came about with regard to the FTEs? Were more FTEs or less FTEs provided with regard to the immigration issues that had been identified in her district?

A I think ultimately -- I am not absolutely sure, but I think ultimately nobody got shortchanged, including Carol, and ultimately, the decision was made that her numbers, albeit down, in terms of prosecutions, there was still a lot of activity in her district that would justify giving her a requisite number of attorneys to deal with that. So --

Q And to your knowledge, she was given that requisite?

A To my knowledge she was, yes.

Q And I think you also mentioned your earlier testimony that I think Mr. Elston, Mr. Mercer had specific issues with Ms. Lam's immigration prosecution. Is that a fair characterization?

A I seem to recall a conversation on one or more occasions with either one of them about that perhaps during that meeting. Now, let me clarify when I say I wasn't surprised because if I were to try to guess by looking at the list initially somebody may have had a problem those are what I knew about those 2. Did it rise to the level of where it ended? That is not what I was talking about.

Q Okay. And again, aside and apart from Mr. Elston and Mr. Mercer for that matter, do you recall hearing any complaints from any other Department of Justice officials?

A Paul McNulty, you know, maybe at that same meeting as Bill Mercer and Mike were always at the meetings that he had with the DAG, so we may have had a brief conversation with what we discussed with in the allocations, Paul might have said yes, we have to sort of work with Carol on this.

Q What about Kyle Sampson?

A Kyle was never at those meetings.

Q He wasn't at those. Okay. Okay, with regard to Mr. Kevin Ryan, could you describe the circumstances of his

or your December 7 call to him?

A I had trepidations about making this call because I knew Kevin was angry with me about his evaluation. I think he was concerned that he didn't think I gave him any support.

Q How had he expressed that concern earlier prior to?

A He had not but he was very upset in his written response to the report. And instead of me calling him back to deal with that, I had got a little fed up with Kevin because he wasn't trying to work with me. So I ordered a special evaluation, which is rare in the Department because I wanted to get to the bottom of what was going on. I didn't want Kevin to look bad if it wasn't his fault. And I wanted to give him a second chance to respond.

So I wanted a special and I knew that like most U.S. attorneys they would be upset about that because it is such a rare thing. But it was his chance to get his act together. His special one came back pretty bad. So I hadn't talked to him in a while, so I knew he was probably angry with me. And I knew I was going to make the call. And I called him. And he was cordial and, I figured he thought I was calling him about the evaluation but I didn't mention it.

And I said Kevin I have to talk to you about something very important. I said I have been requested by the

administration to call you, request that you submit your resignation as U.S. Attorney by close of business on the 31st of January next year. There was about a 45-second pause. He didn't say anything to me. And then he said thank you very much and he hung up the phone. And I never heard from him again.

Q Okay. How much did you usually deviate, if at all, the script of talking points that you were given?

A If someone -- I got to a point where I had more conversation with Margaret Chiara, more conversation with DAG Dan Bogden actually the next four.

Q Okay, so let's do that since it makes sense. With regard to Margaret Chiara if you can describe that conversation.

A Again, I don't recall that I made these calls in this sequence.

Q I am just taking it in order as they are listed on Exhibit 10.

A Margaret actually had been calling me. And we had been missing one another, I think, for about a day. I was pretty certain when I called her she was suspecting that I was calling her back in response to her call because she immediately started to talking to me about the issue she wanted to talk about. And I didn't know how to get her to stop talking. And it was awkward. So I just listened for a

while. And I said Margaret let's talk about that later. I have something I have to talk to you about very important now.

I said, Margaret, the administration has asked me to call you and request that you submit your resignation as U.S. attorneys for your district by the close of business on 31st of January of next year. Before I could finish getting it out of my mouth she said, oh, I knew they was coming. Mike Elston talked to me recently. And he told me I had some problems. And I knew this was coming. In fact, I already started looking for a job. She said, can you work with me? At my age it is hard to find a job. Work with me try to find as much time as I need to find a job.

Q What did you say to her?

A I said, Margaret I will endeavor to help you in any way I can and she said thank you and hung up.

Q Did she mention any other names besides Mr. Elston?

A No.

Q What about Mr. Dan Bogden, your conversation with him?

A I called Dan. I said Dan, hey, Mike how are you doing? How are things in the District? When are you coming out to visit? I wish he hadn't asked me that. I said Dan, I have to talk to you about something very important. And he said what is it, Mike? Dan, I said I have to talk. So

Dan is very quiet. I said listen Dan, the administration has asked me to call you and to request that you submit your resignation as U.S. attorney for your district by close of business on 31st of January next year. He said why? I said Dan, I am not in a position to talk to you about that.

He said, did I do something wrong? I said Dan, I am really not in a position to talk to you about that. And I was getting tired. And I said you know Dan sometimes the administration wants to make a change. We all serve at the pleasure of the administration, but thank you for your service. Even myself, I serve at the pleasure. Sometimes these things change. He said well, where am I going to go? This is all I have ever done. I said Dan I really can't talk to you about that anymore. He said, wow, this really sucks or something along that line. I said I understand. Listen, why don't you take a moment, step back and think about it a little bit and give me a call tomorrow if you need to talk. He said okay.

Q Had Mr. Bogden been a friend of yours prior to that call?

A Yes.

Q For how long?

A Probably since 2002.

Q How did it make you feel for the call to Mr. Bogden?

A It was awkward.

Q For the same reasons of the others or different reasons?

A Same reasons. Same reasons.

Q With regard to Mr. Bogden specifically, did you have any guesses as to why he may have been on the list?

A No, none whatsoever.

Q Had you had any issues with him, as director of EOUSA?

A I was not aware of any other issues.

Q Mr. David Iglesias, what was the substance of, nature of your call on December 7?

A I had trouble getting hold of David. I had my secretary call his office. We left several messages. David had not called me back by the time I had completed some of the other calls. He was toward the end. I had actually talked to McKay before I talk to David. So David was the last person I contacted. And I didn't want a day to go by without -- I didn't want David to hear this on the street. And I didn't know if his home State Senator had been contacted, maybe somebody might reach out to him before I called him. I didn't want the day to go by.

So I called David and I got him on his cell phone. He was traveling. I believe he was at the airport either going through security or had just come through security, which made it more awkward. And again, the usual salutations. I

probably was as close to David as anybody because when we served on that border subcommittee, he was my Chair for about 2-1/2 years, and we just did some really good work.

Q When had you served on that committee with him?

A From the time I became U.S. attorney, because I was a border district. He invited me to serve on the district. We visited the four corners of the United States and learned a lot about dealing with border and counterterrorism issues.

Q So that would have been around 2002?

A 2002, 2003.

Q Okay.

A I said, David, listen I know this is a really bad time to call you because you are on the road, but I really have to call talk to you now about something very important, and I apologize for catching you on the road. What is it, Mike, it has to be important? I said, David, I have been asked by the administration to call you and ask you to submit your resignation as U.S. attorney at the close of business, January 31st of next year. Why? David I am not in a position to talk to you about that. Can you tell me if I did anything wrong? David, I am really not in a position to talk you about that. Is there anybody that I can call? David, I would not discourage you from calling anybody if you want to do that. I said you are on travel? He said yes. I said you are on your way home? He said yes. I said

why don't you get on your plane and relax a little bit. Give me a call tomorrow. He said, wow, this is like a punch in the stomach. I said I understand. I said call me tomorrow and talk a little bit more. He said okay.

Q And how did you feel after that particular call?

A Awkward.

Q More so than the others given your friendship, closer friendship with Mr. Iglesias?

A About the same.

Q About the same?

A Maybe a little more.

Q Were you surprised that he was on the list?

A I had no indication of any issues with David. I could see no reason why he was on the list.

Q Had you ever commended him for his service as a U.S. attorney?

A It was customary for me to send out a letter, a form letter which I never had a problem signing unless someone told me there was a problem at the conclusion of a year's evaluation congratulating the U.S. attorneys on the good work they had been doing and thanking them. And if I am pretty sure David got one of those letters if he was evaluated during my tenure.

Q I will mark this as a document.

[Exhibit No. 11 was marked for identification.]

BY Mr. REED:

Q Just for the record, this is a Washington Post article dated March 1st, 2007, entitled "Fired U.S. Attorney says lawmakers pressured him." This is, in particular, three-page document. If you could just turn to the last page of the document, Mr. Battle.

A Sure. Mmh hmm.

Q And, it is the third, I guess, the first kind of full paragraph, if you will, beginning with the Iglesias?

