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

INTERVIEW OF: PAUL J. McNULTY

Friday, April 27, 2007

Washington, D.C.

The interview in the above matter was held in Room
2138, Rayburn House Office Building, commencing at 9:32 a.m.

Appearances:

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

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FOR U.S. SENATE COMMITTEE ON THE JUDICIARY:

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Mr. Nathan. Can we go on the record?

Good morning, Mr. McNulty. Thank you very much for being here today.

As you know, I am Irv Nathan and serving here with the majority on the House Judiciary Committee. This is a voluntary deposition. We appreciate your making the time to be available. We will be guided in terms of the scope and confidentiality by the agreements we have reached, and they are memorialized in previous depositions. Particularly the Battle and Mercer depositions set those forth.

The questioning today will be handled by four people, myself for the majority on the House Judiciary Committee; and there will be two from the Senate majority and minority, who I am expecting momentarily. I will ask Mr. Flores to identify himself for the record, and he will question for the minority of the House Judiciary Committee.

Mr. Flores. Daniel Flores, House Judiciary Republicans.

Mr. Nathan. As you know, Mr. McNulty, we are not asking any of the witnesses to take the oath, but you understand that this is an official, authorized investigation of both the Senate and the House Judiciary Committees and the testimony is governed by 18 U.S.C. 1001, which I know you are very familiar with.

I know you have been through many depositions before, or testimony, and so you know the drill. Obviously --

Mr. McNulty. Can we stop for just a moment?

[Pause.]

Mr. Nathan. Let's go back on the record.

We have now been joined by counsel for the majority in the Senate Judiciary Committee, the staffer who will question today. I would ask him to identify himself for the record.

Mr. Bhara. Preet Bhara, I am with the Senate Judiciary Committee, majority.

Mr. Nathan. We are still waiting for minority counsel from the Senate, but we are going to proceed.

As I started to say with respect to the deposition, obviously, if there any question that I ask you that you don't understand, please ask me and I will rephrase it or explain it. If at any time you want to take a break, we will accommodate you in any way.

EXAMINATION

BY MR. NATHAN:

Q Just for the record, would you state your full name?

A Paul J. McNulty, M-c-N-U-L-T-Y.

Q And are you the Deputy Attorney General of the United States?

A Yes, I am.

Q How long have you held that position?

A I began to serve as Acting Deputy on November 1st, 2005; and then I was confirmed by the Senate and sworn in on March 17th, 2006.

Q And you continue in that position today?

A Correct.

Mr. Nathan. Let me show you, to shorten the matters, a biography that we pulled off the Web site of the Department of Justice. I will have this marked as McNulty Exhibit 1, and I will hand a copy to the witness.

[McNulty Exhibit No. 1

Was marked for identification.]

BY MR. NATHAN:

Q Is that Exhibit 1 which comes from the Department of Justice Web site basically an accurate statement of your biographical history?

A I haven't read it for quite some time, but I assume that what we have on the Web site is reflective of my career.

Q You obviously have a very distinguished career both here in the House and at the Department of Justice. Could you just hit the highlights on the House and then in the Department prior to your becoming Deputy Attorney General?

A Okay. Well, thank you for the opportunity to do that.

I began my career in 1983 here in Washington as counsel to the House Ethics Committee. Standards of Official Conduct is its actual name. I served as the counsel to the House Ethics Committee for about a year and a half. I left there, went to the Legal Services Corporation. I was the Director of Congressional Affairs, Government Affairs, and came back here to serve with the House Judiciary Committee. I was the minority counsel here for about 3-1/2 years and for the Crime Subcommittee; and then I went to the Department of Justice.

At the Department of Justice, I had different jobs, starting off in the Office of Policy as a deputy director and eventually became the director of what was called the Office of Policy and Communications. We sort of connected up the Office of Public Affairs, Office of Legal Policy, and the liaison in law enforcement. We connected those all up, and I became the chief spokesman and the director of policy issues and so forth for the Department. That was until the end of Bush I.

I went to private practice for 2 years at Shaw Pittman and then came back here to serve as the chief counsel for the Crime Subcommittee. I did that until I switched to the majority leader's office in 1999 and then served in the majority leader's office until the start of this administration and went back to the Department of Justice

where I served as the Principal Associate Deputy Attorney General, or PADAG, and then was confirmed as United States Attorney in the Eastern District of Virginia 3 days after 9/11 and served in that position until I was confirmed for the job of deputy.

So I think, all told, I have about 12 years of service on Capitol Hill.

Q And you served for about 4 years as the U.S. Attorney in Virginia?

A Technically, 4-1/2 years. I had a time I was overlapping as Acting Deputy Attorney General.

Mr. Nathan. At this point, minority counsel for the Senate has joined us; and maybe he can identify himself for the record.

Mr. Minor. Matt Minor for the Senate Judiciary Committee, minority.

Mr. Nathan. Thank you.

BY MR. NATHAN:

Q In addition to serving as the U.S. Attorney for Virginia, did you also serve as the chairperson of the Attorney General Advisory Committee for part of the time that you were the U.S. Attorney?

A Yes, I did. I served as the vice chairman and the chairman at different times.

Q Basically how long did you serve in those

capacities?

A Well, I was the chairman of AGAC up until -- at the time I was called on to become the Acting Deputy Attorney General, I hadn't served as the chairman of AGAC all that long. I think I began to serve as Chair of AGAC in the summer of '05. So I had about roughly 6 months or so of chairmanship before that.

Q How long had you been vice chairman?

A Vice chairman, I had been that for at least 2 years or so. I went to AGAC in 2002 after several months of being U.S. Attorney, and I think I was vice chairman -- named vice chairman almost at the beginning of my time. So I served under Paul Warner who was chairman of AGAC, Bill Mercer, Mary Beth Buchanan. I may have it in reverse order, Mary Beth, then Bill Mercer.

Q In any event, the point is that prior to becoming enacting deputy you were pretty familiar both because of being Principal Associate Deputy Attorney General and then being the Vice Chair of the AGAC and for a short period the Chair with many of the U.S. Attorneys around the country.

A Absolutely.

Q When you became the Acting Deputy Attorney General, what did you understand the role of the Deputy was with respect to U.S. Attorneys?

A Well, pretty straightforward, that the Deputy

Attorney General oversees the work of all the components of the Department of Justice. There are some 40 components of DOJ, and all of those component heads report directly or indirectly to the Deputy Attorney General, and then the Deputy Attorney General also oversees the U.S. Attorneys. The Deputy Attorney General is the supervisor in a general sense of the U.S. Attorneys.

Q Is it fair to say that, as a supervisor, the Deputy Attorney General is responsible for the employment, the separation and the general administration of personnel, of all attorneys in the Department, including the U.S. Attorneys?

A Well, I wouldn't agree with that characterization. It is more complicated than that. Personnel, who actually is a U.S. Attorney and is not, is not something the Deputy Attorney General -- at least in my experience as Deputy Attorney General; I can't speak for every past administration -- but to the both best of my understanding of this administration, at least, the decisions about who is a U.S. Attorney are not --

Q I didn't mean the selection. I said separation. Leaving aside selection, I understand the Deputy is not responsible for the selection of the U.S. Attorneys.

A I am sorry. Would you repeat?

Q I was reading from the Web site again, and it says

the employment, but I assume that doesn't mean the original hiring but during the course of the employment. Separation in general of personnel, of all attorneys, including U.S. Attorneys in the Department, are under the supervision.

A I see your point, yes.

Q That's correct, isn't it?

A I think that is right. Certainly the Deputy Attorney General's Office is the office that has traditionally handled issues of discipline and problems that arise within the U.S. Attorney's Office dealing with a U.S. Attorney. That is what Dave Margolis in particular is responsible for in the office.

Q I want to focus on the period from November 1, 2005, when you became the Acting Deputy Attorney General, through the period of October 1, 2006, basically a year period when first you were acting and then you had been confirmed, up until October 1. During that period, did you terminate any U.S. Attorney?

A There may have been some attorneys that left in that period of time.

Q I am not asking about people who left voluntarily. I am asking if you terminated because you didn't think they were doing the proper job or were the right people for the job between those two dates.

A I get your question.

Mr. Hunt. What are the dates?

Mr. Nathan. November 1, 2005, to October 1, 2006.

Mr. McNulty. Let me give you a general answer about this process because I want to be careful everything I say is accurate.

Mr. Nathan. Sure.

