targeted offenders rather than specific offenses, criminal organizations and gangs, and gun trafficking.

K. District

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		21	45	50	29	-42.0%	92
ATF Referrals		31	37	48	31	-35.4%	

Despite a significant decrease in the percentage of Federal firearms cases filed in FY 2005 as compared to FY 2004, the District a is engaged in PSN. I recommend further staff-level follow-up, but I do not see the need to raise the issue to the level of contact between the Acting Deputy Attorney General and the U.S. Attorney.

The Distric filed 42% fewer Federal firearms cases in FY 2005 than in FY 2004; however, that percentage translates to a decrease from 50 cases in FY 2004 to 29 in FY 2005. The numbers of Federal firearms defendants in the district are proportionate – 32 in FY 2005 down from 59 in FY 2004, but above the 26 filed in FY 2002 and the 28 filed in FY 2001.

Crime statistics for the district's largest city, are not reported by the FBI's UCR.

U.S. Attorney has held his position since January 2002. In the district's PSN Report to the Attorney General in October 2005, it reported that its task force included the ATF, FBI, USMS, IRS, ICE, and a number of state and local law enforcement agencies. The task force screens arrests to determine the appropriate venue for prosecution, but it has not cross-designated local prosecutors to prosecute Federal cases. The district's PSN Coordinator is the anti-gang coordinator and the Project Sentry coordinator. He also is active with DEA and OCDETF and coordinates proactive cases with PSN. The district identified drugs and chronic offenders as its most significant sources of gun violence, although it listed felons in possession as another source. The district reported that it focuses on illegal possession, as well as specific offenders and criminal organizations and gangs. The district identified "increased Federal prosecution of firearms-related cases" as one of five strategies it has implemented. The report noted that the previous PSN Coordinator, was detailed to EOUSA, and that the new Coordinator, , needed some time to transition. At the time of the report, the district was planning a conference for PSN training in 2006.

The district's main DOJ PSN point of contact discussed the FY 2005 prosecution statistics with the district's PSN Coordinator. To start, the district's PSN Coordinators have always been responsive to inquiries by the DOJ point of contact, and they have actively worked to implement PSN in the district. The PSN Coordinator explained that until recently, many of the district's PSN cases arose out of investigations involving methamphetamine labs. After an Oklahoma law regulating the distribution of precursor drugs went into effect in July 2004, many of the labs disappeared. Much of the drug supply now comes from Mexico. Also, the ATF was assisting in drug cases in the district until DEA was able to focus its resources in the state. The PSN Coordinator notes that the ATF has now focused its attention on longer-term investigations. ATF referrals of firearms cases to the district decreased significantly in FY 2005.

I District

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		35	24	61	30	-50.8%	93
ATF Referrals		37	91	54	37	-31.5%	

Although the District experienced a substantial drop in Federal firearms prosecutions in FY 2005, the district is engaged in PSN, and it has some reasonable explanations for its decreased firearms prosecution numbers in FY 2005. I do not believe that the district's performance requires the attention of the Acting Deputy Attorney General.

U.S. Attorney has held that post since October 2001. In FY 2005, the ppi experienced a 50.8% drop in Federal firearms cases filed – from 61 in FY 2004 to 30 in FY 2005. This was the most significant percentage drop by any district in FY 2005. The number of cases filed in FY 2005 sits between numbers for other years – above the 24 cases filed in FY 2003 but lower than the 35 cases filed in FY 2002 and barely lower than the 31 cases filed in FY 2001. The numbers of Federal firearms defendants are proportionate – 33 in FY 2005 down from 66 in FY 2004 and the lowest number since 30 cases were filed in FY 2000.

UCR Crime statistics are not available for the largest city in the district.

In its October 2005 PSN Report to the Attorney General, the district lists a full complement of Federal and local task force partners, including the FBI and DEA. The district focuses its PSN efforts in and It screens local gun-related arrests to determine the best venue for prosecution. The district reports using federal firearms cases to prosecute the leaders of 's "Mafia Insane Vice Lords" gang and using PSN relationships to investigate and successfully prosecute those gang members for the subsequent

murder of a key government witness. The district identified gangs and drugs as the primary sources of its gun violence, although it listed felons in possession as another source. The district has implemented a number of PSN's "Best Practices," including increased federal firearms prosecutions, gang investigations, directed police patrols, and chronic offender lists.

In its PSN Report, the district describes the successes of its PSN initiatives launched in in 2002 and in in 2004:

> In , where PSN was implemented in March 2002, violent gun crimes dropped 63% from 131 incidents in 2001 to 49 in 2003. There were 54 such incidents in 2004, still 59% below the 2001 level. Through the first 9 months of 2005, violent gun crime remains down in . In e, where PSN begin in August 2004, violent gun crimes dropped from 261 incidents in 2003 to 172 in 2004, a decrease of 34%. Violent gun crime was down significantly in for the first six months of 2005 and stabilized at the reduced level for the 3rd quarter. . . . Violent gun crime has stabilized in at a rate approximately 60% below 1999-2002 levels. In one year, violent gun crime in has decreased from 210 to 127, a drop of 40%.

The district is understandably proud of its efforts. In October 2005, the district contacted me and sent me a CD titled "The tory" detailing the district's efforts in that target area. On February 14, 2006, I received an email from the district announcing that "The Story" was going to be discussed on a radio program. The email also provided updated crime statistics:

> The gun crime in remained stable near its drastically reduced level. The big emerging news is that has reduced its violent gun crime by 54% over the last two years, going from 261 violent gun crimes in 2003 to 119 in 2005.

When the PSN Coordinator was contacted by the district's main DOJ PSN point of contact and asked about the decreased firearms prosecution numbers in FY 2005, the PSN Coordinator provided some fair explanations for the decreased prosecution numbers. He noted that the FY 2004 numbers were particularly high for the district, due in part to approximately 25 cases that were unsealed at one time in FY 2004. The PSN Coordinator explained that the district received fewer case referrals from ATF in FY 2005, which is confirmed by ATF data showing a decrease from 54 cases referred in FY 2004 to 37 in FY 2005. The PSN Coordinator reported that ATF had experienced personnel issues in the district – one agent from the small NDMS office was reassigned to the CIT initiative, and another was reassigned to assist in as after the hurricane. The ATF's office in the district was shut down for a substantial period of time due to the hurricane. The PSN Coordinator also said that the ATF

RAC was being told by ATF headquarters to shift his focus from firearm possession cases to larger criminal enterprise cases.

The decreased Federal firearms numbers in the [redacted] are not due to a lack of energy or initiative. The district is engaged, and continued staff-level contact and assistance should ensure that the district's program meets its potential.

Elston, Michael (ODAG)

From: Margolis, David
Sent: Thursday, February 22, 2007 9:23 AM
To: Sampson, Kyle; McNulty, Paul J; Moschella, William; Elston, Michael (ODAG); Hertling, Richard; Goodling, Monica
Subject: RE: Draft response to Reid/Durbin/Schumer/Murray letter re Cummins-Griffin

Kyle: remind me - did Tim spend a substantial period of time in Crm Div.? I just don't recall. Otherwise I have no qualms about the letter.

From: Sampson, Kyle
Sent: Wednesday, February 21, 2007 7:22 PM
To: McNulty, Paul J; Moschella, William; Elston, Michael (ODAG); Margolis, David; Hertling, Richard; Goodling, Monica
Subject: Draft response to Reid/Durbin/Schumer/Murray letter re Cummins-Griffin
Importance: High

All, can you please review and provide comments on my draft response to the above-referenced letter?
Richard, can you send the .pdf version of the above-referenced letter around to this group?
Thanks!

