
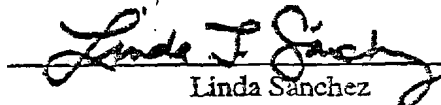


The Honorable Alberto Gonzales  
Page Two  
February 28, 2007

This information is essential for members of the House Judiciary Committee to properly conduct their oversight responsibilities of the Department of Justice. We would appreciate your prompt response to this request. Please reply through the Judiciary Committee office, 2138 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-3951; fax: 202-225-7680).

Sincerely,

  
John Conyers, Jr.  
Chairman

  
Linda Sanchez  
Chair, Subcommittee on Commercial and  
Administrative Law

cc: Hon. Richard A. Hertling  
Hon. Lamar Smith  
Congressional Research Service



U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 27, 2007

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

Dear Chairwoman Sanchez:

This responds to your letter, dated February 14, 2007 and Congressman Emanuel's letter, dated February 7, 2007, which requested that former United States Attorney Carol Lam be appointed as outside counsel to finish the investigation relating to former Congressman Cunningham. As you know, Ms. Lam left the Department of Justice on February 15, 2007 and we understand that she began her new private sector position on February 26, 2007. We are sending similar responses to the other Members who joined in your letter to us.

We appreciate your interest in the continuity of our law enforcement efforts stemming from the prosecution of former Congressman Cunningham and want to assure you that the career prosecutors will continue their work with our support. We do not believe that Ms. Lam's departure will negatively impact that investigation in any material respect. As the Attorney General has testified, the Department would not ever seek the resignation of a U.S. Attorney if doing so would jeopardize a public corruption case.

Accordingly, we are not aware of any basis for appointing Ms. Lam as an outside counsel in connection with the Cunningham investigation, particularly since she has assumed a new position outside of the government. The matter also does not present a conflict of interest or other extraordinary circumstances that would warrant the appointment of a Special Counsel pursuant to the Department's regulation. We have no doubt that the investigation will move forward under the able leadership of the career prosecutors in the United States Attorney's Office, who have been long-dedicated to this matter.

The Attorney General has made the prosecution of public corruption one of his priorities, and we appreciate your support of this important work. The Department is justifiably proud of its record of fighting public corruption. In the first five years of this Administration, our United States Attorney's Offices have charged more than 5,500 defendants in public corruption cases and convicted more than 4,800 individuals. During that same time period, the Criminal Division's Public Integrity Section has charged 280 defendants in public corruption cases and convicted more than 250 individuals.

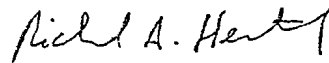
DAG000001428

The Honorable Linda Sanchez  
Page Two

The citizens of our Nation are entitled to honest services from all of their public officials, regardless of their political affiliation. Our citizens are also entitled to know that their public servants are making their official decisions based upon the best interests of the citizens who elect them and pay their salaries, and are not based upon the public official's own financial interests. The Department will continue to aggressively investigate and prosecute public corruption wherever it is found.

In response to Chairman Conyers' request, we will look forward to briefing the Judiciary Committee on February 28 regarding the recent resignations of several United States Attorneys. We hope that this information is helpful. Please do not hesitate to contact this office if you would like additional assistance regarding any other matter.

Sincerely,



Richard A. Hertling  
Acting Assistant Attorney General

cc: The Honorable Chris Cannon  
Ranking Minority Member

DAG000001429



U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530  
February 27, 2007

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

Dear Mr. Chairman:

This responds to your letter, dated February 14, 2007 and Congressman Emanuel's letter, dated February 7, 2007, which requested that former United States Attorney Carol Lam be appointed as outside counsel to finish the investigation relating to former Congressman Cunningham. As you know, Ms. Lam left the Department of Justice on February 15, 2007 and we understand that she began her new private sector position on February 26, 2007. We are sending similar responses to the other Members who joined in your letter to us.

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DAG000001430

The Honorable John Conyers, Jr.  
Page Two

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Sincerely,



Richard A. Hertling  
Acting Assistant Attorney General

cc: The Honorable Lamar Smith  
Ranking Minority Member

DAG000001431



U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 27, 2007

The Honorable Howard Berman  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Berman:

This responds to your letter, dated February 14, 2007 and Congressman Emanuel's letter, dated February 7, 2007, which requested that former United States Attorney Carol Lam be appointed as outside counsel to finish the investigation relating to former Congressman Cunningham. As you know, Ms. Lam left the Department of Justice on February 15, 2007 and we understand that she began her new private sector position on February 26, 2007. We are sending similar responses to the other Members who joined in your letter to us.

We appreciate your interest in the continuity of our law enforcement efforts stemming from the prosecution of former Congressman Cunningham and want to assure you that the career prosecutors will continue their work with our support. We do not believe that Ms. Lam's departure will negatively impact that investigation in any material respect. As the Attorney General has testified, the Department would not ever seek the resignation of a U.S. Attorney if doing so would jeopardize a public corruption case.

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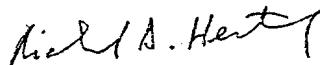
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The Honorable Howard Berman  
Page Two

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Sincerely,



Richard A. Hertling  
Acting Assistant Attorney General



U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 27, 2007

The Honorable Rahm Emanuel  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Emanuel:

This responds to your letter, dated February 14, 2007 and Congressman Emanuel's letter, dated February 7, 2007, which requested that former United States Attorney Carol Lam be appointed as outside counsel to finish the investigation relating to former Congressman Cunningham. As you know, Ms. Lam left the Department of Justice on February 15, 2007 and we understand that she began her new private sector position on February 26, 2007. We are sending similar responses to the other Members who joined in your letter to us.

We appreciate your interest in the continuity of our law enforcement efforts stemming from the prosecution of former Congressman Cunningham and want to assure you that the career prosecutors will continue their work with our support. We do not believe that Ms. Lam's departure will negatively impact that investigation in any material respect. As the Attorney General has testified, the Department would not ever seek the resignation of a U.S. Attorney if doing so would jeopardize a public corruption case.

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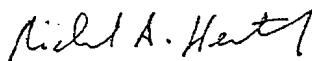


The Honorable Rahm Emanuel  
Page Two

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In response to Chairman Conyers' request, we will look forward to briefing the Judiciary Committee on February 28 regarding the recent resignations of several United States Attorneys. We hope that this information is helpful. Please do not hesitate to contact this office if you would like additional assistance regarding any other matter.

Sincerely,



Richard A. Hertling  
Acting Assistant Attorney General

1138727  
DA

Congress of the United States  
Washington, DC 20515  
February 14, 2007

The Honorable Alberto Gonzales  
U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Attorney General Gonzales:

Last week, Congressman Emanuel sent you a letter requesting that former U.S. Attorney in San Diego Carol Lam be appointed as outside counsel to finish her work on the Duke Cunningham Case. Unfortunately, your office has not yet responded to that letter.

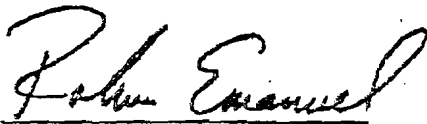
Two days ago, Lam's investigation continued to bear fruit as a federal grand jury charged Kyle "Dusty" Foggo and Brent Wilkes with at least 11 felony counts related to their involvement with Cunningham. As Elana Schor's article in *The Hill* yesterday points out, "Justice Department officials have praised the Cunningham probe as the linchpin of their growing pursuit of public corruption cases, yet prosecutor Lam is nonetheless slated to step down [Thursday] after the Bush administration cited unspecified 'performance' issues in requesting her resignation late last year. Six other U.S. attorneys, several involved in ongoing corruption investigations, were dismissed at about the same time."

As you know, of those seven fired U.S. Attorneys, Lam was not the only one investigating sitting public officials before being dismissed. For example, Daniel Bogden of Nevada and Paul Charlton of Arizona were dismissed while their offices were conducting probes concerning elected officials.

Schor's article also notes that Deputy U.S. Attorney General Paul McNulty was scheduled to brief members of the Senate Judiciary Committee yesterday with information on the decisions to dismiss the U.S. Attorneys. During last week's public Senate hearing, Deputy U.S. Attorney General McNulty confirmed that Bud Cummins III, the former U.S. attorney for Eastern Arkansas, was dismissed without cause to install Timothy Griffin, a former aide to White House adviser Karl Rove.

Carol Lam's indictments of Foggo and Wilkes underscore the importance of last week's request and the need for an explanation of why these diligent public servants were dismissed. It is vital that U.S. Attorneys be able to prosecute wrongdoing free from political pressure. We are pleased that the Department of Justice has also agreed to brief members of the House Judiciary Committee on the dismissals of Carol Lam and other U.S. Attorneys. We look forward to further details regarding the date for that briefing and your response regarding the request to appoint Carol Lam as an outside counsel to finish the Cunningham and related investigations.

Thank you for your prompt attention to these matters. We look forward to hearing from your office.