A Cited.

Q Cited the January 2006 letter?

A Mmh hmm.

Q Is that safe to say that is the letter to which you referred or would that have been a different letter?

A Because I don't know, sitting here, when David was evaluated, but if he was evaluated during that time a letter like that would have gone out. I have sent letters to U.S. attorneys about awards that people receive from AG awards to director's awards. I am always happy to sign a letter to the U.S. attorney about telling them how good the work was they did. It looks like it might have been it. But there could be any number of reasons why I would have sent a letter like that to David.

Q Again, for the record, quoting from the letter it says commending him for "exemplary leadership in the

Department's priority programs." And then next sentence, "experienced in legal management and community relations work and was respected by the Judiciary agencies and staff."

A It would seem that if the evaluation and review report came out in November 2005, it was conceivable a letter like that could have gone out in January.

Q Also I want to show you an excerpt from a hearing transcript held by the House subcommittee on commercial and administrative law which we can be marked as 12.

I only copied the relevant pages.

This is a portion of the hearing transcript on hearing on H.R. 580 restoring checks and balances in the confirmation process of U.S. Attorneys which was held Tuesday March 6, 2007 in the House Subcommittee Commercial Administrative Law, pages 94 and 95 of that hearing transcript. I will give you a chance if you like to just review those briefly.

And I want to just jump to page 95, if you would. Starting from the top, I will just read down from line 2215, he, referring to you, Mr. Battle, told me that the administration wanted to go a different way. I was expected to tender my resignation by the end of January. And I said, Mike -- because I considered Mike to be a friend -- I still do, he is a decent guy, I said what is going on here? I have received absolutely no warning there was a problem. Is

there a problem? What is going on? He, referring to Mr. Battle, goes, "Look, Dave, I don't think I want to know. All I know is this came from on high."

And this is, of course, is Mr. Iglesias's testimony. I wanted to ask you, does this comport with anything you may have said to him on December 7th when you made the call?

A David was one of the longer conversations. I don't remember saying that to David, but if he says it, it is quite possible that I did. David was the last call. I was tired. And I just want to do say, look, I am just the messenger, somebody else made the decision.

Q Do you think it is possible you could have said I don't think I want to know?

A No. I probably what I likely said was David, I don't know. I don't know if I said I don't want to know. I don't talk like that. But it is more likely I said, David, I don't know, and I don't want to know. All I know is it came from on high. I have used that term before. It is quite possible I did say that.

Q If you had said I don't know, I don't want to know, what would you have meant by that? Especially, specifically I don't want to know aspects of this case.

A That it was, I am just the messenger, David. I am not involved in this. This decision was made. I am just communicating it to you. I was confident that with David

and everybody else that I had talked to, as abrupt as I decided I wanted to be for all kinds of different reasons, I have been a lawyer for long enough, and learning to keep my mouth shut and I am hoping I am doing that today. But I knew these people -- I knew they would get off the phone and they would make phone calls. They would call their Senators, Congress people. They would make those calls.

So I kind of knew I could get away with that with them. So I knew that if I said to David, David, I don't know, and I don't want to know, what I was saying to him was look, David, I am just presenting this to you. If you want to find answers, you will know where to go to find those answers.

Q Was there a part of this entire process, meaning especially your role in making the calls that you didn't want to know about?

A It never came up. I mean, I got the list. I made the calls. And as I have said to you before, it is really my -- no one ever told me, as I said to you, what the reasons were. To me, they serve at the pleasure, they serve at the pleasure. And a decision was made to compile a list, that decision was made by someone. I had no input. Nobody asked for my input. I was just communicating what was being asked of me to do. I felt that that was someone else's prerogative.

Q Given the fact though that you were personal friends and you still are personal friends, how did that, the fact that you weren't able to give them any rationale?

A I would have preferred to have been able to do that. On the occasions when I spoke to people and said, I had the chance to say we all serve at the pleasure, we understand that, and, would even include myself in that, I thought that might have brought them back to a reality albeit uncomfortable, that might just be the bottom line.

Q And with regard to the statement, to the degree to which you made it, all I know is this came from on high, did you have specific officials in mind to whom you were referring when you, when you made that statement, if you, in fact, did make it?

RPTS McKENZIE

DCMN BURRELL

A Nobody specific. I came to a meeting. I was given information by a member of a staff that is higher than me. That's where it started as far as I know. I don't mean where it started, but that was above me. And anything above that, I don't know.

Q What about the call to Mr. John McKay on December 7?

A I called Mr. McKay, and John was another one that liked to talk -- [thunder] -- is that going to be on the record?

Q Is that an omen?

A Mr. McKay always came in with a bang. I didn't mean that, John. John was one that liked to talk. He liked to talk to me. We were friends. He and I had a little bit of similar background in having spent some time in leader service type environments. We were one of the few U.S. attorneys that shared that background and we kind of liked that or joked about it. I had just visited his district, a good visit to go out and do a 5-year anniversary memorial service for an AUSA who had been killed out there, a terrible crime still which has not been resolved. It was a good visit. It was very good for his office. I met with a lot of his staff, and he thanked me for coming out, and he and I exchanged e-mails on occasion about all kinds of

things.

John was a very active manager. He was always asking me questions about changing his management staff and doing things differently. So he was always in my hair about something, but he was never a problem because he had money. So he could do things. He just always wanted to do them his way. John -- I called him and we chatted for a little bit, and I said listen, John, I have to talk to you. He said yeah, what is it, Mike? I said, listen, the administration has asked me to contact you, and requested that you submit your resignation as U.S. Attorney at the close of business January 31 next year. He said, really? I said yes. He said, can you tell me why? I said, John, I am not in a position to talk to you about that. He said -- I said John, you know we all serve at the pleasure. We don't own these positions forever. You have done a great job. And the administration will thank you for your service. He said, okay. He said all right. He said thanks a lot. He said, I'll talk to you later.

Subsequently, I don't know if it was a day or so later, he sent me an e-mail and he -- I always remember it because it was pretty quick. He said he felt bad that I had to make the call, that type of call to him. He said you know, he understood that we do serve at the pleasure, he loved the fact that he had an opportunity to serve as U.S. Attorney,

and I am not quoting him but it's something to that effect, and he would move on and thanks, in so many words.

I was happy to see that John was taking it that way. John wouldn't have said that if he didn't mean it, as far as I knew, and I forwarded that e-mail, I think, to either Mark or Kyle so that they could see he seemed to be doing okay.

Q I am going to briefly just touch on another aspect of this replacement plan, Exhibit No. 10. Step three on page two, prepared to withstand political upheaval. What was your understanding of this step? Especially any discussions that the group of officials may have had at that November 27 meeting.

A I am going to make sure I understand the question. Are you talking about the top paragraph, "U.S. Attorneys desiring to save their jobs"?

Q Right. Okay. "Likely will make efforts to preserve themselves in office. We should expect these efforts to be strenuous."

A Okay. That some of the U.S. Attorneys might push back, might make calls to Senators or other people that they would deem to be allies to try to keep this from going forward.

Q What did you personally think would happen?

A What did I think would happen?

Q After you made these calls.

A While I was pleased that -- knowing that none of them were happy about my contacting them, while I was pleased that they didn't yell at me or get upset with me, these people have strong personalities, and I suspected there would be some pushback.

Q What were your views on kind of the unprecedented nature of firing eight in one day, given your experience as a U.S. Attorney and ultimately as the Director of EOUSA?

A Well, when you say unprecedented, all I can speak to is my tenure.

Q All right. In the Battle era?

A I don't know about a hundred years before me. Could you ask the question again?

Q What was your sense of the unprecedented nature of firing eight U.S. Attorneys in one fell swoop on one day? Had you ever seen it before? What were your thoughts about it?

A I had never experienced it before. I didn't know -- because I didn't know whether or not it had been done, I didn't know if it was unprecedented or not. I felt that ultimately most of them, most of the U.S. Attorneys would walk away once they got over their hurt, would walk away if given the opportunity to leave and have their reasons for leaving being presented as being on their own terms because I believed that ultimately they all understood that they

served at the pleasure. I don't think any of them knew when I called them that I was calling a group, and so it was my opinion that most of them would ultimately react the way John McKay did and Paul Charlton.

Q Given your experience with all of the eight on the list, most of whom you say you personally didn't know of any problems, what was your reaction to the initial media reports about the performance problems, rationale that was given regarding their termination?