<< File: reid letter re cummins-griffin.doc >>

Kyle Sampson
Chief of Staff
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2001 wk.
(202) 305-5289 cell
kyle.sampson@usdoj.gov

Elston, Michael (ODAG)

From: Sampson, Kyle
Sent: Thursday, February 22, 2007 10:16 AM
To: Margolis, David; McNulty, Paul J; Moschella, William; Elston, Michael (ODAG); Hertling, Richard; Goodling, Monica
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Elston, Michael (ODAG)

From: Goodling, Monica
Sent: Thursday, February 22, 2007 12:01 PM
To: Sampson, Kyle; Margolis, David; McNulty, Paul J; Moschella, William; Elston, Michael (ODAG); Hertling, Richard
Subject: RE: Draft response to Reid/Durbin/Schumer/Murray letter re Cummins-Griffin

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Subject: RE: Draft response to Reid/Durbin/Schumer/Murray letter re Cummins-Griffin

Importance: High

Attachments: reid letter re cummins-griffin v.2.doc

If you have not already reviewed the letter, please review this version 2. (It includes some nits, plus a new graf from Hertling.) Because this letter mentions Rove and alludes to Harriet, I'd like to send it to WHCO today for their review, with an eye on getting it out tomorrow. THx.

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The Honorable Harry Reid
Majority Leader
United States Senate
Washington, D.C. 20510

Dear Senator Reid:

This is in response to your letter to the Attorney General dated February 8, 2007. An identical response has been sent to the other signatories of that letter.

The full quotation of the Attorney General's testimony at the Judiciary Committee hearing on January 18, 2007 (not the selective quote cited in your letter), more fairly represents his views about the appropriate reasons for asking a U.S. Attorney to resign. In full, the Attorney General stated: "I think I would never, ever make a change in a United States attorney for political reasons or *if it would in any way jeopardize an ongoing serious investigation. I just would not do it*" (emphasis added).

The Deputy Attorney General, at the hearing held on February 6, 2007, further stated the Department's view that asking U.S. Attorney Bud Cummins to resign so that Special Assistant U.S. Attorney Tim Griffin might have the opportunity to serve as U.S. Attorney is not, in the Department's view, an inappropriate "political reason." This is so, the Deputy Attorney General testified because, *inter alia*, Mr. Griffin is very well-qualified and has "a strong enough resume" to serve as U.S. Attorney, and Mr. Cummins "may have already been thinking about leaving at some point anyway." Indeed, at the time Mr. Griffin was appointed interim U.S. Attorney in December 2006 he had far more federal prosecution experience (in the Criminal Division and in the U.S. Attorney's office) than Mr. Cummins did at the time he was confirmed as U.S. Attorney in December 2001. In addition, Mr. Griffin has substantial military prosecution experience that Mr. Cummins does not have. And it was well-known, as early as December 2004, that Mr. Cummins intended to leave the office and seek employment in the private sector. *See* "The Insider Dec. 30," *Ark. Times* (Dec. 30, 2004) ("Cummins, 45, said that, with four children to put through college someday, he'll likely begin exploring career options. It wouldn't be 'shocking,' he said, for there to be a change in his office before the end of Bush's second term.").

In addition, the Department does not consider the replacement of one Republican U.S. Attorney by another well-qualified person with extensive experience as a prosecutor and strong ties to the district to be a change made for "political reasons." U.S. Attorneys serve at the pleasure of the President; that has always been the rule, and U.S. Attorneys accept their appointment with that understanding. U.S. Attorneys leave office all the time for a wide variety of reasons. As noted in the case of Mr. Cummins, he had previously

indicated publicly that he did not expect to remain in office through the President's second term. It was only natural and appropriate that the Department would seek a successor in anticipation of the potential vacancy. When the Department found an able and experienced successor, it moved forward with his interim appointment.

In answer to your specific questions:

- The decision to appoint Tim Griffin to be interim U.S. Attorney in the Eastern District of Arkansas was made on or about December 15, 2006, after the second of the Attorney General's telephone conversations with Senator Pryor.
- The Department of Justice is not aware of anyone lobbying, either inside or outside of the Administration, for Mr. Griffin's appointment. In the spring of 2006, following regular procedures, the Office of the Counsel to the President inquired of the Office of the Attorney General as to whether Mr. Griffin (who then was on active military duty in Iraq) might be considered for appointment as U.S. Attorney upon his return.
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- The Department is not aware of Karl Rove playing any role in the decision to appoint Mr. Griffin.

In conclusion, the Department wholeheartedly agrees with the principle you set forth in your letter that "[o]nce appointed, U.S. Attorneys, perhaps more than any other public servants, must be above politics and beyond reproach; they must be seen to enforce the rule of law without fear or favor." That many U.S. Attorneys, appointed by Presidents of both parties, have had political experience prior to their appointment does not undermine that principle.

We appreciate the opportunity to respond to your inquiry.

Sincerely,

Richard A. Hertling
Acting Assistant Attorney General

Elston, Michael (ODAG)

From: Moschella, William
Sent: Thursday, February 22, 2007 3:20 PM
To: Sampson, Kyle; Goodling, Monica; Margolis, David; McNulty, Paul J; Elston, Michael (ODAG); Hertling, Richard
Subject: RE: Draft response to Reid/Durbin/Schumer/Murray letter re Cummins-Griffin

No objection but would copy Specter and McConnell.

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Sent: Thursday, February 22, 2007 12:03 PM
To: Goodling, Monica; Margolis, David; McNulty, Paul J; Moschella, William; Elston, Michael (ODAG); Hertling, Richard
Subject: RE: Draft response to Reid/Durbin/Schumer/Murray letter re Cummins-Griffin
Importance: High

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We appreciate the opportunity to respond to your inquiry.

Sincerely,

Richard A. Hertling
Acting Assistant Attorney General

Elston, Michael (ODAG)

From: Hertling, Richard
Sent: Thursday, February 22, 2007 5:25 PM
To: Moschella, William; Sampson, Kyle; McNulty, Paul J; Elston, Michael (ODAG); Scolinos, Tasia; Goodling, Monica
Subject: FW: Draft Schumer response per our conversation.

Attachments: schumer ears.wpd

Here is the letter I intend to send Schumer tomorrow morning. Please advise before 10 a.m. if you have any comments, edits, or concerns. Thanks.

From: Burton, Faith
Sent: Thursday, February 22, 2007 5:17 PM
To: Hertling, Richard
Subject: Draft Schumer response per our conversation.

schumer ears.wpd
(78 KB)

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Charles E. Schumer
Chairman
Subcommittee on Administrative Oversight
and the Courts
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This supplements our previous response to your letter, dated February 14, 2007, which requested information relating to the Subcommittee's oversight interest in the recent requests to several United States Attorneys for their resignations.

In response to your prior request, which followed the Committee hearing of February 6, on this matter, and in an extraordinary effort to accommodate the Subcommittee's interests, the Deputy Attorney General briefed Committee Members on the reasons for the requested resignations. At that briefing on February 14, you requested access to the Evaluation and Review Staff (EARS) reports for the offices discussed by the Deputy Attorney General. As he stated at the briefing, these reports are not evaluations of the United States Attorneys themselves but, in some instances, they may contain relevant information that is responsive to the Subcommittee's interests in this matter.

The Department has substantial confidentiality interests in the EARS reports because they are an important management tool that relies upon the candor of participating individuals, both Evaluation Team members and those who provide information to them. In order to protect the continuing value of this process, we want to avoid disclosures that would chill such candor or the energetic conduct of these reviews. Accordingly, we appreciate your agreement to limit review of the reports to one staff member for the Chairman and one for the Ranking Member. We will redact the identities of the Evaluation Team participants as well as individuals who provided information to the Team in connection with each report, although we do not believe these redactions will in any way interfere with your ability to understand the reports. We further request that you advise us in advance if you believe it is necessary to disclose information from these reports outside of the Committee. While our public disclosure of information contained in these reports might be prohibited by the Privacy Act, we are providing access to the reports as described above in response to your oversight request and pursuant to 5 U.S.C. 552a(b)(9).