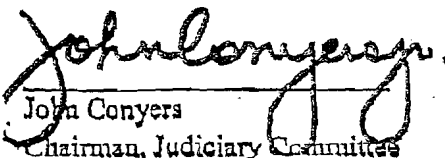


Rahm Emanuel  
Member of Congress

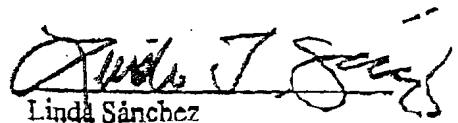
Sincerely,



Howard R. Berman  
Member of Congress



John Conyers  
Chairman, Judiciary Committee



Linda Sanchez  
Chairman, Subcommittee on Commercial  
and Administrative Law

RAHM EMANUEL  
9th District, Member

1213 LONGWORTH  
HOUSE OFFICE BUILDING  
202-335-4041

Congress of the United States  
House of Representatives  
Washington, DC 20515-1305

**Fax Transmittal**

To: Attorney General Gonzales

Fax #: 202-305-2643

From: Congressman Rahm Emanuel

Date: February 15, 2007

Re: Carol Lam

# of pages, including cover sheet: 2



United States Senate  
WASHINGTON, DC 20510

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PS

February 13, 2007

The Honorable Alberto Gonzales  
Attorney General  
Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

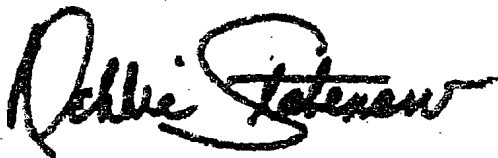
Dear Attorney General Gonzales:

We have read about the forced resignations of selected United States Attorneys around the country and we want to make sure that neither of our U.S. Attorneys in Michigan will be subjected to this treatment. Specifically, we would like to know:

1. Has either of our Michigan U.S. Attorneys been asked to resign?
2. If so, please provide us with the justification for your resignation request including any negative submissions in his or her personnel file.

Thank you for your cooperation.

Sincerely,



Debbie Stabenow



Carl Levin

CC: Fred Fielding

DAG000001439





U.S. Department of Justice  
Office of Legislative Affairs . . .

Office of the Assistant Attorney General

Washington, D.C. 20530

February 23, 2007

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.

As an initial matter, the Department 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. Your letter, however, contains assumptions and assertions that are simply erroneous.

First, your letter truncates the actual quote of the Attorney General's testimony at the Judiciary Committee hearing on January 18, 2007, and consequently, mischaracterizes the statement. 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 Department of Justice rejects any suggestion that U.S. Attorneys were asked or encouraged to resign for the inappropriate "political reason" of interfering with any public corruption case or retaliating against a U.S. Attorney who oversaw such a case.

Second, your letter mischaracterizes the testimony of the Deputy Attorney General given at the hearing held on February 6, 2007. The Deputy Attorney General simply 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 an inappropriate "political reason." This is so, the Deputy Attorney General testified, because, *inter alia*, Mr. Griffin is very well-qualified to serve as U.S. Attorney, and Mr. Cummins "may have already been thinking about leaving at some point anyway."

DAG000001441

The Honorable Harry Reid

Page Two

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 appointed U.S. Attorney in January 2002. Mr. Cummins himself credits Mr. Griffin with the establishment of that office's successful gun-crime prosecution initiative. And Mr. Griffin has substantial military prosecution experience that Mr. Cummins does not have. Those who know Mr. Griffin must concede that he brings a style of leadership and level of energy that could only enhance the success of a U.S. Attorney's office. Moreover, 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."). Finally, the Deputy Attorney General did not state or imply that Mr. Griffin would be appointed as the U.S. Attorney without Senate confirmation. Such a statement would be inconsistent with the Department's stated position that we are committed to having a Senate-confirmed U.S. Attorney in all 94 federal districts.

Third, the Department does not consider the replacement of one Republican U.S. Attorney by another Republican lawyer who is well-qualified and has extensive experience as a prosecutor and strong ties to the district to be a change made for "political reasons." Mr. Cummins was confirmed to serve a four-year term, which expired on January 9, 2006. He served his entire term, plus an additional year. United States Attorneys serve at the pleasure of the President; that has always been the rule, and U.S. Attorneys accept their appointment with that understanding.

In answer to your specific questions:

- Although the decision to have Mr. Griffin replace Mr. Cummins was first contemplated in the spring or summer of 2006, the final decision to appoint Mr. Griffin to be interim U.S. Attorney in the Eastern District of Arkansas was made on or about December 15, 2006, after the Attorney General had spoken with Senator Pryor.
- The Department of Justice is not aware of anyone lobbying for Mr. Griffin's appointment. Consistent with longstanding Administration practice, the decision regarding whether Mr. Griffin (who then was on active military duty) might be considered for appointment as U.S. Attorney upon his return from Iraq was discussed and made jointly by the Department of Justice and the White House.

DAG000001442

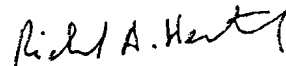


The Honorable Harry Reid  
Page Three

- As the Deputy Attorney General testified, Mr. Cummins's continued service as U.S. Attorney was not considered at the same time as the other U.S. Attorneys that the Deputy Attorney General acknowledged were asked to resign for reasons related to their performance. As the Deputy Attorney General testified, the request that Mr. Cummins resign was "related to the opportunity to provide a fresh start with a new person in that position."
- The Department is not aware of Karl Rove playing any role in the decision to appoint Mr. Griffin.

We appreciate the opportunity to respond to your inquiry.

Sincerely,



Richard A. Hertling  
Acting Assistant Attorney General

cc: The Honorable Mitch McConnell  
The Honorable Arlen Specter



U.S. Department of Justice  
Office of Legislative Affairs •

Office of the Assistant Attorney General

Washington, D.C. 20530

February 23, 2007

The Honorable Richard J. Durbin  
United States Senate  
Washington, D.C. 20510

Dear Senator Durbin:

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.

As an initial matter, the Department 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. Your letter, however, contains assumptions and assertions that are simply erroneous.

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DAG000001444

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 appointed U.S. Attorney in January 2002. Mr. Cummins himself credits Mr. Griffin with the establishment of that office's successful gun-crime prosecution initiative. And Mr. Griffin has substantial military prosecution experience that Mr. Cummins does not have. Those who know Mr. Griffin must concede that he brings a style of leadership and level of energy that could only enhance the success of a U.S. Attorney's office. Moreover, 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."). Finally, the Deputy Attorney General did not state or imply that Mr. Griffin would be appointed as the U.S. Attorney without Senate confirmation. Such a statement would be inconsistent with the Department's stated position that we are committed to having a Senate-confirmed U.S. Attorney in all 94 federal districts.

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In answer to your specific questions:

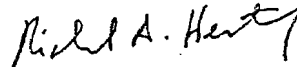
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The Honorable Richard J. Durbin  
Page Three

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We appreciate the opportunity to respond to your inquiry.

Sincerely,



Richard A. Hertling  
Acting Assistant Attorney General

cc: The Honorable Mitch McConnell  
The Honorable Arlen Specter

DAG000001446



U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 23, 2007

The Honorable Charles E. Schumer  
United States Senate  
Washington, D.C. 20510

Dear Senator Schumer:

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DAG000001447

The Honorable Charles E. Schumer  
Page Two

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 appointed U.S. Attorney in January 2002. Mr. Cummins himself credits Mr. Griffin with the establishment of that office's successful gun-crime prosecution initiative. And Mr. Griffin has substantial military prosecution experience that Mr. Cummins does not have. Those who know Mr. Griffin must concede that he brings a style of leadership and level of energy that could only enhance the success of a U.S. Attorney's office. Moreover, 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."). Finally, the Deputy Attorney General did not state or imply that Mr. Griffin would be appointed as the U.S. Attorney without Senate confirmation. Such a statement would be inconsistent with the Department's stated position that we are committed to having a Senate-confirmed U.S. Attorney in all 94 federal districts.

Third, the Department does not consider the replacement of one Republican U.S. Attorney by another Republican lawyer who is well-qualified and has extensive experience as a prosecutor and strong ties to the district to be a change made for "political reasons." Mr. Cummins was confirmed to serve a four-year term, which expired on January 9, 2006. He served his entire term, plus an additional year. United States Attorneys serve at the pleasure of the President; that has always been the rule, and U.S. Attorneys accept their appointment with that understanding.

In answer to your specific questions:

- Although the decision to have Mr. Griffin replace Mr. Cummins was first contemplated in the spring or summer of 2006, the final decision to appoint Mr. Griffin to be interim U.S. Attorney in the Eastern District of Arkansas was made on or about December 15, 2006, after the Attorney General had spoken with Senator Pryor.
- The Department of Justice is not aware of anyone lobbying for Mr. Griffin's appointment. Consistent with longstanding Administration practice, the decision regarding whether Mr. Griffin (who then was on active military duty) might be considered for appointment as U.S. Attorney upon his return from Iraq was discussed and made jointly by the Department of Justice and the White House.