A I am trying to see if I can come up with the right answer. Let me make sure I know what you are talking about. Media reports in relation to what?

Q In relation to initial justification for their firing; i.e., performance problems, performance issues.

A Given by whom?

Q By the Department of Justice.

A Okay. I want to make sure I get the right question. Ask me the question again.

Q What was your reaction to --

A Because you are saying media reports.

Q Or not even media reports, the justification that was given initially by the Department of Justice invoking performance problems as the rationale for the termination of the eight U.S. Attorneys. What was your reaction to that?

A Was that a rationale that was given initially?

Q Timing wise, I am not exactly sure how you want to categorize it, but I think it's safe to say one rationale, what was your --

A When you use the word "initially," timing is important to me. But if your question is generally -- I don't mean to be difficult.

Q No, no. I understand.

A If your question is generally, what is my reaction to a rationale given by the Department that these individuals were fired for performance reasons, does the timing of that statement make any difference? Or was it general?

Q Let's take it generally then.

A Okay. I was a little bit surprised.

Q Why?

A Because as I have indicated to you there was no prior indication to me that any of these people had performance issues that would rise to the level of them being -- of that being a reason for them being asked to resign. And as I said to you, there were only two of them that I thought might have had some issues, and in my opinion Kevin Ryan clearly was in a class by himself.

Q Okay. Just out of curiosity with regard to the calls that you made to each one of them, why is it that you deviated from the strict structure of talking points?

A I didn't want to get into a long conversation with them because I knew that with my relationship with them, I didn't want to get into a conversation where I might end up giving my opinion or my feelings or something later on that might collide with whatever was going on here that I was not a part of. So I decided to keep it as abrupt as I could. I didn't like doing that. But again I know these people. They're lawyers, they're smart, and they would figure it out. And if they didn't, they would say, Mike, what in the name of God are you talking about? Then I'd have to figure out what to do, but it never happened.

Q I am going to give you Exhibit No. 13, which is ASG 7.

A I have seen it before.

[Exhibit No. 13 was marked for
identification.]

BY MR. REED:

Q This is an e-mail from Kyle Sampson to you, with Paul McNulty and Michael Elston, William Moschella, William Mercer, Monica Goodling, Johnny Sutton cc'd, regarding USA replacements from December 13, 2006, the date of the e-mail. Do you recall this e-mail or at least this -- what it refers to substantively?

A I do, yes.

Q Effectively it said Bill had called to report there

were two main complaints in making calls. Battle, one, wasn't clear whether the USAs in question would be permitted to resign, or instead were being fired; and two, was too abrupt.

And then it suggests a second round of calls. What do you remember hearing about -- aside from this e-mail, about any responses to your calls?

A This was the first that I had heard of it, and you have heard my spiel. I guess you could call it abrupt. I was taken aback by both of those claims because -- I am not sure, but nobody -- nobody asked me, you know, let me see, I am trying to think if anybody -- no, at that point nobody would have asked me if they could resign. At least the initial phone call. I don't know if it was before or after this correspondence but I know there was contact with them where it was discussed, some of them, and I can't say specifically who, about how they wanted to go out. Charlton had called me back and knew what he wanted to do. Lam wanted more time. That was being considered. Ryan, I told you what he said. I never heard from him again. Chiara was on the move, according to what she told me. Bogden had been communicating with the DAG because we talked about that. Iglesias needed more time, and McKay had already decided to make his move.

I was of the impression after those initial

conversations that those folks, again, didn't know that they were part of any group and were going to make every effort to move in such a way that would not indicate to the world that they had been asked to leave, but I was more than willing to call them back and clarify that if it wasn't clear. It just didn't seem to me that that was a problem.

Q Did you in fact have to make any second calls to your recollection?

A No. I don't think that I did because I think in the interim Carol Lam had engaged in conversations with the Deputy Attorney General so she may have cleared it up with him. Ryan did whatever he did. I think I ultimately learned that he ended up working out an extension for himself. Chiara, for a long, long time nobody even knew that she was one of the people who were called. She was moving very quietly, and she wanted it that way. So I couldn't imagine her calling and complaining about not knowing what to do.

Bogden, I talked to a few times afterwards about extensions. I will try to work with him and the DAG about that. And I am trying to think. I think he ultimately did get an extension.

Iglesias, I know he was talking to the Deputy Attorney General office also and, as I say, McKay was on his way out. So I don't think I ended up having to make those calls

because I think by the time this got to me they had already clarified some of those issues with the Deputy Attorney General.

Q Just to go back to the actual days of the calls themselves, to the degree to which you remember in any of the calls you made, did any of the U.S. Attorneys at all try to guess a reason why they were being terminated when you talked to them?

A Not the day of the call. But subsequently, I learned that Carol Lam called me back and asked me if the reason she was asked to leave was because she was the subject of an OIG investigation, and I told her I had no idea what she was talking about and I didn't.

Q And was Ms. Lam the only one that called you back?

A No. I talked to almost -- I talked to -- I talked to Charlton subsequently because he had already put in his plan to leave. Lam I talked to again. Ryan I never talked to again. Chiara I talked to a few times. She never ever tried to guess. I told you what her comment to me was. Bogden and I never engaged in the conversation as to why he was, I understood, having ongoing discussions with the DAG, and he was trying to work on what to do. Iglesias and I talked a few times and all David seemed to be interested in was trying to get more time. He didn't discuss with me a reason and neither did McKay.

Q And again, I hate to go back to the November 27 meeting, but just to clarify for the record, I know the list was mentioned, was present at the meeting. Was there actual full substantive discussion as to why each one of them was on the list in that particular meeting?

A Not that I -- I don't think so, no. I don't recall that there was.

Q Okay.

A Nothing specific, no.

Q With regard to -- and this actually addresses the point you were making about Kevin Ryan insofar as a special report was developed for him. Seemingly he was aware of the problem before his termination, was given an opportunity to rectify it. Is that a fair characterization?

A As part of the evaluation and review process, Kevin was given more than an opportunity to deal with whatever the concerns were in his district.

Q So with regard to the other U.S. Attorneys that were ultimately terminated, wouldn't it have been a good idea to give them the same kind of second chance to the degree to which the administration saw issues with their performance and policy implementation?

A I can't say it, again because you have to distinguish Mr. Ryan's situation because what -- his opportunity to have a second chance was done in the normal

course of the evaluation and review process. If the others had problems, I wasn't aware of them as part of that process. If they were in the same boat with Kevin in that regard, then they would have gotten that opportunity. If there were other things going on that I wasn't privy to, I don't know if they were given that opportunity and I don't know what the result was. So I guess to answer your question, I would think that they should have but I honestly don't know.

Q Okay. And again just to go back to that 11/27 -- November 27 meeting or for that matter any -- well actually, just take that meeting. Was there any sense within that November 27 meeting that there was any disagreement among the DOJ officials as to who was on the list of eight?

A I don't know if it was during the meeting or after the meeting when the Deputy Attorney General indicated to me that he couldn't figure out why Bogden was on the list.

Q Deputy Attorney General?

A Yes. And I told him I had no idea one way or the other.

Q Did he give any follow-up reasons, like I don't know why he's on the list because such and such?

A No. He asked me if I was aware of any problems with Bogden. I said I was not.

Q Did anyone aside from the Deputy Attorney General

approach you with surprise about who was on the list?

A No. No.

Q Anyone approach you who was surprised as to who should have been on the list but was not on the list? And when I say anyone, I mean DOJ official.

A At the original meeting on the 27th, Kevin Ryan was not on the list and I was surprised that Kevin wasn't on the list. But I didn't say anything about it. I think when I talked to the Deputy Attorney General and he asked me about Bogden, I said to him, I am kind of surprised Kevin's not on there, and that was the extent of it. I think that was when I was walking out.

Q I know we can't get into specific names. But in your review of the list, did you see any, after reviewing the list, names that you thought should have been on the list that were not on the list?

A No.

Q I just want to explore briefly anything you knew about U.S. Attorneys requesting certain detailees, I guess for lack of a better word, to Iraq to be principal legal advisers. Do you recall any discussions or requests from any U.S. Attorneys along those lines?

A To be detailees to Iraq?

Q Or to be principal legal advisers in Iraq.

A I am going to make sure I understand this. I can't

remember the position that Chuck Larson held. He was one of the first USAs to go to Iraq. When Chuck's term was up, Max Wood took his position and went over. I think Max was the last person that went over. Those are the only two that I am aware of. Of the U.S. Attorneys ranks, there are AUSAs who had gone over.