I hope this information is helpful. Please do not hesitate to contact this office if we can be of assistance in any other matter.

Sincerely,

Richard A. Hertling
Acting Assistant Attorney General

cc: The Honorable Jeff Sessions
Ranking Minority Member

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary

The Honorable Arlen Specter
Ranking Minority Member
Committee on the Judiciary

Elston, Michael (ODAG)

From: Hertling, Richard
Sent: Friday, February 23, 2007 8:19 AM
To: Cabral, Catalina
Cc: Sampson, Kyle; Goodling, Monica; Elston, Michael (ODAG)
Subject: FW: Revised Draft
Attachments: Senator Levin and Senator Stabenow.doc

Please format this and get it ready for my signature.

From: Oprison, Christopher G. [mailto:Christopher_G._Oprison@who.eop.gov]
Sent: Friday, February 23, 2007 7:25 AM
To: Hertling, Richard; Eckert, Paul R.
Cc: Sampson, Kyle
Subject: RE: Revised Draft

slight revision - otherwise good to go

From: Hertling, Richard [mailto:Richard.Hertling@usdoj.gov]
Sent: Friday, February 23, 2007 6:52 AM
To: Eckert, Paul R.; Oprison, Christopher G.
Cc: Sampson, Kyle
Subject: FW: Revised Draft

Here is the draft letter to Levin and Stabenow for your review and approval. Chiara is announcing her departure this morning, having talked to both senators yesterday. We would like to send this letter up to their offices this morning before she makes her announcement.

From: Elston, Michael (ODAG)
Sent: Thursday, February 22, 2007 7:35 PM
To: Hertling, Richard
Cc: Goodling, Monica; Moschella, William; Sampson, Kyle; McNulty, Paul J
Subject: Revised Draft

<<Senator Levin and Senator Stabenow.doc>>

William E. Moschella
Opening Statement

Madam Chairman, Mr. Cannon, and Members of the Subcommittee, I appreciate the opportunity to testify today.

Let me begin by stating clearly that the Department of Justice appreciates the public service that was rendered by the seven U.S. Attorneys who were asked to resign last December. Each is a talented lawyer who served as U.S. Attorney for more than four years, and we have no doubt they will achieve success in their future endeavors – just like the 40 or so other U.S. Attorneys who have resigned for various reasons over the last six years.

Let me also stress that one of the Attorney General's most important responsibilities is to manage the Department of Justice. Part of managing the Department is ensuring that the Administration's priorities and policies are carried out consistently and uniformly. Individuals who have the high privilege of serving as presidential appointees have an obligation to carry out the Administration's priorities and policies.

U.S. Attorneys in the field (as well as Assistant Attorneys General here in Washington) are duty bound not only to make prosecutorial decisions, but also to implement and further the Administration and Department's priorities and policy decisions. In carrying out these responsibilities they serve at the pleasure of the President and report to the Attorney General. If a judgment is made that they are not executing their responsibilities in a manner that furthers the management and policy goals of departmental leadership, then it is appropriate that they be asked to resign so that they can be replaced by other individuals who will.

To be clear, it was for reasons related to policy, priorities and management – what has been referred to broadly as "performance-related" reasons – that these U.S. Attorneys were asked to resign. I want to emphasize that the Department – out of respect for the U.S. Attorneys at issue – would have preferred not to talk at all about those reasons, but disclosures in the press and requests for information from Congress altered those best laid plans. In hindsight, perhaps this situation could have been handled better. These U.S. Attorneys could have been informed at the time they were asked to resign about the reasons for the decision. Unfortunately, our failure to provide reasons to these individual U.S. Attorneys has only served to fuel wild and inaccurate speculation about our motives, and that is unfortunate because faith and confidence in our justice system is more important than any one individual.

That said, the Department stands by the decisions. It is clear that after closed door briefings with House and Senate members and staff, some agree with the reasons that form the basis for our decisions and some disagree – such is the nature of subjective judgments. Just because you might disagree with a decision, does not mean it was made for improper political reasons – there were appropriate reasons for each decision.

One troubling allegation is that certain of these U.S. Attorneys were asked to resign because of actions they took or didn't take relating to public corruption cases. These charges are dangerous, baseless and irresponsible. This Administration has never removed a U.S. Attorney

to retaliate against them or interfere with or inappropriately influence a public corruption case. Not once.

The Attorney General and the Director of the FBI have made public corruption a high priority. Integrity in government and trust in our public officials and institutions is paramount. Without question, the Department's record is one of great accomplishment that is unmatched in recent memory. The Department has not pulled any punches or shown any political favoritism. Public corruption investigations are neither rushed nor delayed for improper purposes.

Some, particularly in the other body, claim that the Department's reasons for asking these U.S. Attorneys to resign was to make way for preselected Republican lawyers to be appointed and circumvent Senate confirmation. The facts, however, prove otherwise. After the seven U.S. Attorneys were asked to resign last December, the Administration immediately began consulting with home-state Senators and other home-state political leaders about possible candidates for nomination. Indeed, the facts are that since March 9, 2006, the date the Attorney General's new appointment authority went into effect, the Administration has nominated 16 individuals to serve as U.S. Attorney and 12 have been confirmed. Furthermore, 18 vacancies have arisen since March 9, 2006. Of those 18 vacancies, the Administration (1) has nominated candidates for six of them (and of those six, the Senate has confirmed three); (2) has interviewed candidates for eight of them; and (3) is working to identify candidates for the remaining four of them. Let me repeat what has been said many times before and what the record reflects: the Administration is committed to having a Senate-confirmed U.S. Attorney in every single federal district.

In conclusion, let me make three points: First, although the Department stands by the decision to ask these U.S. Attorneys to resign, it would have been much better to have addressed the relevant issues up front with each of them. Second, the Department has not asked anyone to resign to influence any public corruption case – and would never do so. Third, the Administration at no time intended to circumvent the confirmation process.

I would be happy to take your questions.

Elston, Michael (ODAG)

From: Scolinos, Tasia
Sent: Thursday, February 22, 2007 5:13 PM
To: Elston, Michael (ODAG); Goodling, Monica; Sampson, Kyle
Cc: Roehrkasse, Brian
Subject: FW: Margaret Chiara Press Release
Attachments: 2007 MMC press release.wpd

FYI - Michigan is going to push this out tomorrow. The first question will be whether she was asked to leave. The first assistant said he did not know what Margaret planned to say in response to that. Has anyone talked to her this week to get a feel for where she is at with this? She is also faxing a copy of her resignation letter to the AG and the WH - the first assistant did not know what it said. Has she discussed it with any of you? I believe this will generate another round of rough stories as expected- her press release paints a pretty darn good record and emphasizes her many "firsts" as a woman which the media will no doubt play up. I am planning to decline comment out of here with respect to whether she was asked to leave.

From: Stoddard, Russell (USAMIW) [mailto:Russell.Stoddard@usdoj.gov]
Sent: Thursday, February 22, 2007 4:58 PM
To: Scolinos, Tasia
Subject: Margaret Chiara Press Release

Ms. Scolinos, attached is the proposed press release.