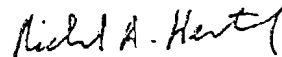
DAG000001448

The Honorable Charles E. Schumer  
Page Three

- As the Deputy Attorney General testified, Mr. Cummins's continued service as U.S. Attorney was not considered at the same time as the other U.S. Attorneys that the Deputy Attorney General acknowledged were asked to resign for reasons related to their performance. As the Deputy Attorney General testified, the request that Mr. Cummins resign was "related to the opportunity to provide a fresh start with a new person in that position."
- The Department is not aware of Karl Rove playing any role in the decision to appoint Mr. Griffin.

We appreciate the opportunity to respond to your inquiry.

Sincerely,



Richard A. Hertling  
Acting Assistant Attorney General

cc: The Honorable Mitch McConnell  
The Honorable Arlen Specter

DAG000001449



U.S. Department of Justice  
Office of Legislative Affairs -

Office of the Assistant Attorney General

Washington, D.C. 20530

February 23, 2007

The Honorable Patty Murray  
United States Senate  
Washington, D.C. 20510

Dear Senator Murray:

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.

As an initial matter, the Department 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. Your letter, however, contains assumptions and assertions that are simply erroneous.

First, your letter truncates the actual quote of the Attorney General’s testimony at the Judiciary Committee hearing on January 18, 2007, and consequently, mischaracterizes the statement. 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 Department of Justice rejects any suggestion that U.S. Attorneys were asked or encouraged to resign for the inappropriate “political reason” of interfering with any public corruption case or retaliating against a U.S. Attorney who oversaw such a case.

Second, your letter mischaracterizes the testimony of the Deputy Attorney General given at the hearing held on February 6, 2007. The Deputy Attorney General simply 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 an inappropriate “political reason.” This is so, the Deputy Attorney General testified, because, *inter alia*, Mr. Griffin is very well-qualified to serve as U.S. Attorney, and Mr. Cummins “may have already been thinking about leaving at some point anyway.”

DAG000001450



The Honorable Patty Murray  
Page Two

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 appointed U.S. Attorney in January 2002. Mr. Cummins himself credits Mr. Griffin with the establishment of that office's successful gun-crime prosecution initiative. And Mr. Griffin has substantial military prosecution experience that Mr. Cummins does not have. Those who know Mr. Griffin must concede that he brings a style of leadership and level of energy that could only enhance the success of a U.S. Attorney's office. Moreover, 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."). Finally, the Deputy Attorney General did not state or imply that Mr. Griffin would be appointed as the U.S. Attorney without Senate confirmation. Such a statement would be inconsistent with the Department's stated position that we are committed to having a Senate-confirmed U.S. Attorney in all 94 federal districts.

Third, the Department does not consider the replacement of one Republican U.S. Attorney by another Republican lawyer who is well-qualified and has extensive experience as a prosecutor and strong ties to the district to be a change made for "political reasons." Mr. Cummins was confirmed to serve a four-year term, which expired on January 9, 2006. He served his entire term, plus an additional year. United States Attorneys serve at the pleasure of the President; that has always been the rule, and U.S. Attorneys accept their appointment with that understanding.

In answer to your specific questions:

- Although the decision to have Mr. Griffin replace Mr. Cummins was first contemplated in the spring or summer of 2006, the final decision to appoint Mr. Griffin to be interim U.S. Attorney in the Eastern District of Arkansas was made on or about December 15, 2006, after the Attorney General had spoken with Senator Pryor.
- The Department of Justice is not aware of anyone lobbying for Mr. Griffin's appointment. Consistent with longstanding Administration practice, the decision regarding whether Mr. Griffin (who then was on active military duty) might be considered for appointment as U.S. Attorney upon his return from Iraq was discussed and made jointly by the Department of Justice and the White House.

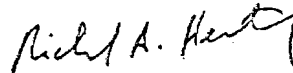
DAG000001451

The Honorable Patty Murray  
Page Three

- As the Deputy Attorney General testified, Mr. Cummins's continued service as U.S. Attorney was not considered at the same time as the other U.S. Attorneys that the Deputy Attorney General acknowledged were asked to resign for reasons related to their performance. As the Deputy Attorney General testified, the request that Mr. Cummins resign was "related to the opportunity to provide a fresh start with a new person in that position."
- The Department is not aware of Karl Rove playing any role in the decision to appoint Mr. Griffin.

We appreciate the opportunity to respond to your inquiry.

Sincerely,



Richard A. Hertling  
Acting Assistant Attorney General

cc: The Honorable Mitch McConnell  
The Honorable Arlen Specter

DAG000001452

United States Senate

February 8, 2007

February 8, 2007

The Honorable Alberto R. Gonzales  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

Dear Attorney General Gonzales:

As you know, the Senate Judiciary Committee held a hearing this week to examine the growing politicization of the hiring and firing of United States Attorneys, our nation's top federal prosecutors.

Unfortunately, the hearing only served to intensify, rather than assuage, our concerns, particularly given the circumstances surrounding the ouster of Bud Cummins, who was the U.S. Attorney in the Eastern District of Arkansas until last December.

When you testified before the Committee on January 18, 2007, you stated unequivocally that you "would never, ever make a change in a U.S. Attorney position for political reasons." In a stunning admission, however, Deputy Attorney General Paul McNulty, in his own testimony on February 6<sup>th</sup>, acknowledged that Mr. Cummins was pushed out for no reason other than to install - without Senate confirmation - Tim Griffin, a former aide to Karl Rove. At the time, Mr. Griffin had minimal federal prosecution experience, but was highly skilled in opposition research and partisan attacks for the Republican National Committee. This strikes us as a quintessentially "political" reason to make a change.

We recognize, of course, that United States Attorneys serve at the pleasure of the President, but as several highly respected and distinguished former officials of the Department of Justice have noted, the dismissal of a well-respected U.S. Attorney simply to reward an inexperienced partisan is unprecedented.

Although Senators expect soon to be briefed privately about the alleged performance issues of several other U.S. Attorneys, we hope that you will quickly and publicly address the most troubling aspects of the Cummins ouster and Griffin appointment. We look forward to a fuller explanation of why a concededly well-performing prosecutor was terminated in favor of such a partisan figure:

- In particular, when was the decision made to appoint Tim Griffin to replace Bud Cummins?

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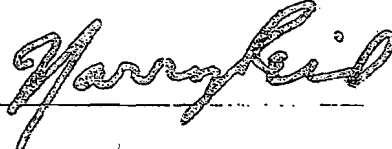
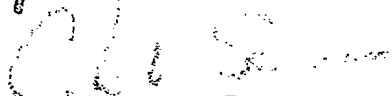
- Specifically, who lobbied on behalf of Tim Griffin's appointment, both inside and outside the Administration?
- Why was Bud Cummins told to resign in June of 2006, when the other dismissed officials were told in December of 2006? Was the reason to give the replacement, Tim Griffin, a chance to become ensconced at the U.S. Attorney's Office in Arkansas before making the appointment?
- In light of the unprecedented nature of the appointment, we are especially interested in understanding the role played by Karl Rove. In particular, what role did Karl Rove, with whom Griffin was closely associated, play in the decision to appoint Griffin?

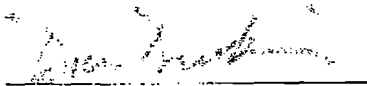
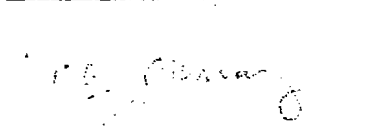
Given that Mr. Rove was himself apparently still being investigated by a U.S. Attorney in June of 2006, it would be extremely untoward if he were at the same time leading the charge to oust a sitting U.S. Attorney and install his own former aide.

These questions go to the heart of the public's confidence in the fair administration of justice. Once appointed, U.S. Attorneys, perhaps more than any other public servant, must be above politics and beyond reproach; they must be seen to enforce the rule of law without fear or favor.

Given the issues raised in the recent hearing, we are naturally concerned about the Administration's professed commitment to keeping politics out of the Department of Justice. We hope that you will quickly put those concerns to rest.

Sincerely,

  
\_\_\_\_\_  
  
\_\_\_\_\_

  
\_\_\_\_\_  
  
\_\_\_\_\_



Feb-07-07 02:26pm From-

T-956 P.002/002 F-563

RAHM EMANUEL  
5TH DISTRICT, ILLINOIS

WASHINGTON OFFICE  
1319 LONGWORTH  
HOUSE OFFICE BUILDING  
202-226-4061

COMMITTEE ON  
WAYS AND MEANS

SUBCOMMITTEE ON HEALTH

SUBCOMMITTEE ON HUMAN RESOURCES

Congress of the United States  
House of Representatives

Washington, DC 20515-1305

February 7, 2007

CHICAGO OFFICE  
3742 WEST IRVING PARK ROAD  
CHICAGO, IL 60618  
773-267-5928

The Honorable Alberto Gonzales  
U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Attorney General Gonzales:

As you are aware, there are many questions surrounding the recent dismissal of seven U.S. Attorneys, including whether or not your office has the authority to dismiss these individuals, and if their firings were politically motivated. These questions will hopefully be answered in good time, but in order to separate the question of authority from the question of political motivation, I am writing specifically about the case of Carol Lam.