Q Okay. Were there any issues with regard to military reserve service, any U.S. Attorneys, or how to effectuate balancing those two considerations that you were aware of?

A I was not a part of either discussion.

Q All right. We're not going to take too much more of your time. I appreciate the patience, too. We're just going to move from the termination phase to the post-termination phase briefly.

Did you participate at all in any of the preparation for the hearing in which Attorney General Gonzalez testified on January 18?

A Attorney General Gonzalez?

Q Yeah.

A No, I don't think I did.

Q What about for Mr. McNulty's testimony? I think it was February 7.

A I don't remember the day but I was at that meeting.

Q And do you recall who else was at that meeting?

A Kyle Sampson, I think Will Moschella would have been

there. I think Bill Mercer, Mike Elston, David Bogden, Monica Goodling, I think Tasia Scolinos might have been there.

Q Do you recall what specifically might have been discussed in that meeting?

A Just getting the Deputy Attorney General ready to testify.

Q Do you recall your specific role and your input?

A I recall that I was invited to give whatever input I could based on my experience and knowledge and understanding of the background of what had happened.

Q Do you recall any specific concerns that the administration wanted to address being discussed at that meeting?

A I don't really. It was more like a moot court. The Deputy Attorney General read for the group his opening statement. Some people commented about certain things that he might want to consider or how to say and then he was questioned principally by Kyle Sampson.

Q And did you contribute in writing any of his testimony?

A No. No.

Q All right. What about preparation for Mr. William Moschella, actually in the hearing -- this transcript that I introduced earlier on March 6 on the checks and balances,

restoring checks and balances on the confirmation process of the United States Attorneys?

A What was the date of that, that meeting? Was there a meeting scheduled?

Q Let me just -- give me one second. I will just mark this as 13. Oh, it should be 14.

Again for the record this is OAG 326. That actually might not be the prep meeting.

A Yeah, I don't think it was.

[Exhibit No. 14 was marked for
identification.]

BY MR. REED:

Q Since we have this, though, do you recall what this meeting was about?

A Yes. This meeting took place at the White House. I was notified fairly late in the day that I would be invited to attend. I wasn't certain what the meeting was about. But I was -- I figured it had something to do with talking about the U.S. Attorney resignations and perhaps folks over there wanted to get some background from me about my knowledge and involvement in that preparation and plan. So we had to submit the waives and DOB and SSNs and stuff so that we could go.

Q Do you recall anything other than that specifically that you discussed at the meeting?

A Now this -- what I am telling you about is what I knew before the meeting.

Q I'm sorry?

A At the meeting there was discussion along the lines of I guess the bottom portion, as I recall, you know, what -- how we were going to respond to what was now starting to meet up in relation to the U.S. Attorneys pushing back a little bit, reasons why they were asked to resign and whether or not there would be some testimony that would talk to if there were performance issues, get specific in the weeds, down and dirty, or just, you know, maintain the position or see how this all went.

Q Do you recall who was at this meeting?

A It was at the White House. I didn't know most of the people there. But I went over with Kyle and Monica, and the Deputy Attorney General was there. Brett Fielding was there. There was a whole bunch of people there. And at one point Karl Rove came in, stayed for a few minutes and then left.

Q When you say a few minutes, what do you mean?

A About 15 minutes. The meeting lasted about an hour.

Q Did he say anything when he was in there, do you recall?

A He did, but I don't recall what he said. I think the discussion centered around what, if any, response there

was going to be because since U.S. Attorneys had reacted to the claim that they had been asked to leave for performance reasons, whether or not -- how we should respond to, if at all, outing whatever concerns there were that led to their resignations.

Q Do you recall any documents at that meeting?

A I don't recall.

Q Do you recall a discussion regarding the second point at the bottom of the e-mail where the U.S. Attorneys were asked to resign?

A Say that again.

Q Do you recall any of the substantive discussions regarding why the U.S. Attorneys were asked to resign at that meeting?

A In terms of performance?

Q Right.

A I don't recall that. No, I don't think there was. No, I don't think we got into that. No, I think -- whether or not consideration, Will would make that a part of his testimony at this point.

Q Will Moschella?

A Right. Thank you for that clarification.

Q With regard to this same meeting we were just discussing, which was the substance of Exhibit No. 14, what was your reaction to the proposal to get specific rationales

about U.S. Attorney performance issues since for most of them you didn't know of any performance issues yourself?

A Could you repeat the question?

Q With regard to -- I think you mentioned earlier the substance of some of the discussions in that meeting was to discuss performance issues related -- or to I guess gather information about performance issues.

A Which meeting?

Mr. Hunt. Which meeting?

BY MR. REED:

Q We're talking about the March 5 meeting at the White House.

A The purpose of the meeting was to discuss whether or not there was going to be a response to the U.S. Attorneys pushing back that they were -- had been asked to resign for performance reasons, whether or not somebody was going to say, no, no, no, that wasn't the reason. Yes, yes, yes, that is the reason, and here are the performance issues or if it was purely serve at the pleasure.

Q Okay.

A What was going to be the response to that.

Q One last topic with regard to your resignation.

A I read it.

Q Okay. Great, thanks. Again, this is a letter dated January 22, 2007 and it appears to be your resignation

letter to Mr. Alberto Gonzalez. Is that correct?

A Yes.

Q And again January 22, 2007 was after December 7, 2006, is that correct?

A Yes.

Q The day you made the calls?

A Yes.

Q Again for the record, did your resignation have anything to do with your awkwardness, for a lack of a better word, in making those calls on December 7?

A No, it did not. Actually, as I indicated earlier, I had begun the process of seeking employment in the private sector as early as the spring of 2006. It's a long process, and it takes time.

Q Did your having to make these calls in any way make you feel you wanted to accelerate the process of leaving?

A You know, some things in life they're just timed in a certain way. I had shortly before this received the offer from Fulbright in January because you came back from the holiday, time went by, they made the offer, I had talked to my wife. This will give you some context here, okay?

Q Sure.

A You know, in September of 2006, I put my house up for sale in Buffalo. So I was serious about this. And September of 2006, my son started the college application

process. I started looking for a new job. I was serious about this, and that stuff, you know, doesn't happen overnight. It all just came together around this time. And I wanted the Attorney general to know as soon as I made my decision to go, and it was shortly after I heard from Fulbright that I submitted this letter.

Q Okay.

A And I also got a new apartment in Virginia. So it has been a rough few months.

Q Okay. Great. I think I might be done with my line of questioning, Mr. Battle. Thank you for your time. Appreciate it.

A You're welcome.

Mr. Sokol. Are you ready to go?

Mr. Kemerer. Sure. Does anybody need a break?

Mr. Battle. No.

Mr. Kemerer. I mean, I am happy to wait or go. I don't have any preferences.

Mr. Sokol. I have none.

BY MR. KEMERER:

Q Mr. Battle, my name is Hannibal Kemerer. I am going to ask you a few questions. You discussed the interview process for U.S. Attorneys earlier, correct?

A For interims, actings and presidentially appointed.

Q Right. And there was a distinction -- I just want

to make sure it's clear for the record. There is a distinction between interviews for U.S. Attorneys for their questions about support for the President may be asked and interviews for Assistant U.S. Attorneys, isn't that right?

A Actually, I can actually clarify that further?

Q Sure.

A I have never been -- I have interviewed AUSAs, Assistant U.S. Attorneys, as the U.S. Attorney in my district, as does every U.S. Attorney. Questions of that nature, at least in my experience, have never come up. With U.S. Attorneys who are seeking a presidential appointment, my experience, those questions are asked of them and I don't know if they're asked of the interims or the actives.

Q And so it was clear in your mind and it always was, at least at the time when you were present for U.S. Attorney, that these U.S. Attorneys were nominees, they were appointed?

A Political.

Q They're not career civil service positions?

A Absolutely, correct.

Q Earlier in your testimony you discussed the PATRIOT Act reauthorization.

A Yes.

Q And I think Mr. Reed refreshed your recollection with respect to the trouble getting a chief judge in

probably Florida to appoint Mr. Acosta down there.

A Yes.

Q Did you actually personally call him, the judge?

A I did. One of my responsibilities whenever there was going to be an acting or an interim appointee was to contact the chief judge and let them know the appointment was going to be made, get some follow-up information from them to see if they had any concerns -- excuse me -- and to make arrangements with them to have the candidate come and be sworn in.