Mr. McNulty. Issues come up with regard to U.S. Attorneys from time to time, but apart from the ones that we are talking about in this whole matter, and they are handled often in various ways, OPR gets involved at times -- as I said about Dave Margolis, one of the great benefits about having Dave in the Deputy's Office is he has the benefit of the experience of years to know how to look at a particular problem that may have come up in a U.S. Attorney's conduct or circumstances and then deal with that U.S. Attorney. And that has happened in this administration with some attorneys. Therefore, it is possible that during the time of November 1 until October 1 we had some issues that came up.

BY MR. NATHAN:

Q Do you recall any?

A Well, the problem is -- and I want to be as forthcoming as possible -- they are usually extremely sensitive in terms of the nature of the problem.

Q Right. Now I am not asking to name names. I want

to know if you, in fact, were responsible for the termination of any U.S. Attorney in that time period.

A I think one way to put it is I personally wasn't responsible for that, but I think maybe we might have to think about getting back to you if there has been any question about a U.S. Attorney who may have left during that period of time as a result of some issue that came up into the Deputy's Office.

Q As you sit here now, you don't remember.

A I don't remember right now. I just don't want to guess and tell you categorically, no, there was nobody that left under some circumstance.

Q During that period of time, did you take any steps, you personally as the Deputy, to begin the process of terminating any U.S. Attorney?

A No.

Q Did you express the view in that period of time that any U.S. Attorney who was then in office in that period between November 1, 2005, and October, 2006, should be terminated?

A Well, I don't know if I would put it that way. I had conversations -- we have conversations involving U.S. Attorneys all the time, and sitting here today I don't remember expressing my thoughts in that way about a U.S. Attorney, but I just don't have -- I haven't given that any

thought until just now.

Q And during that period again from November 1, 2005, to October 1, 2006, did you ever express the belief that there should be some wholesale termination of U.S. Attorneys who weren't performing well?

A No, not that I can remember.

Q Did you ever hear anybody express that view within the Department?

A I have no memory of that approach being discussed before October.

Q In those days, between November, '05, and October 1, '06.

A Correct.

Q And did the Attorney General express to you the view, in that period of time, that there was any U.S. Attorney who he did not believe should continue as the U.S. Attorney?

A I don't recall ever having a conversation with the Attorney General that would have been sort of phrased or worded in that way. We discussed from time to time issues that connected to U.S. Attorneys, but I don't recall anything being stated that way.

Q Talking about in terms of termination, the removal.

A No, I don't recall anything.

Q Did the Attorney General tell you up to that period

of October 1 of 2006 that he had received from any Member of Congress a complaint that any U.S. Attorney was not competent to do the job?

A I don't recall -- I don't have any clear recollection of that right now. I knew about the concerns expressed regarding Carol Lam, and I don't know if anybody ever put it that way to the Attorney General and that the Attorney General passed it on to me. I have no recollection of that. I just remember complaints about the immigration issue. But I don't have any recollection of anybody -- the Attorney General telling me that someone has put it to him that way.

Q As to Carol Lam, you are referring to some complaints by Members of Congress or a Senator about her enforcement of the immigration laws in San Diego, is that correct?

A That is right.

Q Are you aware of any Member of Congress who suggested to either you or the Attorney General prior to October 1 of '06 that she was not competent to be the U.S. Attorney?

A No, I don't remember anybody -- any expression in those terms.

Q Do you recall any -- with respect to any other U.S. Attorney, did you have any Member of Congress or of the

Senate express to you prior to October 1, '06, that any incumbent U.S. Attorney was not capable of handling the job?

A I don't recall that, no.

Q Now when was the first time that you learned that there was an effort within the Department to consider for termination a series of U.S. Attorneys, a number?

A To the very best of my recollection, the first time I learned about it was at the end of October. Somewhere in the time frame of late October, early November was when Kyle Sampson consulted me about the idea of seeking the resignation of a group of U.S. Attorneys.

My best recollection is that the first time I learned about it was through my chief of staff, Mike Elston, who had apparently received an inquiry from Kyle Sampson to run this by me, to ask me my thoughts on the subject. It was presented to me in an oral fashion, as I recall.

Q By Mr. Elston?

A By Mr. Elston, right. And it was presented to me as here is the idea and here are the names of individuals that are being identified for seeking the resignation.

Q And do you recall the names that he stated to you?

A Well, what I don't recall clearly are the actual names that were stated to me in a sense that I know the names that eventually were asked to resign. To the best of my memory, the people who were asked to resign were the

names that were presented to me.

There was one person I recall being presented to me who was not asked to resign because I objected to that name, and there was apparently -- now that I look at the e-mails that have been presented to you all -- one person asked to resign who may not have been presented to me at the time. That is Kevin Ryan.

My memory sitting here today is that the names that were presented to me were basically the same names as the ones that were asked to resign.

Q And have you looked at these e-mails to refresh your recollection about what names were presented to you by Mr. Elston?

A As best I can. I saw that there were some names that were on an e-mail that Mr. Elston received that I didn't see in mid-October. But I can't be sure that the names that were presented to me at some point later, maybe a week or so later, are the exact same names.

Q So your view is that -- your recollection is that, while Mr. Elston may have learned about this in mid-October, you didn't hear it from Mr. Elston until late October, is that right?

A My best recollection is that it was a little bit later in the month when I got it, yes.

Q And when it was presented to you by Mr. Elston, you

did not receive any piece of paper, is that right?

A That is right.

Q So this was an oral presentation of the names that Mr. Sampson was proposing for termination, is that correct?

A Correct.

Q And would you have any reason to believe that Mr. Elston presented you, when he did it orally, with any names other than those that had been presented in an e-mail to him from Mr. Sampson?

A I have no information to suggest that to me one way or the other. I don't -- I can't say that it was only those names that he had received in that e-mail that he got earlier or it included more. The best of my recollection was it was the same names as the ones that eventually were asked to resign, but that is the best I can recall.

Mr. Nathan. Let's have this marked as McNulty Exhibit 2, please.

[McNulty Exhibit No. 2

Was marked for identification.]

BY MR. NATHAN:

Q I am handing you now what has been marked McNulty Exhibit 2, and I recognize that you are not shown as a recipient of this e-mail, which at the top you will see is from Kyle Sampson to Michael Elston, who was your chief of staff at that time in October of 2006, correct?

A Correct.

Q And prior to preparation for testimony relating to this matter had you ever seen this e-mail?

A The first time I saw this e-mail was in the context of the documents that had been produced to the Hill.

Q As you can see, it is redacted. The version we have, which is Bates stamped AG 037 to 038, has been redacted; and some names have been deleted. We are not going to discuss those names.

But with respect to the names that are on this list, you will see that in Roman 4 it shows USAs in the process of being pushed out, Bud Cummins from the Eastern District of Arkansas; and in Roman 5 the USAs we should consider pushing out, Paul Charlton from Arizona, Carol Lam from the Southern District of California, Margaret Chiara from the Western District of Michigan, Dan Bogden from the District of Nevada, and John McKay of the Western District of Washington.

Without identifying, do you recall the names of others who were on this list when Mr. Elston orally provided you with the names?

A First of all, my best memory is that when I was presented with the list of names that David Iglesias's name was included.

Q That is your recollection.

A That is my recollection. I have no recollection of receiving that name in a different way than when I received the names as a group.

Q You will note that his name is not on this list.

A Right.

Q And with respect to the redactions, I am very confident that his name is not among those redacted, aren't you? So that his name is not on this list either in this form we have redacted or in the original unredacted version.

I wonder if you have any basis for believing that Mr. Iglesias was mentioned to you by Mr. Elston when he told you about this at the end of October of '06.

A The only recollection I have is that when I was presented with the idea of seeking the resignations of the U.S. Attorneys and the names of the U.S. Attorneys that David Iglesias was in that group. Because my recollection is going through the various names that were being presented to me and in a sense kind of checking off mentally as to what I knew about that individual. And so I have only a memory of David Iglesias as being part of a group and since I reacted to it in my consultation role --

Also, there is another name that was presented to me when I was originally asked.

Q One of these that are redacted on this document?

A I think so. And I remember voicing an objection to

that name, and that name came off of the list.

Q With respect to -- first of all, what did you say to Mr. Elston when he told you that this was a plan and identified as many as eight or nine names of U.S. Attorneys that were intended for termination?