Carol Lam served as the U.S. Attorney in San Diego from September, 2002 until her dismissal last month. According to the San Diego Union-Tribune, Ms. Lam was fired because her superiors were unhappy with her results on crime and immigration prosecutions. In the latest data, San Diego ranked second in terms of immigration prosecutions, and Ms. Lam had recently convicted the chiefs of Golden State Fence Co. for hiring illegal immigrants. Since Lam's appointment as a U.S. Attorney, violent crime has fallen 2.4% for the San Diego area.

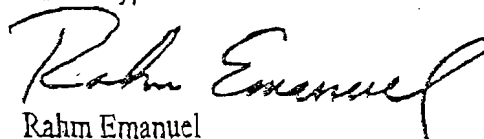
Previously, Lam was praised by former Attorney General Ashcroft for her role in securing a guilty plea by Muhamed Abid Afridi and Ilyas Ali on felony charges of conspiracy to provide material support to terrorists. Lam's record is one that should make the Department of Justice proud.

Yet Carol Lam is best known for her successful investigation and prosecution of former Congressman Duke Cunningham. Former Congressman Cunningham is currently serving jail time, but Ms. Lam's investigation had not ended at the time of her dismissal. In fact, she was in the process of investigating whether or not the corruption involved other Members of Congress and lobbyists, as well as current and former members of the national security apparatus. It is for this reason that the timing of her dismissal raises serious and troubling questions. In fact, special agent in charge Dan Dzwilewski - the FBI's top official for San Diego - said, "I guarantee politics is involved...It will be a huge loss from my perspective."

To remove the cloud of politics over Ms. Lam's dismissal, and to ensure there are no delays in the investigation of the Cunningham matter, I call on you to immediately name Carol Lam as outside counsel with all necessary resources to continue her excellent work on the Cunningham case and related matters.

Thank you for your prompt attention to this matter.

Sincerely,



Rahm Emanuel  
Member of Congress

DAG000001456





U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 31, 2007

The Honorable Mark Pryor  
United States Senate  
257 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senator Pryor:

This is in response to your letter to the Attorney General dated January 11, 2007, regarding the Attorney General's appointment of J. Timothy Griffin to serve as interim United States Attorney for the Eastern District of Arkansas:

As the Attorney General informed you in his telephone conversations with you on December 13, 2006, and December 15, 2006, Mr. Griffin was chosen for appointment to serve as interim United States Attorney because of his excellent qualifications. To be clear, Mr. Griffin was not chosen because the First Assistant United States Attorney was on maternity leave and therefore was not able to serve as your letter states. As you know, Mr. Griffin has federal prosecution experience both in the Eastern District of Arkansas and in the Criminal Division in Washington, D.C. During his service in the Eastern District of Arkansas, Mr. Griffin established that district's successful Project Safe Neighborhoods initiative to reduce firearms-related violence. In addition, Mr. Griffin has served for more than a decade in the U.S. Army Reserve, Judge Advocate General's Corps, for whom he has prosecuted more than 40 criminal cases, including cases of national significance. Mr. Griffin's military experience includes recent service in Iraq, for which he was awarded the Combat Action Badge and the Army Commendation Medal. Importantly, Mr. Griffin is a "real Arkansan" with genuine ties to the community. Based on these qualifications, Mr. Griffin was selected to serve as interim United States Attorney.

As the Attorney General also has stated to you, the Administration is committed to having a Senate-confirmed United States Attorney for all 94 federal districts. At no time has the Administration sought to avoid the Senate confirmation process by appointing an interim United States Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination and confirmation of a new United States Attorney. Not once.

DAG000001458



The Eastern District of Arkansas is not different. As the Attorney General stated to you again two weeks ago, in a telephone conversation on January 17, 2007, the Administration is committed to having a Senate-confirmed United States Attorney in that district too. That is why the Administration has consulted with you and Senator Lincoln for several months now regarding possible candidates for nomination, including Mr. Griffin. That is why the Attorney General has sought your views as to whether, if nominated, you would support Mr. Griffin's confirmation. The Administration awaits your decision.

If you decide that you would support Mr. Griffin's confirmation, then the President's senior advisors (after taking into account Senator Lincoln's views) likely would recommend that the President nominate him. With your support, Mr. Griffin almost certainly would be confirmed and appointed. We are convinced that, given his strong record as a federal prosecutor and as a military prosecutor, Mr. Griffin would serve ably as a Senate-confirmed United States Attorney. If, in contrast, you decide that for whatever reason you will not support Mr. Griffin's confirmation, then the Administration looks forward to considering any alternative candidates for nomination that you might put forward. In any event, your views (and the views of Senator Lincoln) will be given substantial weight in determining what recommendation to make to the President regarding who is nominated.

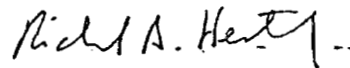
Last year's amendment to the Attorney General's appointment authority was necessary and appropriate. Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. 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. For example, 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. In contrast, 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. Contrary to your letter, nothing in the text or history of the statute even suggests that the Attorney General should articulate a national security or law enforcement need for making an interim appointment. Because the Administration is committed to having a Senate-confirmed United States Attorney for all 94 federal districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

Enclosed is information regarding the exercise of the Attorney General's authority to appoint interim United States Attorneys. As you will see, the enclosed information establishes conclusively that the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. Indeed, every single time

Letter to the Honorable Mark Pryor  
Page 3

that a United States Attorney vacancy has arisen, the President either has made a nomination or – as with the Eastern District of Arkansas – the Administration is working, in consultation with home-State Senators, to select a candidate for nomination. Such nominations are, of course, subject to Senate confirmation.

Sincerely,



Richard A. Hertling  
Acting Assistant Attorney General

cc: The Honorable Blanche L. Lincoln

Enclosure

DAG000001460

## 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 13 new U.S. Attorney vacancies that have arisen. They have been filled as noted below.

For 4 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).

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 8 of the 13 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; and
- **District of Arizona** – Dan Knauss 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 12 times since the authority was amended in March 2006.

In 2 of the 12 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 8 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; and
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned.

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500 PRESIDENT CLINTON AVENUE  
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(501) 324-6336  
TOLL FREE: (877) 259-9602  
<http://pryor.senate.gov>

MARK PRYOR  
ARKANSAS

COMMITTEES:  
COMMERCE, SCIENCE AND  
TRANSPORTATION

HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS

SELECT COMMITTEE ON ETHICS

SMALL BUSINESS AND  
ENTREPRENEURSHIP

# United States Senate

WASHINGTON, DC 20510

January 11, 2007

The Honorable Alberto Gonzales  
U.S. Department of Justice  
950 Pennsylvania Ave, NW  
Washington, DC 20530

Dear Attorney General Gonzales:

I am writing this letter to express my displeasure regarding your appointment of Tim Griffin as Interim U.S. Attorney for the Eastern District of Arkansas. As you will recall, we discussed this matter in two telephone calls (Wednesday December 13, 2006, and December 15, 2006) in which I informed you of my reservations.

First, it is clear (from events that occurred in July and August 2006), that there was an attempt to force then U.S. Attorney Cummins to resign. At that time, my office expressed my concern to the White House Counsel regarding this matter, and Mr. Cummins was able to remain in his position until the end of December. While I am pleased that his service was extended, I am left with the conclusion that the purpose for the dismissal of Mr. Cummins was to appoint Mr. Griffin.

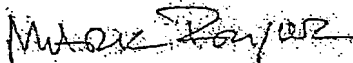
Second, I am astonished that the reason given by your office for the interim appointment is that the First Assistant U.S. Attorney is on maternity leave and therefore would not be able to perform the responsibilities of the appointment. This reason was given to my Chief of Staff, to the news media, and to me by your liaison in a meeting this week. This concerns me on several levels, but most importantly it uses pregnancy and motherhood as conditions that deny an appointment. While this may not be actionable in a public employment setting, it clearly would be in a private employment setting. The U.S. Department of Justice should never discriminate against women in this manner.

Finally, and most importantly, the appointment undermines the Senate confirmation process. The authority granted to the Attorney General to make an interim appointment for an indefinite time was given pursuant to the Patriot Act. I believe that in using this provision, the Attorney General should articulate a national security or law enforcement need that necessitates such an appointment. You have failed to do so in this case. In fact, as cited above, the reason articulated is at worst grossly deficient, and at best, a poor pretense.

For me personally this last point is most troublesome. When the Patriot Act was up for reauthorization, you called me and discussed the importance of its passage. I told you that while there were items in the Act that concerned me, I trusted that the spirit of the law would be upheld. It has also come to my attention that there may have been other similar appointments made under this provision of the Patriot Act. Therefore, I believe that the spirit of the law regarding this interim appointment (and perhaps others) has been violated. As such, I am pushing for a legislative change. I have signed on to a Bill that would strike the previous amended language and restore appointment authority to the original 120 days.

I am quite sure that you may not agree with some or all of my conclusions, therefore, I await your response and I appreciate your cooperation in this matter.