Q And had you known R. Alex Acosta before this?

A I had done work with Alex Acosta when he was the AG, Civil Rights Division. He had worked with me on some issues in my district in Buffalo when I was U.S. Attorney.

Q And maybe even while you were on the Civil Rights Subcommittee of the Attorney Generals?

A Yes. Ralph Boyd at first and then Alex later on.

Q Mr. Acosta probably had a fairly distinguished career at DOJ?

A I felt that Alex Acosta did and he would be a good U.S. Attorney.

Q At the meeting he had in November '06 when -- the first list you saw that omitted Mr. Ryan, did anyone at that meeting discuss replacements for these U.S. Attorneys?

A No.

Q Now when you reported to Mr. Moschella about the -- I know I'm jumping around.

A That's okay.

Q About the Acosta discussion with the chief judge, you didn't think -- or did you -- did you think that there was anything nefarious about the plan to add this appointment authority to get the Attorney General that appointment authority?

A I did not. If you want to give me a chance to elaborate. I had been involved in the situation in South Dakota. I don't know if you were aware of that.

Q No, I wasn't.

A Michelle Tapken was the -- I think she was an AG appointed interim in that district, and I don't remember the timing so don't try to get me to refresh it. But her appointment was about to run out in that district. And it wasn't clear if there could be an extension of that by the AG. The practice had always been requested at the end of the 120-day appointment, then the court's authority would kick in. When I contacted the chief judge to find out if he wanted to extend Ms. Tapken's appointment -- this was about 5 days before her appointment was about to expire -- he didn't want to do it, and that is a very long story but he wanted to appoint somebody from outside the Department that we were not comfortable with. And it turned into a

tremendous brouhaha with us then responding to him with an alternative person who was, I think, a first assistant or somebody in another office.

Q It's like picking an arbitrator?

A Right. And he, through a series of telephone conversations with him over the course of a couple of days, he agreed with that alternative pick and then over the next week we learned that he had issued an order at the end of the 120 days appointing the other guy.

Q Did the person he --

A That he wanted to put in. But when I talked to him about the alternative appointee, and he said it was okay, he never told us that he had issued that order. So we had two U.S. Attorneys about to serve in that district. That was very uncomfortable. And the court had -- had, in our opinion, stuck its nose in, and that was troublesome.

Q You weren't looped into the ultimate list of seven. We've been saying eight all day, but it's really seven, December -- the December list was seven?

A When you say seven, who are you including on that list?

Q I'm including the ones on Exhibit 10. Let's look at Exhibit 10.

A Right. When we say eight, where do we get eight from?

Q I think if you add Mr. Cummins in.

A All right. That's my understanding.

Q But the list that we have that's tangible right here on Exhibit 10, you weren't looped into this until at least December -- at least the final list, the final, final list?

A This is the final list. This had all the folks except for Kevin Ryan.

Q You didn't participate in determining who should be on this list?

A No.

Q With respect to Cummins, you didn't personally have any perspective about any bad things that Mr. Cummins had done in his district?

A No.

Q And so when you had to call into Cummins back in June, you probably didn't relish in doing that, isn't that right?

A No, I did not.

Q And when you called these other U.S. Attorneys in December, you may not have relished in doing that either because you had a friendly relationship?

A It was uncomfortable.

Q By the time you got this list, the list that we've identified as Exhibit 10, the U.S. Attorneys who were going to be terminated in December was basically a fait accompli,

it was a determined number of people, you couldn't really have appealed it to anyone, is that right?

A The thought never even crossed my mind. I felt it was a final list and that decision had been made.

Q Okay. Now I think we clarified this toward the end with the introduction of the last exhibit, but your decision to resign really had nothing to do with the U.S. Attorney request for resignations, isn't that right?

A No. I had begun the process several months before.

Q And you did leave voluntarily, is that right?

A Without question.

Q I asked earlier about whether there was -- whether it was -- whether there was a nefarious purpose in this section in the PATRIOT Act, and I think you said you weren't aware of any nefarious purpose?

A No. I apologize. I gave you a really long answer, but I didn't think anything was nefarious.

Q While there were problems in appointments, you might have questioned putting it in the PATRIOT Act, didn't have a lot to do with terrorism?

A I am not a legislator. So I don't know how that stuff gets done. No offense.

Q At any of these meetings where Mr. Sampson was present, did he share with you a design on avoiding Senate confirmation through that section?

A I never heard that from him.

Q Did you hear it from others?

A No. Let me see if I recall. I have never heard anybody say that it was designed for that purpose.

Q Did anyone at the Department of Justice ask you to postpone your resignation and your going over to Fulbright & Jaworski in order to avoid any appearance issues with respect to this U.S. Attorney's resignation?

A No.

Q Did you get the sense that they would have liked you to have stayed a little longer?

A My original intent was to -- I mean, I wanted to get out at the end of '06, but it just didn't work out that way. Because I had told them back in June that I was looking, the first question they asked me was, what is your timetable? And I said, I want to be out by the spring of 2007. So they always knew that that is when I was going. So they were just, I am sure, waiting -- when I say "they," the Attorney General staff. Because I wanted them to know. I kept them updated as to where I was. And even when I got into the process for the Court of Appeals, again, I kept them updated because I knew that would be made public in New York State, and I didn't want them to think Mike is telling us he wants to privatize, and he is going to be a judge. I always kept them apprized of that. So I -- Jesus, I answered so much I

forgot the question.

Q It was something about whether they asked you to stick around.

A Stick around, no. Because they knew that I was going. No. I mean, as a courtesy, when I went to see Monica and told her I had made my final decision, she did ask me if there is anything, you know, any reason that we could get you to stay, and I said, I have already made up my mind. This is something I really want to do. Thank you very much.

Q You had been in public service for how many years?

A My entire career. 20-plus years.

Q Now, I believe you testified that you knew sort of going into these December 7 calls that you were dealing with politically savvy, very bright lawyers with a lot of contacts. Isn't that right?

A That's what I said.

Q Did you have reservations -- did you have a sense that this might get nasty or did you think that they would just move on?

A I was concerned that -- you mean nasty with me?

Q No. I meant sort of nasty -- I know that they might expect you to get feisty, but I mean just nasty like a public spat.

A I really didn't. I felt that ultimately if -- I

knew they would be given the opportunity in that timetable to resign and to present to the world that they were resigning of their own accord. I also felt very confident that those who needed extensions would get a reasonable extension, 30 days, whatever. And I felt that knowing that they served at the pleasure -- because U.S. Attorneys are good soldiers. Knowing that they serve at the pleasure, if they could just control not -- having not been presented that they were in any way being asked to leave, that they would go quietly. I really believed that.

Q Okay. And we also talked about the people who were on the list and how you were really only aware of a problem with respect to two of them, and I think that was from Kevin Ryan most especially because of his special EARS process, right?

A Again, I want to make it clear, I'm aware of a problem but I am not going to suggest that it was of the level that might cause someone to be asked to resign, except maybe Kevin, because his problem had really gotten out of control.

Q And the fact that you weren't aware of problems with respect to the other, let's call them five because I will put Mr. Cummins in a different category, that doesn't necessarily mean there was anything else to worry about, the administration asking people who serve at it.

A No, I didn't think it was.

Q I think that's it.

Mr. Battle, were you ever present when anyone discussed -- by anyone, I mean anyone within DOJ or the administration -- an intent to ask these U.S. Attorneys to leave because of a political prosecution?

A No. Never aware of that.

Q Or because of their failure to jumpstart a prosecution that could have political repercussions?

A That could have political repercussions?

Q Right.

A No.

Q Were you ever present for any meeting of that sort with anyone in the administration or Department of Justice, which I know is kind of over inclusive, where they discussed terminating one of these -- one or more of these U.S. Attorneys because of their -- that U.S. Attorney's having prosecuted political repercussions?

A No.

Q More specifically, we've discussed any one of these U.S. Attorneys lists, but let's put some names on them. Were you ever privy to any conversations with anyone within the administration or the Department of Justice in which they identified Carol Lam as someone who should be asked to resign or be fired because of her prosecution of Duke

Cunningham?

A No.

Q And the same question with respect to David Iglesias, were you ever privy to any discussions with anyone at the administration or the Department of Justice at which people suggested that Mr. Iglesias should be terminated for failing to print a political encryption prosecution prior to the President's last year's election?

A No.

Q I think that is it for me. Thank you.

BY MR. FLORES:

Q Mr. Battle, you mentioned earlier in questions about the list that there had been a list at one point not being -- what list are you referring to specifically?