A Well, I have to say that I was somewhat surprised. I did not know this process was going on; and so, therefore, though I was readily aware of various issues and concerns associated with individuals that were being mentioned to me, I just wasn't aware that this action was being contemplated and would be occurring. So I remember having kind of a mixed set of reactions, one of being surprised by the fact that this was going to take place, but switching my thinking to, okay, if that is what the folks who do the personnel stuff are intending to do here, what do I think about these individuals and do I have an objection. Which is basically the way it is being sort of put to me, is do I have a problem or an objection with this; and I remembering thinking then about the individual names and whether or not I had an objection. That is the sort of first reaction that I had to the process.

Q Did you say to him, are we really going to do that?

A I might have said something to that effect, yeah. I mean, I don't remember if those were the exact words, but that is consistent with my memory.

Q Because you were surprised, correct?

A Right.

Q And because as the supervisor of U.S. Attorneys for the previous year you had not seen any need for a wholesale termination of eight to ten U.S. Attorneys, had you?

A I don't think I would phrase it quite that way.

Q I thought you did before.

A I am sorry if I made it sound that way. It is the process that I think took me by surprise, that we would do it that way. As to need, that is a little bit more complicated, because that gets into the question of the individual people and what you do with them.

I have to confess to you something here, which is I am kind of a softy. That is a problem I have in my life in terms of I put up with a lot of problems for a long time and I have a difficulty getting to the issue of, all right, let's take care of somebody. And so I probably reacted that way in part just because, oh, we are going to now take action that is associated with these individuals, that, again, mixed bag of people, different kinds of concerns. But it is just kind of contrary to the way that I normally operate.

Q We will keep it confidential that you are a softy.

A It will ruin me, that is for sure.

Q I take it from what you are saying that you did not

suggest any names for this list.

A Well, there gets to the question of Kevin Ryan. From what I have seen from this e-mail and from that one in November that I have subsequently seen -- the one in November was actually sent to me I believe November 7th. Kevin Ryan's name is not there. I am still a little confused as to how Kevin was not listed initially. Because of the matters that I was dealing with as Deputy, Kevin Ryan was an issue that I was very much involved in. Just to take a moment.

In late October, we had to send a team out to San Francisco to do what is called kind of a special evaluation of an office, and that is an unusual thing to do. I was working with the Executive Office of the U.S. Attorneys and Dave Margolis, and we were dealing with some very significant management problems that were occurring in the Northern District of California. So a team of a half dozen or so AUSAs were sent out there to do a 3-day evaluation and talk to a whole lot of AUSAs who were in the office and those who had left the office, and that was actually a significant thing itself.

That team had come back; and, as I recall, they put together a report, a brief report that was presented to the Department. I don't know if it was addressed to me or presented to the Department in late October. I probably

didn't actually see that report when it first came in, probably didn't come do me until sometime in November.

During this same period of time, I was dealing with the Executive Office of the U.S. Attorneys and David Margolis and looking at what this report said, the significance of it. The report was very critical. And so I can't quite understand, sitting here now, just exactly why Kevin wasn't on these lists, or on this November list, early November list in particular.

I know that Kyle said in his public hearing that I told him after that November 27th meeting in the Attorney General's office that I suggested Kevin Ryan. I don't have any personal memory of that, but that would be consistent with what I was dealing with at the time.

Q But at the time that you were presented with this list in late October, again, orally you were told, you didn't suggest any additional names at that time.

A Not at that time, no.

Q And you hadn't been consulted by anyone prior to the formation of that list about these terminations, had you?

A Would you repeat that again, please?

Q You had not been consulted by Mr. Sampson or Ms. Goodling or anyone else who was compiling this list for your views with respect to whether or not any individual U.S. Attorneys should be on this list.

A Not if you are referring to placing someone on a list or not. I am sure I had lots of conversations with Kyle especially over a period of time about U.S. Attorneys.

Q Did you recommend to Mr. Sampson or anyone at the Department prior to late October that anyone be placed on a list for termination?

A No.

Q And no one came to you and said we are compiling -- before Mr. Elston spoke with you, no one came to you and said we are compiling a list and we would like to get your views of the competence or the advisability of continuing in the office a particular U.S. Attorney.

Mr. Flores. Objection to the form of the question.

Mr. McNulty. I have no memory of being approached prior to that time that Mike brought me this.

BY MR. NATHAN:

Q That is in late October of '06.

A Correct. I have no memory of ever being informed that a list was being compiled for seeking the resignations of U.S. Attorneys. I probably had -- I am sure I had many conversations about the performance of U.S. Attorneys during the time that year I was the Acting and the Deputy.

Q In a previous answer you said that you were surprised but that the people who make these kinds of decisions apparently wanted to terminate eight or ten U.S.

Attorneys, correct?

A I was moving quickly, and so you have to give me a moment just to clarify that.

Q Sure.

A My role as Deputy for that year I had been in place was an operational day-to-day kind of role. I didn't -- I wasn't involved in the personnel side of the Department. I wasn't responsible for being involved in the selection, especially of political folks, and the U.S. Attorney selection process in particular. So I defer on the personnel side.

And what I meant in my answer to you previously was that when I was presented with this I assumed that those who were doing the work of personnel believed that the time had come to exercise the authority that the President and Attorney General have to make changes in the U.S. Attorneys and it was going to be pursued in this way. I accepted that as a responsibility and authority that existed, those who focused on the personnel side.

Q And those who focus on the personnel side included White House personnel, isn't that right?

A These are Presidential appointees.

Q So you -- didn't you understand when Mr. Elston presented you with this list that this was a list that had been compiled at least in part by White House personnel?

A I didn't have any reason to assume that.

Q Did you assume it?

A I don't have any memory of assuming that, either.

Q What did you assume? Where did you assume this came from?

A I assume this list came from Kyle.

Mr. Flores. Objection. Can the witness be allowed to answer the question?

BY MR. NATHAN:

Q How would Kyle have a basis for making a determination of which U.S. Attorneys to retain and which to terminate?

A I think Kyle had a wide basis for making those determinations, and the reason is that Kyle had been with the Department basically throughout the entire administration. He was responsible for the selection of U.S. Attorneys for much of the time that he was in the Department and the White House, so he knew the U.S. Attorneys very well, and he was very much engaged in the leadership and the life of the Department.

So it didn't strike me as being unusual that Kyle would be able to identify or to compile a list of individuals where we had issues and concerns about their performance.

Q Kyle Sampson is a 32-year old assistant to the Attorney General, never prosecuted a case, never served in

the U.S. Attorney's Office, didn't supervise the U.S. Attorneys. Did you think that he personally had a basis for determining which U.S. Attorneys to keep and which to fire?

A Well, there is a difference between what a person's experience would allow them to know through experience and what a very intelligent person would know based upon countless conversations with both U.S. Attorneys and with the leadership of the Department of Justice. So it strikes me that -- take, for example, the situation with Carol, just as one example.

Q That is Carol Lam?

A I am sorry, Carol Lam. Kyle was certainly in a position to know of the concerns that existed with regard to her enforcement of gun laws and the Project Safe Neighborhood and enforcement of immigration laws. He was involved in lots of discussions about that and is a very intelligent professional and, again, someone in the middle of that. It doesn't strike me as being unusual that Kyle could say if we have individuals where there are issues, concerns about their performance, Carol Lam as one example, is one of those people, whether he had ever prosecuted a case or not.

Q I want to try to go back to your mindset in late October of '06. How did you believe this list had been assembled at that time?

A My assumption when I first learned of it was that Kyle had pulled together these names based upon the long process of dealing with the U.S. Attorneys and knowing where there were various issues and concerns that existed. That was my understanding at the time.

Q So you thought that he had compiled this list from his own observations and experience over the time he had been at the Department of Justice.

Mr. Flores. Objection to the form of the question.

Mr. Hunt. I don't believe that is an adequate characterization of what he said, if that is the suggestion of your question.

Mr. McNulty. I didn't say it that way. What I meant to say is that I believed it was Kyle's collection of information, from his experiences in talking to lots of different people and his experiences in dealing with the issues that came up.

To take another example, Paul Charlton. Kyle was well aware that Paul Charlton had done something very unusual, really unprecedented with regard to the death penalty case; and he was well aware even of the FBI videotape policy that Paul changed on his own.

Every morning we have an 8:30 meeting at the Attorney General's Office, involves the leadership of the Department, talk about things going on. So Kyle is in a position to

know a lot of different things, and he talks to a lot of people all the time.

BY MR. NATHAN:

Q But he hadn't talked to you about this issue.

A He had not talked to me about compiling a list of names and seeking their resignation.

Mr. Hunt. Are you finished answering?