Russell C. Stoddard
First Assistant U.S. Attorney
Western District of Michigan
616-456-2404
(cell)
<<2007 MMC press release.wpd>>

U.S. Department of Justice

Margaret M. Chiara
United States Attorney
Western District of Michigan

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Grand Rapids, Michigan 49503

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FOR IMMEDIATE RELEASE

Contact: Russell C. Stoddard
First Assistant United States Attorney
(616) 456-2404

Grand Rapids, Michigan – February 23, 2007 – United States Attorney Margaret M. Chiara announced that she is resigning her position as United States Attorney for the Western District of Michigan effective March 16, 2007. Ms. Chiara was nominated by President George W. Bush on September 4, 2001, and she was confirmed by the United States Senate on October 23, 2001. She is the first woman in the history of the State of Michigan to serve as a United States Attorney. Ms. Chiara intends to remain in public service.

Ms. Chiara has enjoyed a distinguished legal career in public service. She served as Assistant Prosecutor for Cass County from 1982 to 1987, the last two years of which she served as the Chief Assistant Prosecutor. From 1988 through 1996, Ms. Chiara was the elected Prosecuting Attorney for Cass County. Ms. Chiara was the first (and only) woman to serve as President of the Prosecuting Attorney's Association of Michigan. Following her tenure as Prosecuting Attorney, Ms. Chiara was appointed Administrator for the Trial Court Assessment Commission, which developed a variety of recommendations for the systematic reform of the Michigan trial courts. From 1999 until her appointment as United States Attorney, Ms. Chiara served as the Policy and Planning Director for the Michigan Supreme Court.

During Ms. Chiara's tenure as United States Attorney, the Western District of Michigan achieved an overall increase of more than fifteen percent in felony prosecutions and convictions. The Northern Division (Marquette), alone, experienced an increase of 84% in the number of criminal cases prosecuted during the two-year period of 2003 to 2005.

The Department of Justice invited Ms. Chiara to serve on several key subcommittees of the Attorney General's Advisory Committee (AGAC), including the Native American Issues Subcommittee (NAIS), the Office of Management and Budget Subcommittee (OM&B), and the Office Outreach: LECC/Victim-Witness Subcommittee. In 2006, her leadership skills were recognized by her appointment as chairperson of the NAIS. During Ms. Chiara's tenure on the NAIS, the subcommittee established "best practices" for Indian Country on a variety of issues, including family violence, border security, guns, drugs and gangs, and gaming. Among the accomplishments of the NAIS were the legislative changes in the Violence Against Women and Department of Justice Reauthorization Act of 2005 and the implementation of a national pilot program to address the growing problem of sexual assaults in Indian Country.

Ms. Chiara developed an attorney training and mentoring program for the Western District of Michigan that was recognized as a "best practice" by the Department of Justice. This program now serves as a national model.

Ms. Chiara's accomplishments as United States Attorney have also been recognized outside of the Department. For example, in April 2005, she was given the "Building Bridges Award" by the Arab-American Anti-Discrimination Committee. This award was given in recognition for her work in forming BRIDGES, the United States Attorney's outreach program to Arab and Muslim residents of the Western District of Michigan. BRIDGES consists of local Arab and Muslim business, community, and religious leaders; federal, state and local law

enforcement; and academia representatives, with the goal of developing trust and rapport between law enforcement and the Arab and Muslim communities.

In October 2005, Ms. Chiara received the "Lifetime Achievement Recognition" by the Women's Historical Center and Michigan Women's Hall of Fame. She was also recognized, in March 2006, as one of the "50 Most Influential Women in West Michigan," by the Grand Rapids Business Journal.

Ms. Chiara developed a number of highly-successful initiatives during her tenure as United States Attorney. Among those are Project Safe Neighborhoods, which is a federal, state, tribal and local law enforcement partnership to reduce gun crime and violence, the Western District of Michigan Environmental Crimes Task Force, and Project Safe Childhood, which focuses on Internet Crimes Against Children.

Under Ms. Chiara's leadership, the Western District of Michigan obtained the first conviction under the Attorney General's Obscenity Prosecution Task Force. In *United States v. Messer, et al.*, the Defendants were convicted of selling and receiving obscene material, including images of minors, as young as one year of age, engaging in sexually explicit conduct. Ms. Chiara and the Assistant United States Attorney who prosecuted the case were commended for this significant accomplishment on January 5, 2007, by the Assistant Attorney General for the Criminal Division.

Noteworthy during the United States Attorney's tenure is the prosecution of Michigan's first death penalty case since 1938, *United States v. Gabrion*, and the nearly concluded second phase of *United States v. Michigan*, which is a historically significant civil case involving treaty rights in Indian Country.

Other significant accomplishments can be found in the attached supplement.

#END#

Elston, Michael (ODAG)

From: Clifton, Deborah J
Sent: Friday, February 23, 2007 4:52 PM
To: Moschella, William; Elston, Michael (ODAG); Frisch, Stuart; Atwell, Tonya M; Barksdale, Gwen; Hardin, Gail; Horkan, Nancy; Lauria-Sullens, Jolene; Lofthus, Lee J; Pagliarini, Raymond; Rodgers, Janice; Santangelo, Mari (JMD); Schultz, Walter H; DeFalaise, Lou (OARM); Davis, Valorie A; Jackson, Wykema C; Wilcox, Matrina (OLP); Engel, Steve; Marshall, C. Kevin; Mitchell, Dyone; Robinson, Lawan; Smith, George; Davis, Kerry; Lofton, Betty; Opl, Legislation; Samuels, Julie; Cummings, Holly (CIV); Benderson, Judith (USAEO); Nowacki, John (USAEO); Smith, David L. (USAEO); Voris, Natalie (USAEO); Caballero, Luis (ODAG)
Cc: Scott-Finan, Nancy; Seidel, Rebecca; Silas, Adrien
Subject: ODAG Moschella draft testimony for a 03/06/07 hearing re the Importance of the Justice Department's United States Attorneys

Attachments: DRAFT Moschella Testimony.doc; H15control.pdf


DRAFT Moschella Testimony.doc ...


H15control.pdf (12 KB)

YOU WILL NOT RECEIVE A HARD COPY OF THIS REQUEST. PLEASE PROVIDE COMMENTS TO ADRIEN SILAS, OLA, NO LATER THAN 2 pm 02/26/07.

Department Of Justice
Office Legislative Affairs
Control Sheet

Date Of Document: 02/23/07
Date Received: 02/23/07
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Control No.: 070223-13441
ID No.: 435525

From: OLA (HOUSE JUDICIARY COMTE) (H.15) ((110TH CONGRESS))

To: HOUSE JUDICIARY COMTE

Subject:
ATTACHED FOR YOUR REVIEW AND COMMENT IS A COPY OF THE DRAFT STATEMENT OF WILLIAM MOSCHELLA, PRINCIPAL ASSOCIATE DEPUTY ATTORNEY GENERAL, REGARDING THE IMPORTANCE OF THE JUSTICE DEPARTMENT'S UNITED STATES ATTORNEYS, BEFORE THE HOUSE JUDICIARY COMTE, TO BE GIVEN ON MARCH 6, 2007

Action/Information:

Signature Level: OLA

Referred To:	Assigned:	Action:
ODAG, JMD/PERSONNEL/GC, OARM, OLP, OLC, CRM, CIV, EOUSA	02/23/07	COMMENTS DUE TO OLA/SILAS BY 2 PM 02/26/07. CC: OLA/SCOTT-FINAN/ SEIDEL

Remarks:

Comments:

File Comments:

Primary Contact: ADRIEN SILAS, 514-7276

Department of Justice

STATEMENT

OF

WILLIAM E. MOSCHELLA
PRINCIPAL ASSOCIATE DEPUTY ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

"[[TITLE]]"

PRESENTED ON

MARCH 6, 2007

Testimony
of

William E. Moschella
Principal Associate Deputy Attorney General
U.S. Department of Justice

Committee on the Judiciary
United States House of Representatives

"[[Title]]"

March 6, 2007

Chairman Conyers, Congressman Smith, and members of the Committee, thank you for the invitation to discuss the importance of the Justice Department's United States Attorneys.