A I believe -- and again, my recollection isn't that great -- that the meeting on the 27th of November, again, date not certain, there was a list of U.S. Attorneys who it became clear to me at that meeting were going to be asked to resign, and I remembered not seeing Kevin on that initial list. A final list ultimately came out and was developed between that day and when I was asked to make the call and Kevin's name did show up on that list. Kevin Ryan's.

Q Could your failure to see Mr. Ryan on that list that you received on November 27 have been a result of your overlooking his name there? Are you certain that he was not

on that list?

A I am certain he wasn't on it. It just -- it surprised me because I didn't know who was privy to developing the list, but I knew that -- I know that the Deputy Attorney General, who was at the meeting, was aware Kevin had but I didn't know if he was involved also.

Q Just one other question to be crystal clear. Were you ever present at or party to any discussion with the Department of Justice officials at your level or White House officials in which it was suggested that one of the eight prosecutors involved in these dismissals we have been discussing today ought to have been dismissed for any reason associated with a specific case involving political corruption, political issues in terms of the offense at issue or failing to bring such a case or any other case specific reason?

A No.

Q Thank you. That's all the questions I have.

[Recess.]

RPTS BINGHAM

DCMN NORMAN

[4:43 p.m.]

The Witness. Can I just clarify a point --

Mr. Hunt. We are back on the record.

The Witness. Because I know Mr. Reed covered it with me. On the 27th of November at that meeting, the original list had all of the people who ended up on the final list, but omitted Kevin Ryan. Is that clear? Then Ryan showed up. The only change on the final list was the adding of Ryan.

Mr. Hunt. Can you clarify whether it had anybody else on the list? Other than it being the final list omitting Kevin Ryan, did it contain any other names?

Mr. Battle. No.

EXAMINATION BY MR. BOOKBINDER:

Q Let me just -- since you started there, let me just follow up very quickly on that. Do you have any sense of when and how Kevin Ryan was added to the list?

A I don't. I just know when I got the final list for the calls, he was on the list.

Q And when was that?

A Probably got it the day before or the day of the calls.

Q Okay. Taking a step back, I am just going to hit

some of the topics that other folks have hit, and I will try to be as brief as possible.

As to the time that Monica Goodling was working in the EOUSA when you were there, I wanted to first ask just a little bit about her role. My sense from what you are saying is that EOUSA tends to be largely an administrative and mostly nonpolitical place; is that right?

A Yes.

Q My sense is that Monica Goodling's background was very much as somebody from the political sections of the Department of Justice and, previously, other offices. So I am wondering why you have very much a political person at a place like the EOUSA, to the extent you had a sense of that?

A I don't know what her background was in terms of where she worked with the political components of the Department. She was hired as a principal deputy by Mary Beth Buchanan before I came in as director. So I inherited her as a staff member.

Q Was her -- would you describe her job responsibilities there as having political components?

A Not necessarily, because the portfolio of the deputies is very specific. They have responsibilities in overseeing the various components of EOUSA. To the extent that perhaps something inside those components might have political overtones could nevertheless be the case; the most

clear of which I can think of would be the appointments process.

Q And was that the only sense in which you would see her role as having been different than those of the other deputies, you know, other than obviously having different specific subject matters?

A Her role was very specific as to the things in her portfolio.

Q You talked a little bit before about the fact that when you had an interim or an acting U.S. attorney, decisions to hire career AUSAs had to be approved through EOUSA.

A Yes.

Q And what was your role in that process?

A The U.S. attorneys would -- it took on various different forms. The U.S. attorneys would generally -- sometimes they would, again after establishing that they had the money to make the hire, they might come in and say they had somebody specific they wanted to bring in. They might say they had some vacancies and they wanted to start to interview for the process of hiring. It came in a number of different ways. But ultimately when they submitted and identified people that they wanted to hire, they had to come to us and we had to approve that process.

Q And what would come to you? Would it be resumes

or --

A The name of the person, the resume, background information. And I don't know if it came to me before or after it went to the Office of Attorney Recruitment and Management.

Q And did you, ultimately personally approve, or would it be somebody below you?

A I would hand off that responsibility for vetting purposes to one of my deputies who was responsible for doing that.

Q And what was Monica Goodling's role in that process, if any?

A You know, there may have been occasions -- I am not sure -- where my deputy may have spoken to her about particular individuals in particular offices. I think the AG's staff sometimes would comment about to us on whether or not we should let the appointment go through. So there was some involvement with Ms. Goodling and the AG's staff about appointments. So I would generally give it to my deputy and he would then generally vet it through -- and I think part of the vetting process included the AG's staff.

Q And did she ever raise to you, or was it ever reported to you that she raised parts of people's resumes that might have been partisan or political as items to be considered?

A For AUSA positions?

Q For AUSA positions.

A Not that I recall.

Q Did you -- is that something -- do you have any recollection of anybody raising those kinds of issues in those hiring decisions?

A For AUSA positions in the field?

Q For AUSA positions when it came to AUSA approving hires.

A I can't think of any specific instance in relation to a hiring in the field being impacted by that.

Q The requirement for EOUSA approval, was that sometimes waived for specific offices to hire people in AUSAs or others?

A Any that came across my desk, I got involved in the process. Now if somebody went around me, I didn't know about it.

Q So there weren't situations where you said this office can hire people without our approval?

A No, I don't think I ever did that.

Q Let me just ask a little more specifically on the issue I was just asking about, did you ever know of either Ms. Goodling, or anybody involved in that approval process of AUSA's, to comment on the membership of potential hires in groups known to be conservative, like Federalist Society

or the Heritage Foundation, in terms of experience on the resume?

A For AUSA positions?

Q For AUSA positions.

A I don't recall that I have, no.

Q How about people whose experience or membership in groups known to be liberal, like the ACLU or People for the American Way, is that something that anybody ever spoke about that you recall?

A I don't recall.

Q How about political experience in terms of working for a Member of Congress, Senator, or Governor or that kind of thing?

A Not really. I mean I -- again, if the U.S. attorneys communicated something to me about hiring an AUSA, I passed it on to my deputy. And ultimately I would get a yea or a nay and I would communicate that to the U.S. attorney.

Q So sometimes there were -- sometimes you would hear back negative; you would hear that they were rejecting somebody?

A I can't be specific. I don't know that I did, because most of the time when we said no, it was for monetary reasons. At least what I did.

Sometimes we would say no -- if a Presidentially

appointed U.S. attorney had already been identified, and that person was going through the process of confirmation, it was traditional to try to preserve the opportunity for that person to ultimately make the hires and not let the interim do it. So, more often than not, if we said no it was either because they didn't have the money or because we identified a Presidentially appointed U.S. attorney, and wanted to preserve that. In fact, I got in trouble for hiring somebody before I left and not leaving it for my successor.

Q You said that more often than not it was one or the other of those reasons, but there may have been reasons on other occasions?

A It could have been, but I don't recall that ever being communicated to me.

Q Would sometimes you get a "no" recommendation and not know the reason?

A No. Most the time -- again, I can't recall a situation where someone said that we were not going to approve a hire for political affiliation, party affiliation, or anything of that nature. It was generally because of the Presidential appointment process. That was always my experience. It might have been other reasons, but that was what was communicated to me.

Q There may have been other reasons -- you wouldn't

have been sure what they were, or you wouldn't recall if there were other reasons?

A It was satisfactory to me that on occasion we might say yes if somebody was really in dire need, even if they were an interim or acting. But if that was not the case, generally speaking, we tried to hold it open for the presidentially appointed person because -- to give you an example in my own district, I did get permission to hire two people before I left. Because of my budget crunch my successor has not been able to hire, and he is not happy about that and we were able to keep that open.

Q There was some discretion as to, in some cases, allowing hires to go through, even though it was an interim, and in other cases not doing so?

A It would depend on the circumstances.

Q Gotcha. And when a recommendation came to you from a deputy or from the AG's Office or something like that, you wouldn't always know all of the considerations?

A [Nods in the affirmative.]

Q Who had final approval? Who made final call on that?

A It was sort of a joint effort. If I got it again I would vet it to see if they had money to hire. I think my deputy would then do the background vetting or go through the process. And then I think he communicated with the

Attorney General staff. And then ultimately I would get a response back to communicate to the U.S. attorney.

Q And did you ever disagree with that response that came back to you?