BY MR. NATHAN:

Q After you received this list from Mr. Elston, an oral list from Mr. Elston which he told you had come from Mr. Sampson, did you contact Mr. Sampson to ask him how he had gone about compiling this list?

A After I received the information, I probably had maybe two or three conversations with Kyle about this whole effort or this plan. Following that, leading up to the sort of final plans going over for approval, whenever this was November 7th or November 15 this, I don't specifically recall discussing with him how he went about formulating the list. I maybe just assumed that process was one of, again, identifying the folks where there were issues and concerns. That is probably because it struck me that way from the moment I saw it, and therefore I continued to assume that is how Kyle did it.

Q And after you were advised of this list did you have any conversation with the Attorney General about the names

that were on the list?

A I don't recall having any conversations with the Attorney General in this time frame.

Q So you never explained to the Attorney General your reasons for accepting the list that had been presented to you orally by Mr. Elston, which he had gotten in writing from Mr. Sampson?

Mr. Flores. Objection to the form of the question.

Mr. McNulty. Let me put it in my words. I would say that I worked through Kyle Sampson at this stage of the process. He came and consulted with me about it. I believe the Attorney General has testified to that effect in some way, talked about the way the process went; and I believe he, in response to Senator Cornyn, said one of the things he would do differently is get the Deputy Attorney General more directly involved.

So Kyle received my input, he consulted with me, and it is my understanding that Kyle then went back to the Attorney General, reported to him -- that is how Kyle explained it, too, how various officials, including the Deputy, reacted or responded to it.

BY MR. NATHAN:

Q What was the input that you provided to Mr. Sampson? I thought you said that you hadn't told Mr. Sampson any of your views with respect to any of these U.S. Attorneys.

A We must be missing each other here. What I just tried to say to you is how I responded to the Attorney General.

Q Now with respect -- so you didn't have any conversations with the Attorney General about these names or these reasons in that time frame through November --

A I gave my feedback to Kyle. I probably initially gave it back to Mike, who communicated to Kyle, but I don't know the specific line of communication between Mike and Kyle. And then I gave Kyle some feedback on this in terms of any objection I had, and then my understanding is that Kyle communicated back to the Attorney General how senior officials reacted.

Q So, as I understand it, the feedback that you gave Mr. Sampson was that you had no objection to the list as you understood it existed at that time, is that correct?

A With the exception of expressing reservations about Dan Bogden being on the list, and I expressed reservations either through Mike or directly to Kyle about another name that was on the list.

By the way, I also recall -- I am sorry, I also recall expressing concerns at some point when I got this plan presented to me about the timing of when people would be asked to leave. That is, not the date on which they would be asked but how long they would have. I wanted to make

sure that they had a sufficient amount of time to find a new job.

And so I recall wanting to make sure that it was close to 2 months and that we built in the opportunity for everybody to get an extension if they needed an extension. I think that got built into the plan at some point.

Q So, if I understand it, your input consisted of stating your objection to one or two of the names that were on the list and to dealing with the process, perhaps giving people more time to resign and find new jobs. Is that the input that you gave to Kyle Sampson regarding this list and this process?

A The way I would put it is I had to give a reaction to or be consulted with, on the plan itself, the notion of going forward --

Q In other words, terminating eight to ten U.S. Attorneys.

A Doing the whole thing in the first place, correct. So I recall having reacted to the basic idea. I recall having to give feedback or voice any objection I might have on any of the names and then giving some specific feedback on particulars like the time that they would leave.

Q Right. Were you present for -- any time when Mr. Sampson explained the selection of these U.S. Attorneys to the Attorney General?

A The only time I recall being in the presence of the Attorney General and Kyle with regard to this issue in this time frame prior to, say, December 7th, the only one I recall is that meeting at the end of November.

Q November 27th.

A There might have been another occasion, but I just can't remember at this point.

Q So you never communicated either directly or indirectly to the Attorney General the reason that you supported the termination of any specific U.S. Attorney?

Mr. Hunt. Are you still talking about this time frame?

Mr. Nathan. Yes, up through December 7th.

Mr. McNulty. The question was maybe a little broader than I would agree with there. Could you rephrase that again or say it again?

BY MR. NATHAN:

Q Yes. You never advised the Attorney General of your reasons for believing that any individual U.S. Attorney belonged on this list of termination?

A I think the moment you said directly or indirectly, that is where I had a problem.

Q Right.

A So I have no memory of a direct conversation where I directly communicated to the Attorney General my reasons for supporting the names of the individuals on the list, at

least up until that November meeting, even that November meeting, which I am sure we will get into in a moment.

But indirectly or through Kyle the Attorney General received feedback as to how senior people at the Department, including me, reacted to these names.

Q Yes, I understand that you told Mr. Sampson that you had no objection to the termination of most of the names on the list.

A Yes.

Q And no objection to the process of making a mass resignation as contemplated.

What I am asking you is you didn't tell either Mr. Sampson or the Attorney General your reasons for thinking that any individual U.S. Attorney belonged on the list for termination.

A The only reason why I don't affirm easily that question --

Q Why don't you?

A It is just because it might leave a false impression to anybody who read the report of this conversation that they would think that the reasons that existed for the individuals to be on the list were not known or communicated at some point or discussed to some significant degree at other times in the past. Just because my role at the time this idea was presented to me was to say I don't object

should not be understood to say that the Attorney General was not aware of concerns that I had about some of these individuals from all the things we did together day in and day out over the months.

Q All right. Let's move forward. At this time, any time prior to December 7th of '06, did you see any document that set forth the reasons for the termination of any particular U.S. Attorney?

A I can only recall seeing documents that related to the various issues and concerns about U.S. Attorneys that were directly related to eventually the reasons why they were asked to resign.

Q I am asking you in the period from late October to December 7th did you see any memorandum prepared in support of this proposal to terminate this set of U.S. Attorneys that laid out the reasons that any particular U.S. Attorney was on that list?

A No, I don't recall seeing any kind of document like that.

Q Did you ask for any such document?

A No, I did not ask for a document.

Q To your knowledge, did the Attorney General ask for such a document?

A Don't know the answer to that.

Q But he didn't ask you for any such document.

A No.

Mr. Nathan. Let's have this marked as the next exhibit, I guess number 3.

[McNulty Exhibit No. 3

Was marked for identification.]

BY MR. NATHAN:

Q I want to show you a set of e-mails that we have now marked as Exhibit 3 and bears the Bates stamp DAG 010 to 011. As you can see, it appears to come from your computer. The e-mails are dated on November 7th, 2006. The top one appears to be from Mr. Elston, your chief of staff, to you.

Importance, high, regarding U.S. Attorney replacement plan, with attachments. Do you see that?

A Yes.

Q And do you recall receiving this e-mail?

A Well, I don't have a clear recollection of whether I recall seeing it back when I got it, but I certainly have seen this e-mail since it has been produced to the Congress. So I am familiar with it.

Q And there doesn't appear to be any message from Mr. Elston to you apart from --

A Forwarded to me.

Q I am sorry?

A He forwarded it to me.

Q Forwarded it to you without comment, including the

attachment, correct?

A That is what it appears, yes.

Q Do you see that what he forwarded to you was an e-mail from Mr. Sampson to Mr. Elston around 6:30 on November 7th in which he says: Please review and provide comments ASAP. I would like to get this to Harriet tonight, if possible.

Did you notice that at that time when you received this e-mail?

A I don't have any recollection of what I -- sitting here in April, I don't recall what I saw or didn't see on November 7th.

Q All right. Do you know who Harriet is that is referenced in that e-mail?

A Yes. Harriet Miers, the White House counsel.

Q And did you know in early November that this list would be run by the White House Counsel's Office?

A I don't know if this was the first communication where that was mentioned.

Q The first communication that you saw.

A I am just trying to search my memory if I have any recollection of a conversation about sending the list over to the White House. I just don't have that recollection.

Q You will note on this one -- this is the plan for replacing certain U.S. Attorneys, correct? That is what is

contained in this e-mail?

A Yes.

Q And it has proposed calls by Mr. Battle and proposed Senate calls by people at the White House and then the following selection of interim and then, ultimately, other U.S. Attorneys, permanent U.S. Attorneys, correct?

A That is correct.

Q And you will see that on this list, compared to the list that you received or that Mr. Elston received on October 17th, that Mr. Inglesias's name is on this list, correct?

A Uh-huh.