Sincerely,



Mark Pryor

Sent via facsimile







U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 22, 2007

The Honorable John Conyers, Jr.  
Chairman  
Committee on the Judiciary  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Howard L. Berman  
Member  
Committee on the Judiciary  
United States House of Representatives  
Washington, D.C. 20515

Dear Chairman Conyers and Representative Berman:

This is in response to your letter, dated January 17, 2007, regarding Carol Lam's resignation as United States Attorney for the Southern District of California.

Your letter's suggestion that Ms. Lam was asked or encouraged to resign in an effort to disrupt an ongoing public corruption investigation is categorically untrue. United States Attorneys never are removed, or asked or encouraged to resign, in an effort to disrupt any particular investigation, criminal prosecution or civil case – including any public corruption case. Any suggestion to the contrary simply is irresponsible. Indeed, the Attorney General has directed United States Attorneys to prosecute public corruption vigorously. A fair examination of the Department of Justice's performance in this area clearly demonstrates the Department's commitment to protect the integrity of government by rooting out public corruption – whenever it is found and whoever is implicated.

Moreover, the removal of a United States Attorney to impede an ongoing public corruption investigation would be entirely ineffective. Public corruption investigations typically involve many agents and prosecutors. The departure of the United States Attorney, for whatever reason, does not stop or even slow the investigation. Given the occasional turnover of United States Attorneys, career investigators and prosecutors exercise direct responsibility for nearly all such cases.

United States Attorneys serve at the pleasure of the President. Like other high-ranking Executive Branch officials, they may be removed for any reason or no reason. 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

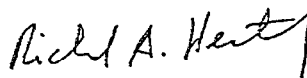
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Letter to Chairman Conyers and Representative Berman  
January 22, 2007  
Page 2

offices effectively. That on occasion in an organization as large as the Justice Department some United States Attorneys resign – for whatever reason – should come as no surprise.

With regard to the upcoming United States Attorney vacancy in the Southern District of California, the Department will select a person to serve temporarily as United States Attorney until a Senate-confirmed United States Attorney is appointed, and the Administration will consult with home-State Senators to select a person to be nominated, confirmed and appointed. Please be assured that both persons will be experienced lawyers who are committed to the Department's priorities – including the vigorous prosecution of public corruption.

Sincerely,



Richard A. Hertling  
Acting Assistant Attorney General

cc: The Honorable Lamar S. Smith  
Ranking Minority Member

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DA

Congress of the United States  
Washington, DC 20515

January 17, 2007

The Honorable Alberto Gonzales  
U.S. Attorney General  
Robert F. Kennedy Building  
Washington, DC 20530

Dear Mr. Attorney General:

In the last week, we learned that the Administration has asked for the resignation of Carol Lam, United States Attorney for the Southern District of California. Ms. Lam announced yesterday that she has submitted her resignation effective February 15<sup>th</sup>.

Prior to her appointment as U.S. Attorney, Ms. Lam was a San Diego Superior Court Judge and a career prosecutor. Since her appointment as U.S. Attorney in 2002, we have heard no suggestion that she was either unqualified for the position or that she was guilty of misconduct in her office.

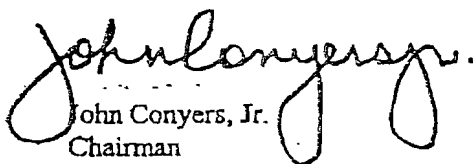
To the contrary, since word of the Administration's effort to remove Ms. Lam surfaced, reports in the San Diego Union-Tribune quote other prosecutors and defense lawyers as being "universally shocked" by her impending dismissal. San Diego's City Attorney called Lam, "the most outstanding U.S. Attorney we've ever had." The head of the FBI office in San Diego called Lam "crucial to the success of multiple ongoing investigations" adding that she "has an excellent reputation and has done an excellent job."

Given this praise and concern for the potential ramifications of her sudden departure, we are perplexed as to why you have chosen to remove Ms. Lam from the U.S. Attorneys' office in San Diego now. The one reason we've heard suggested for her dismissal was a decrease in immigration-related prosecutions, yet in the months of May, June and July of 2006, the U.S. Attorneys' Office in the Southern District of California was one of the top three USAOs in immigration prosecutions, hardly a record that would lead to removal.

At the moment, Ms. Lam is leading an office in the middle of a high-profile public corruption investigation. While the work on this investigation led to the conviction of former-Rep. Cunningham, a number of other corruption probes have grown out of the case and are still pending. We do not doubt that removing Ms. Lam from the U.S. Attorneys' office in San Diego now will disrupt this investigation.

Forcing Ms. Lam's resignation now leaves the appearance that this growing public corruption probe may be part of the Administration's motivation in removing her. If this is untrue, it is vitally important that this perception be corrected, and we ask you to share with us the basis of your request for her resignation.

Sincerely,



John Conyers, Jr.  
Chairman  
House Committee on the Judiciary



Howard L. Berman  
Member  
House Committee on the Judiciary

CONGRESSMAN  
**HOWARD L. BERMAN**  
2221 Rayburn House Office Building  
Washington, D.C. 20515  
202-225-4695  
202-225-3196 (fax)  
(Facsimile Transmission Cover Sheet)

Date 11/7/07  
Fax# 202-514-4507

To Attorney General Alberto Gonzales

Number of pages (including cover sheet): 2

From:

<input checked="" type="checkbox"/> Howard L. Berman Member	<input type="checkbox"/> Gene Smith Chief of Staff	<input type="checkbox"/> Deanne Samuels Executive Secretary	<input type="checkbox"/> Doug Campbell Legis. Director
<input type="checkbox"/> Bari Schwartz Counsel	<input type="checkbox"/> Julia Massimino Legis. Counsel	<input type="checkbox"/> Shanna Winters Legis. Counsel	<input type="checkbox"/> Stephanie Williamson Legis. Assistant
<input type="checkbox"/> Jami Crespo Legis. Assistant	<input type="checkbox"/> Cong. Fellow	<input type="checkbox"/> Cong. Fellow	<input type="checkbox"/> Intern

Message: \_\_\_\_\_





U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 16, 2007

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Dianne Feinstein  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Chairman Leahy and Senator Feinstein:

This is in response to your letter, dated January 9, 2007, regarding the Administration's appointment of United States Attorneys.

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. Discussions with United States Attorneys regarding their continued service generally are non-public, out of respect for those United States Attorneys; indeed, a public debate about the United States Attorneys that may have been asked or encouraged to resign only disservices their interests. In any event, please be assured that 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. United States Attorneys are law

DAG000001473

Letter to Chairman Leahy and Senator Feinstein  
January 16, 2007  
Page 2

enforcement officials and officers of the court who must carry out their responsibilities with strict impartiality.

The Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. When a vacancy in the office of United States Attorney occurs (because of removal, resignation or for any other reason), the Administration first must determine who will serve temporarily as United States Attorney until a new Senate-confirmed United States Attorney is appointed. Because of the importance of continuity in the office, the Administration often looks to the First Assistant United States Attorney or another senior manager in the office to serve as acting or interim United States Attorney. Where neither the First Assistant United States Attorney nor another senior manager in the office is able or willing to serve as acting or interim United States Attorney, or where their service would not be appropriate in the circumstances, the Administration may look to other Department employees to serve as interim United States Attorney. At no time, however, has the Administration sought to avoid the Senate confirmation process by (1) appointing an interim United States Attorney and then (2) refusing to move forward, in consultation with home-State Senators, on the selection, nomination and (hopefully) confirmation of a new United States Attorney. The appointment of United States Attorneys by and with the advice and consent of the Senate unquestionably is the appointment method preferred by the Senate and the one that the Administration follows.

Last year's amendment to the Attorney General's appointment authority was necessary and appropriate. 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. For example, 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. In contrast, 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. Because the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

Enclosed per your request is information regarding the exercise of the Attorney General's authority to appoint interim United States Attorneys. As you will see, the enclosed information establishes conclusively that the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. Indeed,

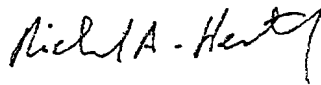
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Letter to Chairman Leahy and Senator Feinstein  
January 16, 2007  
Page 3

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. Such nominations are, of course, subject to Senate confirmation.

Sincerely,



Richard A. Hertling  
Acting Assistant Attorney General

Enclosure

DAG000001475

## 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 11 new U.S. Attorney vacancies that have arisen. For five of the 11 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). Those districts are:

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

- **Northern District of Iowa** – FAUSA Judi Whetstine is acting United States Attorney (Whetstine is not a candidate for nomination and is retiring this month, necessitating an Attorney General appointment; nomination is not yet ready);
- **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 (Valdrini was not a candidate for presidential nomination; another individual was nominated and confirmed).

For six of the 11 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 (Griffin has expressed interest in presidential nomination; nomination is not yet ready);
- **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 (Taylor has expressed interest in presidential nomination; nomination is not yet ready);
- **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 (Stecher has expressed interest in presidential nomination; nomination is not yet ready);
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned (Morford has expressed interest in presidential nomination; nomination is not yet ready); and
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned (Schlozman expressed interest in presidential appointment; someone else was nominated).