A No. Because if the answer was "no" and I was told that it was because we had identified a presidentially appointed, we wanted to wait, that was satisfactory to me. I don't recall any other reason ever being given for a "no." When it was a "yes," I was of course happy, because I gave the U.S. attorney some good news.

Q So since these were always -- the only situations in which you had to do this kind of approval were for interim or acting U.S. attorneys; so it was always going to be an acceptable reason to say "no," that we are going to wait for the presidentially appointed person?

A When we interviewed the actings and the interims we would tell them that, that they would have to seek approval. And we would do it on a case-by-case basis.

Q But in other words, if they came back to you and said we are going to hold off for the presidentially appointed U.S. attorney, that wouldn't necessarily differentiate one applicant from another one that came through, and so you wouldn't necessarily know if there might have been other reasons why somebody was being denied?

A Right. That was the reason that was acceptable to

me.

Q And was Monica Goodling one of the people who would ultimately come to you with that final recommendation, or do you think she may have sort of been in the process somewhere?

A She was probably in the process. The communication would come to me from my deputy who I tasked with the responsibility.

Q Would you have seen it as acceptable to -- for items on someone's resume having to do with membership in a group that is perceived as conservative or liberal or political experience or perhaps going to schools which are seen as having a particular ideology, would you have seen that as an acceptable factor for making these decisions on approval whether or not to hire career AUSAs?

A By the time an applicant was identified to me, that person had been vetted by the U.S. Attorney's Office. So, clearly, the U.S. attorney -- whatever that person's background or affiliation that was acceptable to that person, that was enough for me.

Q I guess my question is, to the extent that there was this vetting for approval by the EOUSA and the AG's Office, would you have considered that acceptable for them to consider those kind of factors in deciding whether to recommend "yea" or "nay" on these?

A Those would not have been acceptable to me.

Mr. Hunt. Can you just clarify you are still speaking about career appointments?

Mr. Bookbinder. Still speaking about career appointments.

Mr. Hunt. Thank you.

BY MR. BOOKBINDER:

Q Moving on to the actual decision to fire a number of U.S. attorneys, since we are talking about appointed people here, let me hand out -- we are at Exhibit 11 now.

I will hand you a document which shouldn't take very long to review which we will call Exhibit 16.

[Exhibit No.16

Was marked for identification.]

BY MR. BOOKBINDER:

And this is actually -- first of all, have you had a moment to review this document?

A Yes.

Q This is actually an item from the calendar of Kyle Sampson which sets out an August 11, 2005 meeting, apparently with you, about U.S. attorney expirations. Do you have any recollection of this meeting?

A I don't.

Q Is there any possibility that it could have concerned any kind of plan to fire people once their terms

had expired?

A It is possible.

Q But you don't recall having a discussion along those lines with Mr. Sampson?

A I don't. No.

Q Moving on to an exhibit that we have already, that is already in, which is Exhibit 5, which was an October 5th memorandum to all U.S. attorneys about procedures for resigning, and you just discussed that a little bit?

A Uh-huh.

Q You said that was something that was issued periodically. Do you recall whether it was your decision to issue it at that particular time, or whether someone else might have suggested now would be a good time to get this memorandum out?

A My recollection seems to be to get out ahead of what we would anticipate over the next several months to a year would be U.S. attorneys thinking about moving on -- it was suggested that week to my deputy that we just sort of update the guidance and get it out to everybody. And I, of course, agreed to that, again knowing my own situation and having conversations with U.S. attorneys who were thinking about their future.

Q Did you have -- but according to what you said before, you wouldn't have had any sense when you did this

that there was a pending firing of a significant number of --

A No.

Q -- U.S. attorneys?

A No. Other than two previous concerns I had with Ms. Goodling, I didn't know anything was on the horizon.

Q And nobody who would have known that came and said to you hey, this would be a good time to get a --

A No, not at all.

Q -- memo out on resignations?

A No.

Q You said before that at the November 27th meeting, something was handed out which looked a lot like the plan document that we passed around. What was your reaction to that plan when you saw it?

A My interest, of course, was in my role. My secondary interest, of course, was in how to respond to any questions that any of the U.S. attorneys might have had when they asked me for a reason why this was happening. And my third concern was if anyone were to push back, how would they push back and what would the reaction be?

A Did you have any considerations about -- of what the reaction would be in the broader U.S. attorney community, whether this might have a chilling effect on other U.S. attorneys or make them think that they were in

danger if they did or did not do certain things?

A Yes. I felt that if -- none of the U S. Attorneys who were called knew that anybody else was being called. And I felt that if, however, somehow someone figured that out, and that was -- the U.S. attorney community was made aware of that, that it would absolutely have a damaging effect on the morale of the organization.

Q And is that -- did you relay that concern at all?

A The original discussion about when to make the calls was that the calls be made before December 7th. And I don't know if it was me or Deputy McNulty. But I think I suggested to him, and maybe he said that we should wait until after the Project Safe Childhood conference which was coming up, I think, that week or very soon. The feeling was that if these calls were made before that and, again, it got out that these number of people had been contacted, it would have a chilling effect on that conference. U.S. attorneys don't get together that often, and we just didn't want them to have a bad conference. So the agreement was to postpone the calls.

Q And word did get out among U.S. attorneys, even before the public controversy began; is that right?

A I don't really know. I think it did. I am trying to remember. We dedicated a courtroom to Mike Shelby, the late Mike Shelby at the NAC. I don't remember the date.

And there was a lot of talk about it at that conference. And I don't know, I think that was a counterterrorism conference or national security conference that took place in January. I think. It might have been December.

Q A couple of follow-up questions on that November 27th meeting. How long did the meeting last?

A I know that it didn't last more than an hour. Might have been half an hour, 40 minutes. It wasn't very long.

Q And the Attorney General was there, you said, for most of that?

A That is my recollection.

Q Did he at some point during the meeting approve the plan?

A It was presented -- I suspected that the purpose of the meeting was to finalize the plan. By the time we had left, it was agreed that the plan -- that the plan would go forward, the execution of it would go forward.

Q So it was kind of a consensus of everybody in the room --

A Yes.

Q And that included, obviously, the Attorney General?

A Yes.

Q Do you recall anything specific that he said in the course of the meeting?

A No.

Q When you made the calls to the U.S. attorneys -- and we won't go back through individual calls -- was there anything that you said to them -- as far as I know, you consistently said that you weren't authorized to say what the reasons were. Was there anything in the explanation that you gave to them that you felt to be different from your understanding of what the actual facts were?

A When you say "actual facts," what do you mean?

Q Well, your understanding of why they were being asked to resign, how the decision was made kind of thing?

A Essentially I didn't disagree with that portion of the talking points, which would allow -- invited me to engage with them that we all serve at the pleasure, and that at any given time the administration could go in a different direction. Something of that nature.

Q When you participated in the meeting that you discussed earlier to prepare Deputy Attorney General McNulty for his Senate testimony, what was your role in that meeting? What did you say, or attribute --

A I understood my role to be to contribute to getting the Deputy Attorney General prepared in anticipation of whatever types of questions or issues might come up. And I said absolutely nothing.

Q You said nothing in the course of the meeting?

A Nothing. I didn't say the word "nothing." I just

remained silent.

Q What was -- do you recall what Monica Goodling's role was in that meeting?

A I don't know what her role was. She was there. It was like a moot court preparation, and Kyle Sampson did most of the questioning.

Q Do you recall her doing any questioning?

A She may have made a point or two here and there; as did others, jumped in on occasion.

Q But you don't recall what those points might have been?

A I don't.

Q Did you have a sense that Mr. McNulty was given complete and accurate information as to why these people were being fired, to the extent that you knew?

A I didn't have any reason to believe otherwise.

Q Did you feel like you had complete and accurate information at the time as to why they had been fired?

A There were no indications in my experience that any of them had any specific problems outstanding. No one had indicated to me that that was the case. And, again, as a former U.S. attorney serving at the pleasure, it was acceptable to me. So I felt that if that was the reason, that was accurate.

Q But in other words, you didn't know specifics as to

why any of them were fired?

A I did not. No.

Q So to the extent that Mr. McNulty was supplied with specifics, you had no basis for evaluating that?

A Yes, I didn't. Yes, I didn't know.

Q Do you know how many prep sessions there were for Mr. McNulty?

A I don't know. I attended one. I don't know if there were others.

Q Nobody talked about at that one about, you know, we already did this once or we are doing this again on some other day?

A I don't recall anyone ever saying that.