As the chief federal law-enforcement officers in their districts, U.S. Attorneys represent the Attorney General before Americans who may not otherwise have contact with the Department of Justice. U.S. Attorneys are not only prosecutors, however; they are government officials charged with managing and implementing the policies and priorities of the Executive Branch. The Attorney General has set forth six key priorities for the Department of Justice, and in each of their districts, U.S. Attorneys lead our efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families—including child pornography, obscenity, and human trafficking.

United States Attorneys serve at the pleasure of the President. Like any other high-ranking officials in

the Executive Branch, they may be removed for any reason or no reason. The Department of Justice—including the office of United States Attorney—was created precisely so that the government's legal business could be effectively managed and carried out through a coherent program under the supervision of the Attorney General. And unlike judges, who are supposed to act independently of those who nominate them, U.S. Attorneys are accountable to the Attorney General, and through him, to the President—the head of the Executive Branch. This accountability ensures compliance with Department policy, and is often recognized by the Members of Congress who write to the Department to encourage various U.S. Attorneys' Offices to focus on a particular area of law enforcement.

The Attorney General and the Deputy Attorney General are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their offices effectively. It should come as no surprise to anyone that, in an organization as large as the Justice Department, U.S. Attorneys are removed or asked or encouraged to resign from time to time. However, in this Administration U.S. Attorneys are never—repeat, never—removed, or asked or encouraged to resign, in an effort to retaliate against them, or interfere with, or inappropriately influence a particular investigation, criminal prosecution, or civil case. Any suggestion to the contrary is unfounded, and it irresponsibly undermines the reputation for impartiality the Department has earned over many years and on which it depends.

Turnover in the position of U.S. Attorney is not uncommon and should be expected, particularly after the position's four-year term has expired. When a presidential election results in a change of administration, every U.S. Attorney leaves and the new President nominates a successor for confirmation by the Senate. Moreover, U.S. Attorneys do not necessarily stay in place even during an administration. For example, approximately half

of the U.S. Attorneys appointed at the beginning of the Bush Administration had left office by the end of 2006. Of the U.S. Attorneys whose resignations have been the subject of recent discussion, each one had served out his or her four-year term prior to being asked to resign.

Given the reality of turnover among the United States Attorneys, it is actually the career investigators and prosecutors who exercise direct responsibility for nearly all investigations and cases handled by a U.S. Attorney's Office. While a new U.S. Attorney may articulate new priorities or emphasize different types of cases, the effect of a U.S. Attorney's departure on an existing investigation is, in fact, minimal, and that is as it should be. The career civil servants who prosecute federal criminal cases are dedicated professionals, and an effective U.S. Attorney relies on the professional judgment of those prosecutors.

The leadership of an office is more than the direction of individual cases. It involves managing limited resources, maintaining high morale in the office, and building relationships with federal, state, and local law enforcement partners. When a U.S. Attorney submits his or her resignation, the Department must first determine who will serve temporarily as interim U.S. Attorney. The Department has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's Office during the period when there is not a presidentially-appointed, Senate-confirmed United States Attorney. Often, the Department looks to the First Assistant U.S. Attorney or another senior manager in the office to serve as U.S. Attorney on an interim basis. When neither the First Assistant nor another senior manager in the office is able or willing to serve as interim U.S. Attorney, or when the appointment of either would not be appropriate in the circumstances, the Department has looked to other, qualified Department employees.

At no time, however, has the Administration sought to avoid the confirmation process in the Senate by appointing an interim U.S. Attorney and then refusing to move forward—in consultation with home-State Senators—on the selection, nomination, confirmation and appointment of a new U.S. Attorney. Not once. In every single case where a vacancy occurs, the Bush Administration is committed to having a United States Attorney who is confirmed by the Senate. And the Administration's actions bear this out. Every time a vacancy has arisen, the President has either made a nomination, or the Administration is working—in consultation with home-state Senators—to select candidates for nomination. The appointment of U.S. Attorneys by and with the advice and consent of the Senate is unquestionably the appointment method preferred by the Senate, and it is unquestionably the appointment method preferred by the Administration.

Since January 20, 2001, 125 new U.S. Attorneys have been nominated by the President and confirmed by the Senate. On March 9, 2006, the Congress amended the Attorney General's authority to appoint interim U.S. Attorneys, and 13 vacancies have occurred since that date. This amendment has not changed our commitment to nominating candidates for Senate confirmation. In fact, the Administration has nominated a total of 15 individuals for Senate consideration since the appointment authority was amended, with 12 of those nominees having been confirmed to date. Of the 13 vacancies that have occurred since the time that the law was amended, the Administration has nominated candidates to fill five of these positions, has interviewed candidates for nomination for seven more positions, and is waiting to receive names to set up interviews for the final position—all in consultation with home-state Senators.

However, while that nomination process continues, the Department must have a leader in place to carry out the important work of these offices. To ensure an effective and smooth transition during U.S. Attorney

vacancies, the office of the U.S. Attorney must be filled on an interim basis. To do so, the Department relies on the Vacancy Reform Act ("VRA"), 5 U.S.C. § 3345(a)(1), when the First Assistant is selected to lead the office, or the Attorney General's appointment authority in 28 U.S.C. § 546 when another Department employee is chosen. Under the VRA, the First Assistant may serve in an acting capacity for only 210 days, unless a nomination is made during that period. Under an Attorney General appointment, the interim U.S. Attorney serves until a nominee is confirmed the Senate. There is no other statutory authority for filling such a vacancy, and thus the use of the Attorney General's appointment authority, as amended last year, signals nothing other than a decision to have an interim U.S. Attorney who is not the First Assistant. It does not indicate an intention to avoid the confirmation process, as some have suggested.

As you know, before last year's amendment of 28 U.S.C. § 546, the Attorney General could appoint an interim U.S. Attorney for the first 120 days after a vacancy arose; thereafter, the district court was authorized to appoint an interim U.S. Attorney. In cases where a Senate-confirmed U.S. Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in recurring problems. Some district courts recognized the conflicts inherent in the appointment of an interim U.S. Attorney who would then have matters before the court—not to mention the oddity of one branch of government appointing officers of another—and simply refused to exercise the appointment authority. In those cases, the Attorney General was consequently required to make multiple successive 120-day interim appointments. Other district courts ignored the inherent conflicts and sought to appoint as interim U.S. Attorneys wholly unacceptable candidates who lacked the required clearances or appropriate qualifications.

In most cases, of course, the district court simply appointed the Attorney General's choice as interim

U.S. Attorney, revealing the fact that most judges recognized the importance of appointing an interim U.S. Attorney who enjoys the confidence of the Attorney General. In other words, the most important factor in the selection of past court-appointed interim U.S. Attorneys was the Attorney General's recommendation. By foreclosing the possibility of judicial appointment of interim U.S. Attorneys unacceptable to the Administration, last year's amendment to Section 546 appropriately eliminated a procedure that created unnecessary problems without any apparent benefit.

We are aware of no other agency where federal judges—members of a separate branch of government—appoint the interim staff of an agency. Such a judicial appointee would have authority for litigating the entire federal criminal and civil docket before the very district court to whom he or she was beholden for the appointment. This arrangement, at a minimum, gives rise to an appearance of potential conflict that undermines the performance or perceived performance of both the Executive and Judicial Branches. A judge may be inclined to select a U.S. Attorney who shares the judge's ideological or prosecutorial philosophy. Or a judge may select a prosecutor apt to settle cases and enter plea bargains, so as to preserve judicial resources. *See* Wiener, Inter-Branch Appointments After the Independent Counsel: Court Appointment of United States Attorneys, 86 Minn. L. Rev. 363, 428 (2001) (concluding that court appointment of interim U.S. Attorneys is unconstitutional).