#### **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 nine times since the authority was amended in March 2006. In two of the nine 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 (Dedrick has expressed interest in presidential nomination; nomination is not yet ready).

In one 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 (Cohen is not a candidate for presidential nomination; nomination is not yet ready).

In the five 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 (Griffin has expressed interest in presidential nomination; nomination is not yet ready);
- 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 (Taylor has expressed interest in presidential nomination; nomination is not yet ready);
- 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 (Stecher has expressed interest in presidential nomination; nomination is not yet ready);
- Middle District of Tennessee – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned (Morford has expressed interest in presidential nomination; nomination is not yet ready); and
- Western District of Missouri – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned (Schlozman expressed interest in presidential appointment; someone else was nominated).

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# United States Senate

WASHINGTON, DC 20510

January 9, 2007

The Honorable Alberto Gonzales  
U.S. Department of Justice  
950 Pennsylvania Ave, NW  
Washington, DC 20530

Dear Attorney General Gonzales:

Recently, it has come to our attention that the Department of Justice has asked several U.S. Attorneys from around the country to resign their positions by the end of the month, prior to the end of their terms without cause. We also understand the intention is to have your office appoint interim replacements and potentially avoid the Senate confirmation process altogether.

We are very concerned about this allegation, and we believe, if true, such actions would be intemperate and ill-advised. We have asked our staffs to look into changing the law to prevent such actions and are introducing legislation today that will return the law to its previous language providing a district court with the authority to appoint an interim U.S. Attorney for the district in which a vacancy arises. Therefore, we ask that if such requests have been made that you desist from moving forward with these efforts and hold the requests in abeyance.

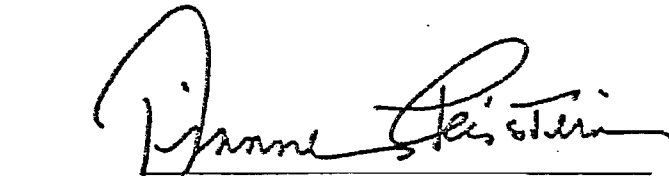
As you know, U.S. Attorneys around the country serve important functions bringing many of the most important and difficult cases. Our U.S. Attorneys are responsible for taking the lead on public corruption cases and many of the anti-terrorism efforts across the country. U.S. Attorneys also play a vital role in combating traditional crimes like narcotics trafficking, bank robbery, guns, violence, environmental crime, civil rights violations and fraud. U.S. Attorneys are also taking the lead on prosecuting computer hacking, Internet fraud and intellectual property theft; accounting and securities fraud and computer chip theft. Continuity in these positions is of utmost importance, and freedom from any inappropriate influences or the appearance of influence must be avoided at all costs.

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Please provide information regarding all instances in which you have exercised the authority to appoint an interim United States Attorney. In addition, please provide us with information on whether any efforts have been made to ask or encourage the former or current U.S. Attorneys to resign their position.

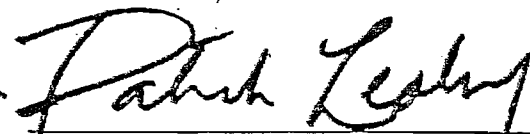
We would appreciate your prompt attention to this matter and written answers prior to your appearance before the Judiciary Committee on January 18, 2007. Please contact us or Senator Feinstein's chief counsel, Jennifer Duck (202-224-6975), should you have any questions.

Sincerely yours,



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Dianne Feinstein  
United States Senator



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Patrick Leahy  
United States Senator

REINSTEIN STATEMENT

DAG000001481



## Senator Feinstein Concerned over Resignations of at Least Seven U.S. Attorneys Across the Country

- Senator Feinstein to question Attorney General Gonzalez  
at Judiciary Committee Hearing later this week -

January 16, 2007

Washington, DC – *In a speech on the Senate Floor, U.S. Senator Dianne Feinstein (D-Calif.) today expressed concern about the fact that a number of U.S. Attorneys have been asked by the Department of Justice to resign their positions prior to the end of their terms and without cause.*

*In a little noticed provision included in the Patriot Act reauthorization last year, the Administration's authority to appoint interim U.S. Attorneys was greatly expanded. The law was changed so that if a vacancy arises the Attorney General may appoint a replacement for an indefinite period of time – thus completely avoiding the Senate confirmation process*

*Senators Feinstein, Patrick Leahy (D-Vt.), and Mark Pryor (D-Ark.) last week introduced the Preserving United States Attorney Independence Act, which would prevent further circumvention of the Senate's constitutional prerogative to confirm U.S. Attorneys and restore appointment authority to the appropriate District Courts.*

*The full text of Senator Feinstein's floor statement follows.*

*Recent newspaper articles have detailed the circumstances surrounding the departure of several U.S. Attorneys across the country:*

- **Politicizing Prosecutors:** “United States attorneys are so powerful that their impartiality must be beyond question. One way to ensure that is to require them to submit to questions from the Senate, and face a confirmation vote.” *New York Times* – 1/15/07.  
[www.nytimes.com/2007/01/15/opinion/15mon2.html?\\_r=1&oref=slogin](http://www.nytimes.com/2007/01/15/opinion/15mon2.html?_r=1&oref=slogin)
- **U.S. Attorney Vacancies Spark Concerns:** “As the Bush administration enters its last two years, a number of U.S. attorneys are departing, causing concern that some high-profile prosecutions may suffer. As many as seven U.S. attorneys. . . are leaving or being pushed out.” *Wall Street Journal* – 1/16/07.  
[http://online.wsj.com/google\\_login.html?url=http%3A%2F%2Fonline.wsj.com%2Farticle%2F%2F%2F16891552371177295.html%3Fmod%3Dgooglenews\\_wsj](http://online.wsj.com/google_login.html?url=http%3A%2F%2Fonline.wsj.com%2Farticle%2F%2F%2F16891552371177295.html%3Fmod%3Dgooglenews_wsj)



- **Lam is Asked to Step Down:** "The Bush administration has quietly asked San Diego U.S. Attorney Carol Lam, best known for her high-profile prosecutions of politicians and corporate executives, to resign her post, a law enforcement official said." *San Diego Union Tribune* – 1/12/07.  
[http://weblog.signonsandiego.com/uniontrib/20070112/news\\_1n12lam.html](http://weblog.signonsandiego.com/uniontrib/20070112/news_1n12lam.html)
- **Nevada U.S. Attorney Given Walking Papers:** "The Bush administration has forced Daniel Bogden out of his position as U.S. attorney for the District of Nevada, Nevada's two senators said Sunday." *Las Vegas Review Journal* – 1/16/07.  
[www.reviewjournal.com/lvrj\\_home/2007/Jan-15-Mon-2007/news/11930257.html](http://www.reviewjournal.com/lvrj_home/2007/Jan-15-Mon-2007/news/11930257.html)

*The following is a transcript of Senator Feinstein's floor speech:*

"Mr. President, I have introduced an amendment on this bill which has to do with the appointment of U.S. Attorneys. This is also the subject of the Judiciary Committee's jurisdiction, and since the Attorney General himself will be before that committee on Thursday, and I will be asking him some questions, I speak today in morning business on what I know so much about this situation.

Recently, it came to my attention that the Department of Justice has asked several U.S. Attorneys from around the country to resign their positions -- some by the end of this month -- prior to the end of their terms not based on any allegation of misconduct. In other words, they are forced resignations.

I have also heard that the Attorney General plans to appoint interim replacements and potentially avoid Senate confirmation by leaving an interim U.S. Attorney in place for the remainder of the Bush administration.

How does this happen? The Department sought and essentially was given new authority under a little known provision in the PATRIOT Act Reauthorization to appoint interim appointments who are not subject to Senate confirmation and who could remain in place for the remainder of the Bush administration.

To date, I know of at least seven U.S. Attorneys forced to resign without cause, without any allegations of misconduct. These include two from my home State, San Diego and San Francisco, as well as U.S. Attorneys from New Mexico, Nevada, Arkansas, Texas, Washington and Arizona.

In California, press reports indicate that Carol Lam, U.S. Attorney for San Diego, has been asked to leave her position, as has Kevin Ryan of San Francisco. The public response has been shock. Peter Nunez, who served as the San Diego U.S. Attorney from 1982 to 1988, has said, 'This is like nothing I've ever seen in my 35-plus years.'

He went on to say that while the President has the authority to fire a U.S. Attorney for any reason, it is 'extremely rare' unless there is an allegation of misconduct.

To my knowledge, there are no allegations of misconduct having to do with Carol Lam. She is a distinguished former judge. Rather, the only explanation I have seen are concerns that were expressed about prioritizing public corruption cases over smuggling and gun cases.

The most well-known case involves a U.S. Attorney in Arkansas. Senators Pryor and Lincoln have raised significant concerns about how "Bud" Cummins was asked to resign and in his place the administration appointed their top lawyer in charge of political opposition research, Tim Griffin. I have been told Mr. Griffin is quite young, 37, and Senators Pryor and Lincoln have expressed concerns about press reports that have indicated Mr. Griffin has been a political operative for the RNC.