Q I take it, since you thought that Mr. Iglesias was mentioned to you in the oral presentation by Mr. Elston, that this did not appear to be any surprise to you, to see Mr. Inglesias's name on that list when you saw the e-mail.

A Well, though I cannot remember sitting here now exactly whether or not I saw this e-mail, the reason why I had to make that caveat is I don't always read all my e-mails so I may or may not have looked at this e-mail at this time. But the name Dave Iglesias on this list would not have been, as best I recall, the first time I heard about him being included, because my memory is that he was included when I was consulted.

Q And that means that you did not take any action to

put Mr. Iglesias on the list.

A I have no recollection of doing anything like that.

Q And you didn't have any conversation with the Attorney General about Mr. Iglesias with respect to this termination before December 7th, is that right?

A That is correct.

Q Did you have any input after November 7th and prior to November 27th with respect to this plan?

A It might have been in that time frame that you just identified when the objection that I had to the one name was actually communicated back to Kyle. Because I recall an e-mail that is part of this series of e-mails or this string on November 7th where my chief of staff expresses the concern that he thinks Paul will have about the inclusion of one of the names. That probably is a name that is redacted.

Q It has been redacted. Is that a U.S. Attorney who is in the south?

Mr. Hunt. I want to be careful.

Mr. Nathan. I am not going to go through names.

Mr. Hunt. I just want to be careful not to say anything that would identify the individual.

BY MR. NATHAN:

Q Is that a fair characterization, from the south?

A Yes.

Q And apart from that potential input, in other words,

deleting one name that you didn't think belonged on that list, did you have any other input between November 7th and November 27th?

A I don't recall anything right now. Expression of my reticence about Dan Bogden going on the list could have been expressed at that period of time, but I don't sit here and have that recollection.

Q Let's go to the meeting of November 27th. Do you recall that meeting?

A Yes.

Q It was in the Attorney General's conference room?

A Yes.

Q Who do you recall being there?

A I recall the Attorney General, Mike Battle, Kyle Sampson. Those individuals I recall on my own. I have seen the list of people who were invited and -- Will Moschella was there, according to the list, so he was probably -- I am sure he was there. I don't have that vivid memory of it now. And Monica Goodling I believe was also at that meeting. Mike Elston was not. I think he is listed, but I believe Mike Elston had a conflict that morning and did not make that meeting.

Q Describe what happened at the meeting.

A Well, my best memory of it is that it began after our normal staff meeting. The staff meeting is at 8:30, and

this was 9:00. It was scheduled for an hour, but it was much shorter than an hour.

My best memory of the meeting was that its purpose was for a kind of last opportunity to go over what was the plan, what were we going to be doing. Kyle was -- it was Kyle's meeting. He was sort of laying out what we were there for.

I don't have any memory of the dialog of the meeting. I just recall the meeting was for the purpose of saying, okay, we just need to go over this one more time, make sure that we are clear on what we are going to be doing.

Q When you say "go over one more time," you mean the plan for implementing these terminations, is that right?

A That is how I read it, yeah.

Q There was no discussion as to which names should be on the list or which shouldn't be on the list at this meeting, was there?

A I don't recall that. He says after the meeting I mentioned Kevin Ryan may have been at that meeting. I took note of the fact Kevin was not there. I know it is a bad thing to do, to speculate in a deposition what I was doing, but I just have heard that, and so I am assuming that there must have been --

Q I am focusing at the meeting itself. I understand your testimony to be that no one at the meeting laid out the reasons that any particular U.S. Attorney was on the list

for termination.

A I have no memory of discussion about the specific reasons for the U.S. Attorneys being included. That doesn't mean it didn't occur. I just don't have any memory of that.

Q And you don't recall any piece of paper that was circulated that set forth any reasons for the proposed termination of any particular U.S. Attorney whose name was on the list at that meeting?

A If by that you mean the way you phrased it to me before when we talked about a specific memo that relates to this plan and justifying the reasons of those U.S. Attorneys, I don't recall that being included in that meeting.

Q Okay. And prior -- between November 27th and December 7th, were there any further meetings that you had with the Attorney General or with Mr. Sampson about implementing this plan?

A Well, I remember that after I sent the e-mail on December 5th to Kyle where I expressed my continuing concerns about Dan Bogden, Kyle and I had a conversation about that, where I think it was a follow-up to that e-mail. Because what happened was I sent the e-mail, and he didn't really respond back to me. And of course I see him all the time in the building, and I raised it again.

And I said at that meeting, as I recall the way it

worked, I was concerned about him still and that I was worried about his wife and kids. I was worried it might have an impact on his family, and -- losing his job, and he said he didn't have a family, he was single. At that point, I said, I guess I don't have any objection to going forward.

That was a conversation I do recall that occurred in the time frame you talked about, but I don't recall any other conversations in that period of time. They may have occurred. I just don't have any memory of them.

Q Right after the November 27th meeting, did you have a conversation with Mr. Battle concerning Mr. Bogden?

A What was the time frame again?

Q Right after the meeting on November 27th, as you were leaving the meeting, do you recall any conversation?

A I don't recall that.

Q Apart from the e-mail that you sent where you raised some question about Mr. Bogden, do you recall any other conversations about Mr. Bogden to any of the people at the high-level Department of Justice dealing with this list?

A My only memory is that conversation I had with Kyle following my e-mail.

Mr. Nathan. Let's have this marked as the next exhibit, please.

[McNulty Exhibit No. 4

Was marked for identification.]

BY MR. NATHAN:

Q I hand you what has been marked as McNulty Exhibit 4. What you see is an e-mail from you dated December 5, 9:44 in the morning, December 5, '06, from you to Mr. Sampson. Is this what you have been referring to when you talk about your e-mail about Mr. Bogden to Mr. Sampson?

A Yes, it is.

Q And you say that you are skittish about Bogden, meaning about keeping him on the list for termination?

A Right.

Q How long after this did you have your conversation with Mr. Sampson about Mr. Bogden?

A I am not entirely sure. Shortly after that. Could have been the same day, next day.

Q Before December 7th.

A Oh, yes.

Q And he told you that Mr. Bogden didn't have a family, and that allayed your concerns?

A Well, can I make a comment about the whole Bogden thing?

Q Sure. Absolutely.

A You know, I was trying to be in this whole process somewhat deferential in this process to the personnel folks. And the way this list came to me was, do you have any

specific objections for including these individuals. I understood right from the get-go that this was kind of a continuum of concerns from those that were subjective and not very specific to those that were very specific and things that I had been personally very involved in.

And so I in a sense accepted that as kind of the range of issues and the nature of the process itself being subjective to objective. And given those parameters and given the fact that there was a kind of deference to personnel side -- I sometimes analogize that when you are Deputy it is like being the field manager and you get the players and you have work to do and then you have got a person in the front office and there is the general managers and they make trades and so forth. So in a sense I was kind of deferential to the personnel process.

I understood that I needed to have a specific objection as to why I thought somebody should come off the list. I also, at the same time as I was looking at all this, realized that we are all -- those of us who are political appointees, we are all political appointees, and all our days are limited in terms of how long we are going to serve and that these same U.S. Attorneys were in that boat. They were going to be leaving at some point in the next couple of years. I knew that in my class of U.S. Attorneys we had lots and lots of turnover and that that is not unusual.

In my mind at the same time was the notion that, well, Dan is going to have to leave the office at some point over the next couple of years, though I note here, because I went back and looked at Dan's bio, that he may have been the kind of guy who tried to go into the new administration, having been a career AUSA.

But even Dan in his goodbye e-mail to his office said one of the reasons why he hesitated going from an AUSA to a U.S. Attorney is that that meant the day would come he would have to leave.

So also going on in my mind was the fact that, well, this is, again, a period of time we are all going to transition out. We are going to give these folks enough time.

And I was very busy at the same time working on this Thompson memo revision. It was very much on my mind. I was engaged in a lot of discussions and there was a lot of activity associated with that. So I would get back to this project or this would come up, and I remember this being on my mind, the Dan situation, as this process was getting closer to the end. So when Kyle told me that he was single, I think that just tipped the scale in my mind as saying, all right, I won't voice an objection and insist that he comes off the list.

Do I regret that to this day? That still weighs heavy

on my heart, because I think I had an opportunity there, and I didn't follow through as best I could have. I just don't still feel great about that.

Q When you say you were deferential to the personnel department, that includes the White House, correct?

A Sure.

Q They are the ones who give you the personnel, aren't they?

Mr. Hunt. Can you let him finish his answer?