Prosecutorial authority should be exercised by the Executive Branch in a unified manner, consistent with the application of criminal enforcement policy under the Attorney General. Court-appointed U.S. Attorneys would be at least as accountable to the chief judge of the district court as to the Attorney General, which could, in some circumstances become untenable. In no context is accountability more important to our society than on

the front lines of law enforcement and the exercise of prosecutorial discretion, and the Department contends that the chief prosecutor should be accountable to the Attorney General, the President, and ultimately the people.

As noted, when a vacancy in the office of U.S. Attorney occurs, the Department typically looks first to the First Assistant or another senior manager in the office to serve as an Acting or interim U.S. Attorney. Where neither the First Assistant nor another senior manager is able or willing to serve as an Acting or interim U.S. Attorney, or where their service would not be appropriate under the circumstances, the Administration has looked to other Department employees to serve temporarily. No matter which way a U.S. Attorney is temporarily appointed, the Administration has consistently sought, and will continue to seek, to fill the vacancy—in consultation with home-State Senators—with a presidentially-nominated and Senate-confirmed nominee.

Thank you again for the opportunity to testify, and I look forward to answering the Committee's questions.

Elston, Michael (ODAG)

From: Goodling, Monica
Sent: Monday, February 26, 2007 2:09 PM
To: Scolinos, Tasia; Roehrkasse, Brian; Hertling, Richard; Elston, Michael (ODAG)
Cc: Sampson, Kyle; Moschella, William
Subject: Updated USA documents

Attachments: FACT SHEET - USA appointments.pdf; TPS - US Attorney vacancy-appointment points.pdf; Examples of Difficult Transition Situations.pdf; WHY 120 DAYS IS NOT REALISTIC.doc; Griffin Talkers.doc; USA prosecution only stats.pdf; 02-06-07 McNulty Transcript re US Attorneys.doc

I have updated the documents in my possession in advance of this week's hearing. (However, please note that we may have a nomination tomorrow, which will affect several of these documents. We will also have two resignations on Wednesday but not until COB -- those will affect the numbers of vacancies and acting/interim numbers at that time.) I will update and recirculate if that occurs. Thanks!

FOR PUBLIC USE


FACT SHEET - USA appointments....


TPS - US Attorney vacancy-appo...


Examples of Difficult Transiti...


WHY 120 DAYS IS NOT REALISTIC....


Griffin Talkers.doc (33 KB)


USA prosecution only stats.pdf...


02-06-07 McNulty Transcript re...

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

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

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

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

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, there have been 16 new U.S. Attorney vacancies that have arisen. They have been filled as noted below.

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

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

- **Eastern District of North Carolina** – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting United States Attorney (Sharon Potter was nominated and confirmed); and
- **Southern District of Georgia** – FAUSA Edmund A. Booth, Jr. is acting USA.

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

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

For 10 of the 16 vacancies, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) ("Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant"). Those districts are:

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

- **Southern District of California** – Karen Hewitt was appointed interim United States Attorney when incumbent United States Attorney resigned.

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

The Attorney General has exercised the authority to appoint interim United States Attorneys a total of 14 times since the authority was amended in March 2006.

In 2 of the 14 cases, the FAUSA had been serving as acting United States Attorney under the Vacancies Reform Act (VRA), but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed that same FAUSA to serve as interim United States Attorney. These districts include:

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

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

- **District of Alaska** – Nelson Cohen

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

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

In the 10 remaining cases, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. Those districts are:

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

- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Northern District of California** – Scott Schools was appointed interim United States Attorney when incumbent United States Attorney resigned; and
- **Southern District of California** – Karen Hewitt was appointed interim United States Attorney when incumbent United States Attorney resigned.

TALKING POINTS: U.S. ATTORNEY NOMINATIONS AND INTERIM APPOINTMENTS BY THE ATTORNEY GENERAL

Overview:

- In every single case, it is a goal of the Bush Administration to have a U.S. Attorney that is confirmed by the Senate. Use of the AG's appointment authority is in no way an attempt to circumvent the confirmation process. To the contrary, when a United States Attorney submits his or her resignation, the Administration has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's office during the period when there is not a presidentially-nominated, senate-confirmed (PAS) U.S. Attorney. Whenever a U.S. Attorney vacancy arises, we consult with the home-state Senators about candidates for nomination.

- Our record since the AG-appointment authority was amended demonstrates we are committed to working with the Senate to nominate candidates for U.S. Attorney positions. Every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or the Administration is working, in consultation with home-State Senators, to select candidates for nomination.
  - ✓ Specifically, since March 9, 2006 (when the AG's appointment authority was amended), the Administration has nominated 15 individuals to serve as U.S. Attorney (12 have been confirmed to date).

U.S. Attorneys Serve at the Pleasure of the President:

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

- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the United States Attorneys and ensuring that United States Attorneys are leading their offices effectively.

- United States Attorneys serve at the pleasure of the President. Thus, like other high-ranking Executive Branch officials, they may be removed for any reason or no reason. That on occasion in an organization as large as the Justice Department some United States Attorneys are removed, or are asked or encouraged to resign, should come as no surprise. United States Attorneys never are removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or

inappropriately influence a particular investigation, criminal prosecution or civil case.

- Whenever a vacancy occurs, we act to fill it in compliance with our obligations under the Constitution, the laws of the United States, and in consultation with the home-state Senators. The Senators have raised concerns based on a misunderstanding of the facts surrounding the resignations of a handful of U.S. Attorneys, each of whom have been in office for their full four year term or more.

- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the U.S. Attorneys and ensuring that they are leading their offices effectively. However, U.S. Attorneys are never removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or inappropriately influence a particular investigation, criminal prosecution or civil case.

The Administration Must Ensure an Effective Transition When Vacancies Occur:

- When a United States Attorney has submitted his or her resignation, the Administration has -- in every single case -- consulted with home-state Senators regarding candidates for the Presidential nomination and Senate confirmation. The Administration is committed to nominating a candidate for Senate consideration everywhere a vacancy arises, as evidenced by the fact that there have been 124 confirmations of new U.S. Attorneys since January 20, 2001.

- With 93 U.S. Attorney positions across the country, the Department often averages between 8-15 vacancies at any given time. Because of the important work conducted by these offices, and the need to ensure that the office is being managed effectively and appropriately, the Department uses a range of options to ensure continuity of operations.

- In some cases, the First Assistant U.S. Attorney is an appropriate choice. However, in other cases, the First Assistant may not be an appropriate option for reasons including that he or she: resigns or retires at the same time as the outgoing U.S. Attorney; indicates that he/she does not want to serve as Acting U.S. Attorney; has ongoing or completed OPR or IG matters in their file, which may make his/her elevation to the Acting role inappropriate; or is subject of an unfavorable recommendation by the outgoing U.S. Attorney or otherwise does not enjoy the confidence of those responsible for ensuring ongoing operations and an appropriate transition until such time as a new U.S. Attorney is nominated and confirmed by the Senate. In those cases, the Attorney General has appointed another individual to lead the office during the transition, often another senior manager from that office or an experienced attorney from within the Department.

The Administration Is Nominating Candidates for U.S. Attorney Positions:

- Since March 9, 2006, when the appointment authority was amended, the Administration has nominated 15 individuals for Senate consideration (12 have been confirmed to date).

- Since March 9, 2006, when the appointment authority was amended, 16 vacancies have been created. Of those 16 vacancies, the Administration nominated candidates to fill 5 of these positions (3 were confirmed to date), has interviewed candidates for 7 positions, and is waiting to receive names to set up interviews for the remaining positions – all in consultation with home-state Senators.