While the administration has confirmed that 5 to 10 U.S. Attorneys have been asked to leave, I have not been given specific details about why these individuals were asked to leave. Around the country, though, U.S. Attorneys are bringing many of the most important and complex cases being prosecuted. They are responsible for taking the lead on public corruption cases and many of the antiterrorist efforts in the country. As a matter of fact, we just had the head of the FBI, Bob Mueller, come before the Judiciary Committee at our oversight hearing and tell us how they have dropped the priority of violent crime prosecution and, instead, are taking up public corruption cases; ergo, it only follows that the U.S. Attorneys would be prosecuting public corruption cases.

As a matter of fact, the rumor has it -- and this is only rumor -- that U.S. Attorney Lam, who carried out the prosecution of the Duke Cunningham case, has other cases pending whereby, rumor has it, Members of Congress have been subpoenaed. I have also been told that this interrupts the flow of the prosecution of these cases, to have the present U.S. attorney be forced to resign by the end of this month.

Now, U.S. Attorneys play a vital role in combating traditional crimes such as narcotics trafficking, bank robbery, guns, violence, environmental crimes, civil rights, and fraud, as well as taking the lead on prosecuting computer hacking, Internet fraud, and intellectual property theft, accounting and securities fraud, and computer chip theft.

How did all of this happen? This is an interesting story. Apparently, when Congress reauthorized the PATRIOT Act last year, a provision was included that modified the statute that determines how long interim appointments are made. The PATRIOT Act Reauthorization changed the law to allow interim appointments to serve indefinitely rather than for a limited 120 days. Prior to the PATRIOT Act Reauthorization and the 1986 law, when a vacancy arose, the court nominated an interim U.S. Attorney until the Senate confirmed a Presidential nominee. The PATRIOT Act Reauthorization in 2006 removed the 120-day limit on that appointment, so now the Attorney General can nominate someone who goes in without any confirmation hearing by this Senate and serve as U.S. Attorney for the remainder of the President's term in office. This is a way, simply stated, of avoiding a Senate confirmation of a U.S. Attorney.

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The rationale to give the authority to the court has been that since district court judges are also subject to Senate confirmation and are not political positions, there is greater likelihood that their choice of who should serve as an interim U.S. Attorney would be chosen based on merit and not manipulated for political reasons. To me, this makes good sense.

Finally, by having the district court make the appointments, and not the Attorney General, the process provides an incentive for the administration to move quickly to appoint a replacement and to work in cooperation with the Senate to get the best qualified candidate confirmed.

I strongly believe we should return this power to district courts to appoint interim U.S. Attorneys. That is why last week, Senator Leahy, the incoming Chairman of the Judiciary Committee, the Senator from Arkansas, Senator Pryor, and I filed a bill that would do just that. Our bill simply restores the statute to what it once was and gives the authority to appoint interim U.S. Attorneys back to the district court where the vacancy arises.

I could press this issue on this bill. However, I do not want to do so because I have been saying I want to keep this bill as clean as possible, that it is restricted to the items that are the purpose of the bill, not elections or any other such things. I ought to stick to my own statement.

Clearly, the President has the authority to choose who he wants working in his administration and to choose who should replace an individual when there is a vacancy. But the U.S. Attorneys' job is too important for there to be unnecessary disruptions, or, worse, any appearance of undue influence. At a time when we are talking about toughening the consequences for public corruption, we should change the law to ensure that our top prosecutors who are taking on these cases are free from interference or the appearance of impropriety. This is an important change to the law. Again, I will question the Attorney General Thursday about it when he is before the Judiciary Committee for an oversight hearing.

I am particularly concerned because of the inference in all of this that is drawn to manipulation in the lineup of cases to be prosecuted by a U.S. Attorney. In the San Diego case, at the very least, we have people from the FBI indicating that Carol Lam has not only been a straight shooter but a very good prosecutor. Therefore, it is surprising to me to see that she would be, in effect, forced out, without cause. This would go for any other U.S. Attorney among the seven who are on that list.

We have something we need to look into, that we need to exercise our oversight on, and I believe very strongly we should change the law back to where a Federal judge makes this appointment on an interim basis subject to regular order, whereby the President nominates and the Senate confirms a replacement?"

**EDITORIALS**

## Why Have So Many U.S. Attorneys Been Fired? It Looks a Lot Like Politics

ADAM COHEN  
NY Times  
February 26, 2007

Carol Lam, the former United States attorney for San Diego, is smart and tireless and was very good at her job. Her investigation of Representative Randy Cunningham resulted in a guilty plea for taking more than \$2 million in bribes from defense contractors and a sentence of more than eight years. Two weeks ago, she indicted Kyle Dustin Foggo, the former No. 3 official in the C.I.A. The defense-contracting scandal she pursued so vigorously could yet drag in other politicians.

In many Justice Departments, her record would have won her awards, and perhaps a promotion to a top post in Washington. In the Bush Justice Department, it got her fired.

Ms. Lam is one of at least seven United States attorneys fired recently under questionable circumstances. The Justice Department is claiming that Ms. Lam and other well-regarded prosecutors like John McKay of Seattle, David Iglesias of New Mexico, Daniel Bogden of Nevada and Paul Charlton of Arizona — who all received strong job evaluations — performed inadequately.

It is hard to call what's happening anything other than a political purge. And it's another shameful example of how in the Bush administration, everything — from rebuilding a hurricane-ravaged city to allocating homeland security dollars to invading Iraq — is sacrificed to partisan politics and winning elections.

U.S. attorneys have enormous power. Their decision to investigate or indict can bankrupt a business or destroy a life. They must be, and long have been, insulated from political pressures. Although appointed by the president, once in office they are almost never asked to leave until a new president is elected. The Congressional Research Service has confirmed how unprecedented these firings are. It found that of 486 U.S. attorneys confirmed since 1981, perhaps no more than three were forced out in similar ways — three in 25 years, compared with seven in recent months.

It is not just the large numbers. The firing of H. E. Cummins III is raising as many questions as Ms. Lam's. Mr. Cummins, one of the most distinguished lawyers in Arkansas, is respected by Republicans and Democrats alike. But he was forced out to make room for J. Timothy Griffin, a former Karl Rove deputy with thin legal experience who did opposition research for the Republican National Committee. (Mr. Griffin recently bowed to the inevitable and said he will not try for a permanent appointment. But he remains in office indefinitely.)

The Bush administration cleared the way for these personnel changes by slipping a little-noticed provision into the Patriot Act last year that allows the president to appoint interim U.S. attorneys for an indefinite period without Senate confirmation.

Three theories are emerging for why these well-qualified U.S. attorney were fired — all political, and all disturbing.

1. Helping friends. Ms. Lam had already put one powerful Republican congressman in jail and was investigating other powerful politicians. The Justice Department, unpersuasively, claims that it was unhappy about Ms. Lam's failure to bring more immigration cases. Meanwhile, Ms. Lam has been replaced with an interim prosecutor whose résumé shows almost no criminal law experience, but includes her membership in the Federalist Society, a conservative legal group.

2. Candidate recruitment. U.S. attorney is a position that can make headlines and launch political careers. Congressional Democrats suspect that the Bush administration has been pushing out long-serving U.S. attorneys to replace them with promising Republican lawyers who can then be run for Congress and top state offices.

3. Presidential politics. The Justice Department concedes that Mr. Cummins was doing a good job in Little Rock. An obvious question is whether the administration was more interested in his successor's skills in opposition political research — let's not forget that Arkansas has been lucrative fodder for Republicans in the past — in time for the 2008 elections.

The charge of politics certainly feels right. This administration has made partisanship its lodestar. The Washington Post reporter Rajiv Chandrasekaran revealed in his book, "Imperial Life in the Emerald City," that even applicants to help administer post-invasion Iraq were asked whom they voted for in 2000 and what they thought of Roe v. Wade.

Congress has been admirably aggressive about investigating. Senator Charles Schumer, Democrat of New York, held a tough hearing. And he is now talking about calling on the fired U.S. attorneys to testify and subpoenaing their performance evaluations — both good ideas.

The politicization of government over the last six years has had tragic consequences — in New Orleans, Iraq and elsewhere. But allowing politics to infect U.S. attorney offices takes it to a whole new level. Congress should continue to pursue the case of the fired U.S. attorneys vigorously, both to find out what really happened and to make sure that it does not happen again.

**Congress should strike provision to oust attorneys: Congress should strike provision to oust attorneys**

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East Valley Tribune (Mesa, Arizona)  
February 28, 2007

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Feb. 28--Congress clearly didn't take much notice of an obscure provision the Bush administration slipped into the USA Patriot Act last year. But now it seems clear that the measure is being used to conduct a political purge of U.S. attorneys' offices.