Mr. McNulty. There wasn't going to be a lot more to say there. When I think of personnel, I certainly think that the personnel, when we are talking about political appointees, is a combination of the Department of Justice personnel efforts and White House personnel.

BY MR. NATHAN:

Q And with respect -- you understood, at least by November 27th and December 7th, that these decisions had been made by a combination of the Attorney General's Office and the White House, isn't that correct?

A By what day did you say?

Q November 27th or December 7th.

A Well, I knew by that date that we had submitted our list over to the White House and that we were waiting for their response based upon some of those communications.

Q And you didn't inquire as to what the reasons were

at the White House for their agreeing to any particular U.S. Attorney being on this list, did you?

A No, I did not.

Q And as you sit here today you don't know the reasons that any person at the White House concurred in the designation of a given U.S. Attorney to be on this list, do you?

A No, I do not.

Q And even as you sit here today you don't know exactly the distribution of authority between the Attorney General and the White House with respect to the selection of these individuals for termination, do you?

A What I know as I sit here today is -- well, maybe I should say it this way. What I understood to be the case at the time was that the Department, with Kyle taking this project on personally, that the Department put together a list of names based upon the performance issues associated with individuals and that we had in a sense vetted that internally in the Department and that we had then sent that over to the White House for the White House concurrence in going forward with the plan. That is how I understood it.

Q At the time that was your belief.

A That is exactly right. And I still see it as essentially operating that way.

Q Have you studied the e-mails that the Department has

now produced with respect to the period prior to October of '06?

A Even with all those e-mails that I have now come to understand and see, the extensive back and forth that existed between Kyle and the White House and so forth, I still understand the process at its final stage having -- requiring an initiative by the Department to identify who these individuals are and put them together in a list and then send them to the White House.

As I sit here today, my view is that if Kyle had decided not to do that or just never gotten around to it, we may have not done this. So that is why I still see it as being something the Department initiated when it went forward with putting together those names.

Q You testified before the Senate that you were involved in this process from beginning to end; and you identified that process as starting in October of '06 and terminating as of December 7th, isn't that correct?

A I don't know if that is exactly how I said it, but at the time I testified my understanding of the process was that it began in October.

Q Of '06?

A Of '06. And that was when I became involved in the process.

Q Right. And that it ended December 7th when the

communication was made to the U.S. Attorneys.

A Correct.

Q And that was your understanding of what you testified, correct?

A Yes.

Q And that was your understanding when you spoke to the press in early March of '07 about this, is that right?

Mr. Hunt. Can you establish what you are talking about?

BY MR. NATHAN:

Q Did you talk to the press at the end of February, beginning of March about this process?

A I have had conversations with reporters at different times along the way, and I recall and I think you are referring to some e-mails that were just recently sent up here.

Q Last night.

A Right. I recall being identified as having talked to the New York Times and the Washington Post, and I recall doing that at that time, yes.

Q And you recall doing that in connection with the Washington Post and the New York Times articles over that weekend of March 3rd and 4th, '07, correct?

A That is the time frame I think those articles are dated, yes.

Q And your discussion with those reporters was shortly before those stories appeared?

A That is correct.

Q And you told them that this process began in October of '06 and culminated on December 7th?

A Well, I don't know if that is what I told them. When you look at the articles, it is not clear to me whether or not what I said to one of those reporters is what is being attributed to me. Because many of the statements are referring to Justice officials. I don't know if I am the Justice official they are talking about.

What I tried to do when I talked to reporters was to explain -- and I assume I did it with them -- I try to explain my own personal role and how it worked.

What I do recall in the conversation I had especially with the New York Times reporter, David Johnston, was focusing on my role, because David had questions relating to me more personally. The article seemed to have -- what he intended to write about seemed to have more of a focus on the Deputy Attorney General, and so I talked to him about my own involvement. But I don't know, looking back, which statements are attributed to me or not attributed to me. They are not quotes.

Q I will come back to this in a few minutes.

Did you have a briefing of the Senate following your

public testimony?

A Uh-huh. Yes.

Q And in that briefing did you tell the Senators that the White House has limited involvement in this matter?

A I don't remember exactly what I said in the Senate, but I certainly tried to communicate to the Senators that were in that room and the staff in the room that day the truth as I knew it at that time. So my best memory of how I said it would have been to explain the process as I have laid it out for you today, that it began in late October or sometime in October, involved Justice Department officials putting together a list and then sending it to the White House for approval and then making those calls. That is how I understood the process at the time both at my testimony on the 6th and my briefing a week later.

Q So in both your testimony and your briefing the impression that you created, which was your honest belief, was, A, the process began in October of '06 and, B, the White House had limited involvement, simply receiving a list from the Department in late '06 as to who the Department wanted to terminate, is that right?

A Well, I can't say that -- I will let the Senate staff and members talk about the impression. But, as I just stated to you, that was my understanding of the situation at the time I made my briefings.

Q And that is the impression you wanted to leave with them.

A I just wanted to give them as much truth as I knew.

Q Which is what you understood at that time.

Let me go back in time to early October of '06. Did you receive a phone call at that time from Senator Domenici?

A I recall getting a phone call on December -- on October 3rd. I returned it. He wasn't available. Then he called me back on the 4th and got through to me at that time.

Q So you spoke to him on the 4th.

A Yes.

Q Can you tell us what he said to you and what you said to him?

A I didn't say much to him. He called, and it was a very short conversation. He expressed his concerns about the abilities of David Iglesias, and he used general terms, things like he's not up for the job, over his head, not getting the job done, things to that effect, and I think he's just not the right guy for the job.

He didn't, as I have searched my memory, refer to any specific case. He just talked in generalities about his fitness for the job. He may have mentioned categories like public corruption and immigration. So I am a little vague on how -- how many categories, including in terms of kind of

work he is doing. What is clear in my memory is his statements of lack of support for his abilities.

Q Did he call for his termination?

A I don't recall him doing that. What I recall him doing is just saying that to me; and I said, thank you very much, Senator.

Q Is that the full extent of the conversation?

A That is the best I remember. It was very short and just to that point.

Q He just calls you up, says David Iglesias is not up to the task. Maybe he mentions categories of cases. You say, thank you. He hangs up, and that is the entire conversation. Why did he call? What did he say was the purpose, besides giving you his opinion on Mr. Iglesias?

A That was the purpose of the call I remember.

Q He didn't ask you to secure his termination. He didn't say you should terminate him.

A I have no memory of him saying something like that.

Q Did you make a memo of this conversation?

A No, I didn't.

Q Did you report it contemporaneously to anyone?

A Well, though I don't have a specific recollection of that, my best memory is that I -- a conversation like that I would have mentioned to the AG and/or Kyle at the next opportunity I had. When I receive a call from a Senator or

House Member of any significance -- I mean, I can't think of many cases I wouldn't. I pass that information along.

Q Did you make any statement back to the Senator about your views on Mr. Iglesias?

A I didn't say much back to the Senator. I don't recall specifically what I would have said to him except I understand, Senator, or something like that.

Q You knew Mr. Iglesias, didn't you?

A Oh, yeah. Yes.

Q He was on the AGAC with you, wasn't he?

A Yes, he was.

Q He had been the U.S. Attorney for 5 or 6 years prior to this call, correct?

A That is correct. He was in the group of 2001, 2002.

Q Did you ever look at his evaluation that EOUSA had done?

A Not at the time of that phone call.

Q No, but previous to the phone call?

A No, I hadn't.

Q You had never looked at it before that phone call?

A I have no memory of looking at his evaluation.

Q After you got the phone call, did you ask for his file?

A No, I didn't.

Q At any time prior to December 7th, did you ask or

see his file, the evaluations?

A I don't remember looking at his evaluations before December 7th.

Q After getting this call on October 4th, did you take any steps to find out what had triggered Senator Domenici's?

A No, I did not.

Q Did you call Mr. Iglesias to ask him what brought this on?

A No, I did not.

Q In the newspaper article that you talked about, either in the New York Times on the week of March 3rd or 4th or in the Washington Post article, your predecessor, James Comey, described Iglesias as one of the best prosecutors he ever worked with. Do you recall that?

A I am vaguely familiar with reading that quote. I don't recall exactly the words.

Q In this process, before December 7th of '06, did you consult with Mr. Comey about these U.S. Attorneys?

A Not in relation to this plan.

Q In relation to this matter.

A That was actually a misstatement that was in the Washington Post story. The Washington Post, for the record, retracted that statement.

Q They were corrected.