Q Knowing everything you know now, do you feel that the Deputy Attorney General was given complete information, say, about the chronology in which things were done, reasons why things were done?

A Based upon what? Based upon my involvement?

Q Your involvement or anything you know at this point, whether from press accounts or from documents that you reviewed or anything else?

A Could you ask the question again?

Q Sure. Based on everything you know now --

A Oh, I know now.

Q You know now, exactly -- do you think that the

Deputy Attorney General at that meeting that you attended was given complete and accurate information?

A About what?

Q About the chronology and the process and the thinking behind these firings?

A I don't know if the discussion -- I don't recall a discussion of that ever came up during that particular meeting. The meeting was more in the neighborhood of preparing him to testify and anticipating questions. If at some point he had a conversation with someone else about that chronology, I don't know. But I don't recall it being at that meeting.

Q And based on the testimony that he ultimately gave, do you think that he was given, at any point, incomplete or inaccurate information about anything at all?

A I have no way of knowing.

Q Turn to the March 5th meeting at the White House which you discussed earlier. You mentioned that Karl Rove was there briefly, I think you said about 15 minutes?

A Fifteen, 20 minutes.

Q Do you know who else from the White House staff was there?

A Other than Mr. Fielding, I didn't recognize -- that is the first meeting I ever went to at the White House, so I didn't recognize a lot of those people.

Q So you said that -- so Karl Rove was there, Fred Fielding was there; do you know if Sara Taylor was there?

A I wouldn't know. She could have been sitting right next to me. I have no idea who she was.

Q And Scott Jennings, do you know who that is --

A No.

Q -- do you know if he was there?

Now, you said that after that meeting there was discussion as to whether there was to be pushback as to -- I think the way you characterized it was --

A I will actually use the word "response."

Q Okay. Sure. That U.S. attorneys were --

A They were pushing back.

Q They were pushing back as to whether there were performance reasons for their firing, and there was discussion at that meeting as to whether the Department of Justice or the White House ought to respond by setting out specific performance reasons?

A Yes.

Q What was your feeling about that discussion, given that as somebody who was involved in actively overseeing U.S. attorneys' offices, in apparently six of these eight cases you were not aware of specific performance-related reasons for their firing?

A Again, when I was U.S. attorney, I had very little

knowledge of what my colleagues were doing around the country, because you tend to pay attention to what goes on in your district; and most of the things you heard about them was good news, cases they prosecuted and accomplishments that they had achieved.

When I became Director, I learned a lot more because I had to have more contact with them. I learned even more because I had to go through the evaluation and review process. That pretty much -- other than a situation where there was misconduct -- was where my knowledge in what was going on in the U.S. attorneys offices in relationship to performance began and ended.

There may have been other situations where things were going on that I wasn't privy to, because they have their own relationship with the Deputy Attorney General, and they may -- some of them have their own relationship with the Attorney General. So I was satisfied with the fact that there could have been things going on with them that were problematic that I was not privy to. And I was okay with that because I was the Director here, and there were things that may have been going on above my head.

Q To the extent that a U.S. Attorney's Office had serious performance issues in terms of management or performance and success in certain types of prosecutions and investigations, to the extent that there were very major

problems, is that something that generally would come to the attention of the Director of EOUSA?

A Those would be easy because you just couldn't hide those things. They should come out in the evaluation and review process. And as I stated earlier, some of that stuff is so serious it rises to the level of misconduct. So I would have heard about it from OPR or OIG.

Q And you hadn't heard any such thing as to at least six of these eight?

A That's correct.

Q Now you talked a little bit about Kevin Ryan and how, in a sense, in the course of your work with him in terms of the EARS process, when there were problematic results he had a second chance to go back and, as you said, put his best foot forward.

Is it your sense that it would have been advisable and a good practice, to the extent that the Department was thinking of firing people, to have some kind of formalized, documented way of measuring that there were problems with these people and a way of maybe giving them an opportunity to respond to those problems and improve?

A I guess in any case, that would make a lot of sense. But just going back to my discussion about Carol Lam, it is quite possible that Ms. Lam had discussions that were of an oral nature that didn't require anything formal with the

Deputy Attorney General or someone else to try to reconcile why her numbers on immigration cases and gun cases were where they were.

That is something that could be resolved informally between a U.S. attorney and a deputy and someone else. So it might not always call for that. I am just using that as an example.

Q Sure. But certainly if you were thinking of firing somebody, it makes a certain amount of sense to compile a record similar to the type of record that ultimately you had on Kevin Ryan. Does that make sense?

A Well, I guess I will give you two answers -- three answers. Kevin, I don't know -- I don't know where Kevin would have ended up. I think his process might have still been going on. I guess the answer is if you are going to fire somebody -- and you have to remember, as a manager, I haven't even dealt with that in my organization -- if you are going to terminate someone in matters related to performance or something of that nature, it would make good sense to have documentation and an opportunity to correct. But these people are distinguishable from that because they serve at the pleasure, and you don't need performance as a rationale for asking them to resign.

Q Sure. Certainly if performance was a rationale, it would have made some sense to have a process like that.

Does that make sense?

A If that is the route you want to go.

Q And as to all of these people, other than Kevin Ryan, and perhaps informally with Carol Lam, you weren't aware of that kind of process going on?

A I was not.

Mr. Hunt. Can you clarify whether you are speaking separate and apart from the EARS process itself which does have --

Mr. Bookbinder. Sure.

By MR. BOOKBINDER:

Q My understanding as to all of these other people, the EARS process was positive and so there wasn't -- there wasn't an opportunity -- the EARS process didn't point out problems and give people an opportunity to fix them, because it didn't find problems?

A To the extent that it did, it would have.

Q But to the extent that there were problems outside that were not identified in the EARS process -- in the EARS process -- there wasn't any other process that you are aware of?

A Not that I am aware of, no.

Q You said in response to questions before that -- and I think you were very careful, it sounded like you were very careful in your word choice -- that you never heard that the

PATRIOT Act section which dealt with interim -- with interim U.S. attorneys and gave the Attorney General that power without a time limit -- you said that you had never heard anyone say that the purpose of that section was avoiding Senate confirmation of U.S. attorneys?

A Sure.

Q Did you ever hear anyone say that avoiding Senate confirmation might be a positive effect or a side benefit or maybe a use for that provision?

A No. The reason why I answered -- I am sorry, I forgot your last name.

Mr. Kemerer. Kemerer.

A -- Mr. Kemerer's question the way I did with the discussion about what happened in South Dakota was, it was my opinion that the provision that allowed the Attorney General to appoint in the way that that provision would do it was to avoid that scenario, not to avoid Senate confirmation. Because what ultimately happened in South Dakota was we got to a point -- a U.S. attorney there who was from another U.S. attorney's office and not some guy off the street -- no offense to the judge -- that we didn't know anything about, and while that person was in there carrying on the duties and responsibilities known by that person who worked in the Department, the vetting process went on for somebody who was ultimately Senate-confirmed as

a presidentially appointed U.S. attorney.

So it was never designed to have an impact on that. That was my understanding. It was very clear to me because that happened, because the judges in some of the districts -- we didn't see a lot of that, but we were starting to see more and more judges who were upset and were -- I hate to use this phrase -- poking around in ways that was unfair, at least as far as we were concerned.

Q Were you privy to any discussions about potentially appointing Tim Griffin in this interim way and not going through Senate confirmation?

A Never heard that before.

Q You also said that you were not aware in any of the eight cases of a basis for the decision to fire them being either bringing a case that had political implications or not bringing a case that had political implications, and you were specifically asked about Carol Lam and David Iglesias, among others. It is accurate, though, to say that you weren't privy, ultimately, to discussions as to why they were fired, at all, for any reason. Is that right?

A I was not. That's correct.

Q So whether it was this set of reasons or another set of reasons, you would have no idea?

A I have no idea.

Q Just a couple of quick follow-ups on that March 5th

White House meeting.

Were you aware as to whether Harriet Miers was there?

A I think I would recognize her. As far as I am concerned -- now, again, we are in a big room. She might have been off to a blind side, but I didn't see her.

Q And how about Bill Kelley?

A I don't know what Mr. Kelley looks like. If he walked in this room, wouldn't know him.

Q So of the White House staff, the only people you specifically remember is Karl Rove and Fred Fielding?

A [Nods in the affirmative.]

Q But there were others that you just didn't recognize?

A Right. Right that I just didn't know.

Q I think we are all set.

[Whereupon, at 5:42 p.m., the interview was concluded.]