The 16 Vacancies Were Filled on an Interim Basis Using a Range of Authorities, in Order To Ensure an Effective and Smooth Transition:

- In 5 cases, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period.

- In 1 case, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). However, the First Assistant took federal retirement a month later and the Department had to select another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate.

- In 9 cases, the Department selected another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate.

- In 1 case, the First Assistant resigned at the same time as the U.S. Attorney, creating a need for an interim until such time as a nomination is submitted to the Senate.

Amending the Statute Was Necessary:

- Last year's amendment to the Attorney General's appointment authority was necessary and appropriate.

- We are aware of no other federal agency where federal judges, members of a separate branch of government and not the head of the agency, appoint interim staff on behalf of the agency.

- Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on

the Attorney General's appointment authority resulted in numerous, recurring problems.

- The statute was amended for several reasons:

  1) The previous provision was constitutionally-suspect in that it is inappropriate and inconsistent with sound separation of powers principles to vest federal courts with the authority to appoint a critical Executive Branch officer such as a United States Attorney;
  2) Some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments;
  3) Other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances.

- Court appointments raise significant conflict questions. After being appointed by the court, the judicial appointee would have authority for litigating the entire federal criminal and civil docket for this period before the very district court to whom he was beholden for his appointment. Such an arrangement at a minimum gives rise to an appearance of potential conflict that undermines the performance of not just the Executive Branch, but also the Judicial one. Furthermore, prosecutorial authority should be exercised by the Executive Branch in a unified manner, with consistent application of criminal enforcement policy under the supervision of the Attorney General.

- Because the Administration is committed to having a Senate-confirmed United States Attorney in all districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

WHY 120 DAYS IS NOT REALISTIC

- One hundred twenty days is not a realistic period of time to permit any Administration to **solicit and wait for home-state political leaders to identify a list of potential candidates,** provide the time needed to **interview and select a candidate for background investigation,** provide the FBI with adequate time to **do the full-field background investigation, prepare and submit the nomination,** and to be **followed by the Senate's review and confirmation** of a new U.S. Attorney.

- The **average number of days between the resignation of one Senate-confirmed U.S. Attorney and the President's nomination of a candidate for Senate consideration is 273 days** (including 250 USAs during the Clinton Administration and George W. Bush Administration to date). Once nominated, the Senate has taken an additional period of time to review the nominations of the Administration's law enforcement officials.

- The **average number of days between the nomination of a new U.S. Attorney candidate and Senate confirmation has been 58 days for President George W. Bush's USA nominees** (note - the majority were submitted to a Senate that was controlled by the same party as the President) and **81 days for President Bill Clinton's USA nominees** (note - 70% of nominees were submitted in the first two years to a Senate controlled by the same party as the President, others were submitted in the later six years to a party that was not).

- Simply adding the two averages of 273 and 58 days would mean a **combined average of 331 days from resignation of one USA to confirmation of the next.**

- The substantial time period between resignation and nomination is often due to factors outside the Administration's control, such as: 1) the Administration is waiting for home-state political leaders to develop and transmit their list of names for the Administration to begin interviewing candidates; 2) the Administration is awaiting feedback from home-state Senators on the individual selected after the interviews to move forward into background; and 3) the Administration is waiting for the FBI to complete its full-field background review. (The FBI often uses 2-4 months to do the background investigation -- and sometimes needs additional time if they identify an issue that requires significant investigation.)

Examples of Difficult Transition Situations

Examples of Districts Where Judges Did Not Exercise Their Court Appointment (Making the Attorney General's Appointment Authority Essential To Keep the Position Filled until a Nominee Is Confirmed)

1. **Southern District of Florida:** In 2005, a vacancy occurred in the SDFL. The Attorney General appointed Assistant Attorney General of the Civil Rights Division, Alex Acosta, for 120 days. At the end of the term, the Court indicated that they had (years earlier) appointed an individual who later became controversial. As a result, the Court indicated that they would not make an appointment unless the Department turned over its internal employee files and FBI background reports, so that the court could review potential candidates' backgrounds. Because those materials are protected under federal law, the Department declined the request. The court then indicated it would not use its authority at all, and that the Attorney General should make multiple, successive appointments. While the selection, nomination, and confirmation of a new U.S. Attorney was underway, the Attorney General made three 120-day appointments of Mr. Acosta. Ultimately, he was selected, nominated, and confirmed to the position.

2. **Eastern District of Oklahoma:** In 2000-2001, a vacancy occurred in the EDOK. The court refused to exercise the court's authority to make appointments. As a result, the Attorney General appointed Shelly Sperling to three 120-day appointments before Sperling was nominated and confirmed by the Senate (he was appointed by the Attorney General to a fourth 120-day term while the nomination was pending).

3. **In the Western District of Virginia:** In 2001, a vacancy occurred in the WDVA. The court declined to exercise its authority to make an appointment. As a result, the Attorney General made two successive 120-day appointments (two different individuals).

This problem is not new ...

4. **The District of Massachusetts.** In 1987, the Attorney General had appointed an interim U.S. Attorney while a nomination was pending before the Senate. The 120-day period expired before the nomination had been reviewed and the court declined to exercise its authority. The Attorney General then made another 120-day appointment. The legitimacy of the second appointment was questioned and was reviewed the U.S. District Court for the District of Massachusetts. The Judge upheld the validity of the second 120-day appointment where the court had declined to make an appointment. See 671 F. Supp. 5 (D. Ma. 1987).

Examples Where Judges Discussed Appointing or Attempted to Appoint Unacceptable Candidates:

1. **Southern District of West Virginia:** When a U.S. Attorney in the Southern District of West Virginia, David Faber, was confirmed to be a federal judge in 1987, the district went through a series of temporary appointments. Following the Attorney General's 120-day appointment of an individual named Michael Carey, the court appointed another individual as the U.S. Attorney. The court's appointee was not a DOJ-employee at the time and had not been subject of any background investigation. The court's appointee came into the office and started making inquiries into ongoing public integrity investigations, including investigations into Charleston Mayor Michael Roark and the Governor Arch Moore, both of whom were later tried and convicted of various federal charges. The First Assistant United States Attorney, knowing that the Department did not have the benefit of having a background examination on the appointee, believed that her inquiries into these sensitive cases were inappropriate and reported them to the Executive Office for United States Attorneys in Washington, D.C. The Department directed that the office remove the investigative files involving the Governor from the office for safeguarding. The Department further directed that the court's appointee be recused from certain criminal matters until a background examination was completed. During that time, the Reagan Administration sped up Michael Carey's nomination. Carey was confirmed and the court's appointee was replaced within two-three weeks of her original appointment.

2. **South Dakota:**

   In 2005, a vacancy arose in South Dakota. The First Assistant United States Attorney (FAUSA) was elevated to serve as acting United States Attorney under the Vacancies Reform Act (VRA) for 210 days. As that appointment neared an end without a nomination having yet been made, the Attorney General made an interim appointment of the FAUSA for a 120-day term. The Administration continued to work to identify a nominee; however, it eventually became clear that there would not be a nomination and confirmation prior to the expiration of the 120-day appointment.

   Near the expiration of the 120-day term, the Department contacted the court and requested that the FAUSA be allowed to serve under a court appointment. However, the court was not willing to re-appoint her. The Department proposed a solution to protect the court from appointing someone about whom they had reservations, which was for the court to refrain from making any appointment (as other district courts have sometimes done), which would allow the Attorney General to give the FAUSA a second successive, 120-day appointment.