A They were corrected. When I read that in the story

I realized that that was a mistake that needed to be corrected.

Q And you asked that it be corrected.

A Yes.

Q And they did.

A Yes.

Q So the fact is you didn't consult with Mr. Comey about any of these individuals on the list.

A But I had conversations with Jim Comey over a period of time -- not in the most recent time frame, that is not since I have been Deputy, but going back quite some time, Jim and I have been associated with each other through much of this administration -- about U.S. Attorneys. So I had many conversations about U.S. Attorneys with Jim but not in this time frame.

Q Is Mr. Comey a pretty good judge of prosecutors and of U.S. Attorneys?

A I am sure he is. But I will say that I don't know the basis for Jim's assessment of David. David is a very nice guy.

Q David Iglesias.

A David Iglesias. He is a very nice guy; and I have a good relationship with him, personal relationship with him in the sense that we talked to each other at the AGAC meetings and enjoy each other's company. But I don't know

what Jim's -- the basis for Jim's assessment would be.

Q I am trying to get the basis for your inaction in response to this call. You know that Mr. Iglesias had been a U.S. Attorney at the suggestion of Senator Domenici back in 2001, correct?

A He was, yes.

Q He would been the U.S. Attorney for 5 years by this time; and you had not seen anything in his evaluations that suggest that he was not doing his job, isn't that right?

A I was not familiar with his evaluations.

Q Were you aware that he had been considered for promotion to the U.S. Attorney in the Southern District of New York?

A No, I wasn't aware.

Q Are you aware of it now as you sit here?

A No.

Q Are you aware that he was being considered at one time for the U.S. Attorney position in the District of Columbia?

A No, I am not aware of that.

Q Do you know that he was considered for a high-level position at the Department of Justice in this period between 2001 and 2006?

A No.

Q You didn't know that. But you knew that he had been

selected for the AGAC and had been on it, correct? Was there anything about his activities that you were aware of prior to October 3rd or 4th of '06 that suggested that there was any credibility to the claim by Senator Domenici that he was not up to the job of being U.S. Attorney in New Mexico?

A Well, I had picked up just from time to time -- and during the time I was the Deputy I wasn't familiar with issues associated with him prior to my time as Deputy, but I had just picked up -- I can't be very specific about it -- concerns about the aggressiveness and the effectiveness of his office under his leadership.

So when Senator Domenici said that to me, it did not come completely out of the blue or a surprise that there had been any question about David Iglesias.

Q Did you discuss with the Attorney General his visit to New Mexico at the end of 2005 after you had already started as Acting Deputy Attorney General?

A No, I don't think I was familiar with that.

Q Are you familiar with the briefing materials that the Attorney General received before he went out there?

A No, I am not.

Q Are you familiar with the fact that the Attorney General told Mr. Iglesias when he visited him that he was doing a great job?

A No, I am not familiar with that.

Q Are you familiar with any letter that Mr. Battle sent to Mr. Iglesias after his most recent evaluation prior to the phone call that you got from Senator Domenici?

A Say that one more time, please.

Q Are you familiar with any letter Mr. Battle sent to Mr. Iglesias following the most recent evaluation that the EOUSA had done of the New Mexico's U.S. Attorney's Office prior to the Domenici call?

A Well, I am familiar with that now, because I think I have seen that in some form that has been identified, but at the time I did not.

Q At the time of the October 4th call --

A Right.

Q -- you did not know that.

A Right.

One other thing I think should be included in this is that I -- one of the reasons why that made an impression on me I guess when Senator Domenici made that call was that Senator Domenici had recommended him for that position initially, and these U.S. Attorneys are largely selected as a result of those kinds of home-State Senator support. So that just struck me as a significant thing, his home-State Senator. Plus Senator Domenici is a very distinguished Senator who has been there a long time. Maybe from working on the Hill for 12 years I have a certain instinct to be

deferential to Members and Senators.

Q You thought it was significant when you got this call.

A Right.

Q But you didn't take any action with respect to it.

Mr. Hunt. I don't think that is an adequate characterization.

BY MR. NATHAN:

Q Well, you didn't write any memo about it, right?

A I did not write a memo about that.

Q You did not ask for his evaluation.

A That is correct.

Q You did not call Mr. Iglesias to see what had triggered this sudden lack of confidence, correct?

A I wouldn't necessarily call it "sudden lack of confidence."

Q Well, the first time it was expressed to you.

A Expressed to me, but I didn't have --

Q Had he ever expressed that before?

A No, I didn't have any particular memory of him expressing that to anybody else before.

Q And did you examine the files of anything going on in New Mexico at that time to see what might have triggered this lack of confidence that was expressed to you by the Senator?

A No, I did not.

Q And you don't recall any specific conversation with the Attorney General or with Mr. Sampson following this call.

A I don't recall a specific conversation, no.

Q So then I ask you, did you take any actions following the call from Senator Domenici acting on what you say was a significant development?

A I don't recall doing anything in the following month that was sort of an investigative nature associated with those concerns expressed.

Q As you sit here today, you believe that Mr. Iglesias' name was mentioned to you when Mr. Elston gave you a list of names from Mr. Sampson, correct?

A Uh-huh.

Q And you didn't object to his being on that list.

A I did not object, no.

Q And was your lack of objection predicated in part based on the call you had received from Senator Domenici?

A That was a significant factor in my thinking as to not -- as to why I did not object, yes.

Mr. Nathan. I want to have marked as the next exhibit this EARS evaluation of the New Mexico office in 2005.

[McNulty Exhibit No. 5

Was marked for identification.]

BY MR. NATHAN:

Q Let me show you what has been marked as McNulty Exhibit 5, which is the EARS evaluation, as I understand it, of the New Mexico U.S. Attorney's Office. Have you ever seen this before?

A I think I have. Yes, I have seen it.

Q When is the first time you saw it? We have established you didn't see it by December 7th of '06. When is the first time you did?

A I think the first time I saw it was in relation to my preparations for my Senate on -- either my Senate testimony or, more likely, my Senate briefing a week later.

Q Which was on February 14th of '07?

A I think that is right.

Q I want to call your attention to the fourth paragraph under United States Attorney and Management Team. I would like to read it into the record.

It says: "The United States Attorney" -- and that is, of course, David Iglesias, correct?

A Yes.

Q -- "was experienced in legal, management and community relations work and was respected by the judiciary, agencies and staff. The First Assistant United States Attorney appropriately oversaw the day-to-day work of the senior management team, effectively addressed all management

issues, and directed the resources to accomplish the Department's and U.S. Attorney's priorities. The U.S. Attorney's Office had a well conceived strategic plan that complied with Department priorities and reflected the needs of the District."

Do you see that?

A Uh-huh. Yes.

Q Would you characterize this paragraph as a justification for seeking the termination of David Iglesias?

A Well, what I would say is that I would look at this paragraph -- and I think now is the important time for me to put into the record, so if you would just indulge me for a moment.

Q Absolutely.

A Much is made of these evaluations -- and the Senate folks who are here know that I tried to discuss this to some extent at my hearing back on February 6th. But much is made of the evaluations and what they say or do not say with regard to the U.S. Attorney's performance, and my experience with the Department of Justice and the EARS process -- and I think if -- you know, I wanted this to be in the record -- that the way the EARS process works is that a number of Assistant United States Attorneys come into a district for a period of 4 days, they interview local law enforcement, Federal law enforcement, they talk to people in the office.

They are peers. They are evaluating the performance of the office.

And with regard to the actual United States Attorney there is a deference to that individual, and that is historic and well established. Some of the language that you will see in EARS tracks from report to report in terms of being an effective leader and all that. And that the kinds of issues that often come up with U.S. Attorneys aren't reflected in an EARS evaluation because it is a peer review done by individuals who are actually subordinate to U.S. Attorneys.

So it did not surprise me at this time when I saw this review or the reviews of other U.S. Attorneys that they contained generally positive language that reflects the thinking of people who have a generous spirit when they are asked by an EARS team how they are doing.

Q I appreciate your explanation of the EARS process, but, with all due respect, that isn't the question I asked you. What I am asking you is: Is this paragraph any -- is there any justification in this paragraph for the termination of David Iglesias?

A I would not look to this paragraph as a place for explaining any issues or concerns associated with him because it is a fairly positive statement.

Q Would you say this is an exemplary paragraph about

Mr. Iglesias?

A I would say it is a very positive statement.

Mr. Nathan. Let me have marked as the next exhibit, I guess number 6, which purports to be a letter dated January 24th, 2006, from Mr. Battle, Director of the Executive Office for United States Attorney, to David Iglesias.