So far, at least eight are known to have been forced out by the Justice Department, and there may be others. The departures were facilitated by a provision that allows the president to appoint interim U.S. attorneys for an indefinite period without the usual Senate confirmation. The ouster that raised the biggest stink was of Carol Lam, the U.S. attorney for San Diego, who nailed former Rep. Randy "Duke" Cunningham for accepting over \$2 million in bribes. The suspicion was that the White House acted because her investigation was still ongoing and widening. Various news reports say Paul Charlton, the former U.S. Attorney for Arizona, was told to quit because he wasn't pursuing enough death-penalty sentences.

Deputy Attorney General Paul McNulty told a Senate committee the firings were all for "performance-related" reasons, although he conceded the U.S. attorney in Little Rock, Ark., was forced out in favor of a protege of White House political adviser Karl Rove.

The "performance-related" defense began to crumble when the department's internal evaluations leaked out, showing most of the ousted attorneys had been capable, competent and well regarded.

Democrats on the Senate Judiciary Committee are threatening to summon the dismissed prosecutors to testify and to subpoena their performance evaluations. The eight could rebut the slap at their reputations.

Better yet would be to repeal the offending provision. A bill to do that has bipartisan support in the Senate, but is being held up in a procedural wrangle. Let's hope the lawmakers unsnarl the obstacle quickly, because this provision has the potential to give us a badly flawed criminal-justice system.

### Everything's just dandy at Justice Department

SHEILA SUESS KENNEDY  
The Indianapolis Star (Indiana)  
February 27, 2007

It isn't only FEMA. Everywhere you look, Bush administration officials are doing "a heck of a job."

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A recent audit of the Justice Department, conducted by the department's own inspector general, concluded that only two of Justice's 26 issued reports of terrorism prosecutions have been accurate. The department has routinely inflated the number of terrorists being charged by including immigration, marriage fraud and drug-trafficking cases entirely unrelated to terrorist activities.







Maybe this was just an honest series of reporting errors, rather than an effort to pad the statistics for political purposes, but either way it is just one more disquieting piece of evidence that -- to put it mildly -- all is not well at Alberto Gonzales' Justice Department.

While it's no secret that constitutional scholars have been critical of Gonzales' embrace of the so-called "unitary executive" theory (which places the president above the law in many situations), his interpretation of presidential authority can be categorized as an honest difference in perspective. Other problems cannot be so easily dismissed.

There is, for example, the case of Sue Ellen Woolridge, until last month chief of the department's environmental enforcement division. Woolridge bought a million-dollar vacation home with Don Duncan, the top lobbyist for ConocoPhillips. Nine months later, on behalf of the Justice Department, she signed a settlement agreement with ConocoPhillips that allowed the oil company to delay installing pollution-control equipment and to delay paying fines. Making this deal smell even worse was the identity of the other co-owner of this beach house: Woolridge's "boyfriend," Stephen Griles, a former lobbyist for the oil industry who had been appointed to an environmental enforcement position at the Department of the Interior and who is under investigation in connection with Jack Abramoff.

Can we spell "appearance of impropriety"?

The congressional investigation into Woolridge's activities has now been joined by several inquiries into the firings of seven U.S. Attorneys. All were Republicans appointed by Bush, and all but one had received positive job reviews. The Washington Post reports that "most of the prosecutors were overseeing significant public-corruption investigations at the time they were asked to leave." One of them -- Carol Lam of San Diego-- had obtained a guilty plea from Randy "Duke" Cunningham and had just indicted others in connection with that case, among them a high-ranking CIA official.

Gonzales has thus far ignored communications from congressional committees requesting an explanation of these firings.

John Dean, former White House counsel for Richard Nixon, recently summed up the situation at the Justice Department. Calling for Gonzales to resign, Dean's criticism was trenchant. "In the history of U.S. Attorneys General, Alberto Gonzales is constantly reaching for new lows. So dubious is his testimony that he is not afforded the courtesy given most Cabinet officers when appearing on Capitol Hill: Congress insists he testify under oath. Even under oath, Gonzales' purported understanding of the Constitution is historically and legally inaccurate, far beyond the bounds of partisan interpretation."

Heck of a job.

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Kennedy is associate professor of law and public policy at the Indiana University School of Public and Environmental Affairs in Indianapolis.

U.S. attorney: victim of politics?

Kalamazoo Gazette (Michigan)  
February 26, 2007 Monday

U.S. Attorney Margaret Chiara has been described by a federal judge in Grand Rapids as one of the best U.S. attorneys he has seen in his two decades on the bench.

That wasn't enough to protect the former Cass County prosecutor. She was the latest in a string of U.S. attorneys abruptly fired by the U.S. Justice Department.

The Justice Department says that six of the seven U.S. attorneys fired before Chiara, 63, announced her resignation were dismissed for "performance-related" issues. All of the attorneys are Republicans. But some Democrats are questioning whether the dismissals were politically motivated.

U.S. attorneys are the nation's top federal prosecutors, overseeing federal cases within their districts. Chiara's was the Western District of Michigan, the western Lower Peninsula, which includes southwestern Michigan.

Since they serve at the pleasure of the White House, it is common for a changing of the guard among U.S. attorneys when the occupant of the White House changes. They can be fired for any reason, but it is unusual for a wholesale firing of U.S. attorneys in the middle of a president's term.

Chiara was appointed in 2001 by the newly elected President Bush to replace Clinton appointee Michael Dettmer.

U.S. District Judge Robert Holmes Bell, the judge who spoke highly of her performance, told The Grand Rapids Press he was "shocked to learn that her resignation had been requested. She's clearly part of a larger pattern."

The Washington Post reported that most of those dismissed had good performance reviews, but said many had run afoul of the White House over political issues like the death penalty or immigration.

Chiara, who opposed the death penalty, announced her dismissal on Thursday, the same day she announced a 23-count indictment against the owners of a Florida company that provided illegal aliens as workers to businesses across the country, including Michigan.

Sen. Charles E. Schumer, D-N.Y., who has criticized the removals, said he would seek a fuller explanation in a public hearing.

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The public deserves to know the reasons for these dismissals.









## Firing of U.S. attorneys is not Bush's finest hour

Tom Teepen  
San Gabriel Valley Tribune (California)  
February 26, 2007 Monday

THE purge of U.S. attorneys, begun last December, continues apace. The eighth to be fired surfaced during the weekend: Margaret Chiara, in Grand Rapids, Mich.

Like nearly all of the others, she had a sound record, but ... well, you know, politics.

And not necessarily partisan politics. The administration did send sailing out the window two who were handling corruption cases against high-ranking Republicans.

Most of the firings appear to be more nearly ideological, punishing attorneys who bucked Bush administration doctrine, for instance recommending against capital punishment in iffy cases.

The administration claims all but one of the attorneys - and we'll come back to that case in a moment - were canned for "performance-

related" issues, suggesting incompetence, but that can't be so.

At least six carried positive job reviews. U.S. attorney John McKay, in Seattle, had received a laudatory audit just last fall. Federal Judge Robert Lasnik, speaking, he said, for the whole Seattle federal bench, rated McKay

"absolutely superb."

Similar judicial praise followed Chiara out the door in Michigan.

In a rare stumble into

candor, the Justice Department admitted that one firing was flat-out political. U.S. attorney Bud Cummins, in Little Rock, Ark., was pushed out to let Bush appoint a longtime aide to Karl Rove, the president's political advisor/schemer. That deal was so obvious and rank the nominee himself backed out, presumably to get away from the stink.

U.S. attorneys serve at a president's pleasure. They are typically fired wholesale when the presidency is switched from one party to the other - servants entombed with

pharaoh. But typically, too, the positions are treated by incoming presidents as

responsible, professional postings and are refilled accordingly. Appointees are vetted by Congress and, once approved, operate with considerable

independence. Together, the nation's 93 provide one of the strengths of the justice system and conform, in practice, more to legal continuity than to the pitch and sway of policy lurches.



A provision that was sneaked into the renewal last year of the Patriot Act set U.S. attorneys up for this fall.

In the past, vacancies during a presidency could be filled either by temporary judicial appointment or by a presidential nomination that would be Senate-reviewed.

The Patriot Act was gimmicked so the president could dodge Congress and make indefinite appointments

unilaterally - still more power snatched by this grabby White House.

That indulgence caught even most congressional Republicans unaware. Many would reverse the provision. Three joined with Democrats on the Judicial Committee to restore the previous, long-standing system, but GOP leadership is blocking a floor vote.

Despite the political tumults that have always swirled around it, our national government traditionally has been buttressed from within thanks to the respect presidents paid to its larger purposes, staffing its inherently apolitical offices with professionals and then, barring misfeasance, letting the professionals work

professionally. Not this president, but perhaps the notoriety that the matter finally is attracting at least will pull the firings up short of decimation.

Bush, of all people, can't very well cite anything "performance-related" in his own defense.

#### U.S. attorneys should be confirmed

Dale McFeatters

Scripps Howard News Service  
February 26, 2007

Congress clearly didn't take much notice of an obscure provision the Bush administration slipped into the USA Patriot Act last year. But now it seems clear that the measure is being used to conduct a political purge of U.S. attorneys' offices.

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