   The Chief Judge instead indicated that he was thinking about appointing a non-DOJ employee, someone without federal prosecution experience, who had not been the subject of a thorough background investigation and did not have the

necessary security clearances. The Department strongly indicated that it did not believe this was an appropriate individual to lead the office.

The Department then notified the court that the Attorney General intended to ask the FAUSA to resign her 120-day appointment early (without the expiration of the 120-day appointment, the Department did not believe the court's appointment authority was operational). The Department notified the court that since the Attorney General's authority was still in force, he would make a new appointment of another experienced career prosecutor. The Department believed that the Chief Judge indicated his support of this course of action and implemented this plan.

The FAUSA resigned her position as interim U.S. Attorney and the Attorney General appointed the new interim U.S. Attorney (Steve Mullins). A federal judge executed the oath and copies of the Attorney General's order and the press release were sent to the court for their information. There was no response for over 10 days, when a fax arrived stating that the court had also attempted to appoint the non-DOJ individual as the U.S. Attorney.

This created a situation were two individuals had seemingly been appointed by two different authorities. Defense attorneys indicated their intention to challenge ongoing investigations and cases. The Department attempted to negotiate a resolution to this very difficult situation, but was unsuccessful. Litigating the situation would have taken months, during which many of the criminal cases and investigations that were underway would have been thrown into confusion and litigation themselves.

Needing to resolve the matter for the sake of the ongoing criminal prosecutions and litigation, after it was clear that negotiations would resolve the matter, the White House Counsel notified the court's purported appointee that even if his court order was valid and effective, then the President was removing him from that office pursuant to Article II of the Constitution and 28 U.S.C. § 541(c). Shortly thereafter, Mr. Mullins resigned his Attorney General appointment and was recess appointed by President Bush to serve as the U.S. Attorney for the District of South Dakota. The Department continued to work with the home-state Senators and identified and nominated a new U.S. Attorney candidate, who was confirmed by the Senate in the summer of 2006.

3. **Northern District of California:** In 1998, a vacancy resulted in NDCA, a district suffering from numerous challenges. The district court shared the Department's concerns about the state of the office and discussed the possibility of appointing of a non-DOJ employee to take over. The Department found the potential appointment of a non-DOJ employee unacceptable. A confrontation was avoided by the Attorney General's appointment of an experienced prosecutor from Washington, D.C. (Robert Mueller), which occurred with the court's concurrence. Mueller served under an AG appointment for 120 days, after which the district court gave him a court appointment. Eight months later, President Clinton nominated Mueller to fill the position for the rest of his term.

TIMOTHY GRIFFIN AS INTERIM UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF ARKANSAS

- The Attorney General appointed Tim Griffin as the interim U.S. Attorney following the resignation of Bud Cummins, who resigned on Dec. 20, 2006. Since early in 2006, Mr. Cummins had been talking about leaving the Department to go into private practice for family reasons.

- Timothy Griffin is highly qualified to serve as the U.S. Attorney for the Eastern District of Arkansas.

- Mr. Griffin has significant experience as a federal prosecutor at both the Department of Justice and as a military prosecutor. At the time of his appointment, he was serving as a federal prosecutor in the Eastern District of Arkansas. Also, from 2001 to 2002, Mr. Griffin served at the Department of Justice as Special Assistant to the Assistant Attorney General for the Criminal Division and as a Special Assistant U.S. Attorney in the Eastern District of Arkansas in Little Rock. In this capacity, Mr. Griffin prosecuted a variety of federal cases with an emphasis on firearm and drug cases and organized the Eastern District's Project Safe Neighborhoods (PSN) initiative, the Bush Administration's effort to reduce firearm-related violence by promoting close cooperation between State and federal law enforcement, and served as the PSN coordinator.

- Prior to rejoining the Department in the fall of 2006, Mr. Griffin completed a year of active duty in the U.S. Army, and is in his tenth year as an officer in the U.S. Army Reserve, Judge Advocate General's Corps (JAG), holding the rank of Major. In September 2005, Mr. Griffin was mobilized to active duty to serve as an Army prosecutor at Fort Campbell, Ky. At Fort Campbell, he prosecuted 40 criminal cases, including *U.S. v. Mikel*, which drew national interest after Pvt. Mikel attempted to murder his platoon sergeant and fired upon his unit's early morning formation. Pvt. Mikel pleaded guilty to attempted murder and was sentenced to 25 years in prison.

- In May 2006, Tim was assigned to the 501st Special Troops Battalion, 101st Airborne Division and sent to serve in Iraq. From May through August 2006, he served as an Army JAG with the 101st Airborne Division in Mosul, Iraq, as a member of the 172d Stryker Brigade Combat Team Brigade Operational Law Team, for which he was awarded the Combat Action Badge and the Army Commendation Medal.

- Like many political appointees, Mr. Griffin has political experience as well. Prior to being called to active duty, Mr. Griffin served as Special Assistant to the President and Deputy Director of the Office of Political Affairs at the White House, following a stint at the Republican National Committee. Mr. Griffin has also served as Senior Counsel to the House Government Reform Committee, as an Associate Independent Counsel for *In Re: Housing and Urban Development Secretary Henry Cisneros*, and as an associate attorney with a New Orleans law firm.

- Mr. Griffin has very strong academic credentials. He graduated *cum laude* from Hendrix College in Conway, Ark., and received his law degree, *cum laude*, from Tulane Law School. He also attended graduate school at Pembroke College at Oxford University. Mr. Griffin was raised in Magnolia, Ark., and resides in Little Rock with his wife, Elizabeth.

- The Attorney General has assured Senator Pryor that we are not circumventing the process by making an interim appointment and that the Administration would like to nominate Mr. Griffin. However, because the input of home-state Senators is important to the Administration, the Attorney General has asked Senator Pryor whether he would support Mr. Griffin if he was nominated. While the Administration consults with the home-state Senators on a potential nomination, however, the Department must have someone lead the office – and we believe Mr. Griffin is well-qualified to serve in this interim role until such time as a new U.S. Attorney is nominated and confirmed.

UNITED STATES ATTORNEYS' PROSECUTION STATISTICS

This Administration Has Demonstrated that It Values Prosecution Experience. Of the 124 Individuals President George W. Bush Has Nominated Who Have Been Confirmed by the Senate:

- 98 had prior experience as prosecutors (79 %)
    - 71 had prior experience as federal prosecutors (57 %)
    - 54 had prior experience as state or local prosecutors (44%)
- 104 had prior experience as prosecutors or government litigators on the civil side (84 %)

In Comparison, of President Clinton's 122 Nominees Who Were Confirmed by the Senate:

- 84 had prior experience as prosecutors (69 %)
    - 56 had prior experience as federal prosecutors (46 %)
    - 40 had prior experience as state or local prosecutors (33 %)
- 87 had prior experience as prosecutors or government litigators on the civil side (71 %)

Since the Attorney General's Appointment Authority Was Amended on March 9, 2006, the Backgrounds of Our Nominees Has Not Changed. Of the 15 Nominees Since that Time:

- 13 of the 15 had prior experience as prosecutors (87%) – *a higher percentage than before.*
    - 11 of the 15 had prior experience as federal prosecutors (73%) – *a higher percentage than before the change*; 10 were career AUSAs or former career AUSAs and 1 had federal prosecution experience as an Assistant Attorney General of the Civil Rights Division
    - 4 of the 15 nominees had experience as state or local prosecutors (27%)

Those Chosen To Be Acting/Interim U.S. Attorneys since the Attorney General's Appointment Authority Was Amended on March 9, 2006, Have Continued To Be Highly Qualified. Of the 16 districts in which new vacancies have occurred, 17 acting and/or interim appointments have been made:

- 16 of the 17 had prior experience as federal prosecutors (94%)