[McNulty Exhibit No. 6

Was marked for identification.]

BY MR. NATHAN:

Q Now have you ever seen this letter before?

A I am not sure if I have seen this letter before. I have heard about this letter or I have some -- it triggers a memory, but I don't know if I actually read it.

Q Where did you hear about this letter?

A Well, just in the process of the oversight of this.

Q During this investigation, since February of '07, is that right? But prior to that you hadn't heard about it?

A That is correct.

Q Or seen it?

A That is correct.

Mr. Nathan. I note by the way, and to Mr. Flores, that we don't have a Bates stamp number on this document, and we can't find a copy of this being provided by the Department of Justice. I will make a representation on the record that Mr. Iglesias, the recipient of this letter, has supplied it

to the committee.

BY MR. NATHAN:

Q Does that signature of Mr. Battle look genuine to you?

A I don't know Mike's signature.

Q You have no reason to doubt the authenticity of this letter, do you?

A I have no reason sitting here today to doubt it.

Q And you will see that in paragraph -- the first paragraph he says that the memorandum, which obviously is the EARS evaluation, reflects that, overall, the legal management of your office is very good and your office is staffed with well prepared and motivated Assistant United States Attorneys who are appropriately directing their efforts to accomplishing the goals of the Attorney General.

He then says: I want to commend you for your exemplary leadership in the Department's priority programs.

Do you see that?

A Yes.

Q Now can that statement be squared with the notion of reasons that have been provided to the committee that Mr. Iglesias was not a good manager in his office?

A Well, this letter I think needs to be understood in its context. The letter is something that is fairly -- as I understand these letters, they are sent out to U.S.

Attorneys after their evaluations when there is a generally positive evaluation; and, as most evaluations go, they are positive. It is a good morale effort by the Director of the U.S. -- Executive Office of the U.S. Attorneys to send letters to U.S. Attorneys and try to appreciate and thank them for their work. It might be that these letters often have a lot of similar language to them, because I think they are sent out in a routine way. So I want to just put it in context in terms of the significance of the letter, and I think the letter speaks for itself.

Q We will break after this question.

As of December the 7th, 2006, had the Department said a single word to Mr. Iglesias to lead him to believe that he was not an exemplary leader doing exactly what the Department wanted him to do in New Mexico?

A As of the time that he was called, I am not aware of any expressions of concern being voiced to David Iglesias.

Q Let's take a break.

Mr. Flores. Before we break, if I could note a request that the Department identify a Bates stamp copy of this letter if we submit it for the record, not as a substitute but for the record.

Mr. Nathan. That would be fine. Let's stay on the record. If it has been produced, please let us know. If it has not, please explain why.

Mr. Flores. Could I also place a similar request for the e-mails and associated documents you mentioned earlier in questions you had sent to Mr. McNulty last night?

Mr. Nathan. Those were documents supplied by the Department of Justice to us. They are Bates stamped and they were produced late, but we are glad to get them.

Let's go on a break.

[Recess.]

RPTS McKENZIE

DCMN MAYER

[11:24 a.m.]

BY MR. NATHAN:

Q With respect to the plan that was adopted on November 27 of 2006, did you have a role to carry out, an implementation of these terminations?

A As best I recall the plan, sitting here at the moment, I don't think I was given any particular responsibility to execute that day, November 27.

Q Did you call any U.S. attorney to advise them of the decision?

A I did not.

Q Did you approve the overall plan?

A I didn't not object to the plan.

Q You did not object to the plan?

A Mm-hmm.

Q Was part of the plan to lead the U.S. attorneys to believe that the White House was involved in this decision?

A Well, I think I let the plan speak for itself. All I know of the plan is what's on the paper. And if you're referring to something that's on the paper, then I'll -- I will defer to it.

Q Well, do you recollect that or not?

A Well, my memory would be jogged by being able to

look at the plan and see what you're referring to. I remember the plan having talking points or summarizing what should be said to the U.S. attorneys, and that's maybe what you are referring to in your question, as to what the White House role was in that.

Mr. McNulty. Well, let's have marked as the next Exhibit 7, this set of emails, which comes from the Deputy Attorney General's Office. And is Bates stamped 571 through 575.

[McNulty Exhibit No. 7
was marked for identification.]

BY MR. NATHAN:

Q I want to hand you what's been marked as McNulty Exhibit 7, and you will see that it's a chain of e-mails, and -- with attachments. And this is from Mr. Sampson to you on December 7, as well as to Mike Battle with copies to Monica Goodling --

A December 4, you mean.

Q December 4.

-- Will Moschella and Michael Elston. I will come back to the e-mail itself, but I want to go to the attachment.

A Okay. And by this e-mail, I remind you of something that may correct or -- your answer was about -- or your question.

Q I wasn't providing answers, you were.

Mr. Hunt. I'm glad to hear that.

A Your question -- although your questions provide a lot of answers, your question earlier was about what I had to do in the plan; and I was thinking about the 7th. But this e-mail reminds me that I was supposed to call Johnny Sutton. And so that may have been something that I didn't include a moment ago.

Q Okay. But now calling your attention to the plan itself, you notice that in Step 1 in the first heading, it says -- the bullet point, this is what information would go to the senators and the political leads -- "The administration has determined to give someone else the opportunity to serve."

Do you see that?

A Mm-hmm. Yes.

Q Okay. And then if you go to Step 3, which is relating to Preparing to Withstand Political Upheaval.

This tells the persons calling the U.S. attorneys what to say. Do you see that?

A Yes, I do.

Q And do you see that, where it says who decided in the second bullet point under Step 3?

A Yes.

Q It says, The administration made the determination to seek resignations (not any specific person at the White

House or the Department of Justice). Do you see that?

A Yes, I do.

Q And isn't it a fact that by saying the administration and not identifying a particular person at the White House or the Department of Justice, the effort was to suggest to the U.S. attorney that the White House had made or been at least a significant part of this determination?

A I don't know what the assumption was or the reason behind the language. I can only read the language on its face, and see that it suggests the administration as a whole, which would certainly include the White House.

Q And it didn't include your name as a person who had made this decision, did it?

A No, it did not.

Q It didn't even include the Attorney General's name, did it?

A It does not include the Attorney General's name, no.

Q You had testified in your Senate testimony that David Margolis was involved in this process, and I haven't heard his name mentioned in connection with your description of what happened here. David Margolis is a career official in the deputy's office, correct?

A That's correct.

Q What was his role in this plan and termination?

A Well, at the time I testified, I understood David to have been involved in the consultation process, and I don't actually know to this day the extent of that.

Q Have you checked on that since you testified to them?

A Well, David and I have had many conversations. But we've tried to avoid getting into anything that would come up in the context of these interviews. So I don't have any knowledge of David's specific recollections about what happened or what didn't happen.

What I understand is that Kyle Sampson -- and this is to the best of my memory -- when he testified before the Senate, indicated that he had talked to a number of Justice officials in his effort to go around and get input from people, and that -- I thought he had identified David in that, at that time.

Q But, of course, that's long after you testified?

A Right. Right.

Q What was the basis in February of 2007 for suggesting that Mr. Margolis had any role in this?

A It was an assumption I made, and I guess it was encouraged by the fact that David was a part of my preparation session for that hearing, and -- he was there in the room talking about this, and I made an assumption that David had been involved with or consulted along the way.

When I was presented with this plan and the names and asked if I had any objections, it wasn't entirely clear to me at that point who -- what other people had been similarly approached or consulted.

Q If any?

A If any, and I was making some assumptions about that.

Q When you received this e-mail that's Exhibit 7 from Mr. Sampson on December 4, did you note the beginning of that chain from Mr. Kelley at the White House to Mr. Sampson?

A I'm sorry --

Q Look at the bottom of the first page.

A Great. At line --

Q No. The one below that, where Mr. Kelley sends an e-mail at about 4:48 p.m. on December 4, 2006, to Mr. Sampson, with a copy to Harriet Miers, which says, "We're a go for the U.S. attorney plan, WH leg, political, and communications have signed off and acknowledged that we have to be committed to following through once the pressure comes."

Did you read that when with you got this e-mail?

A I don't remember reading that. I'm familiar with it now, but I don't recall reading it at the time.

Q At the time -- does "WH leg" stand for legislative,

the legislative unit at the White House?

A I would assume so.

Q And political, is that the political branch of the White House?

A I would assume so.

Q And is that headed up by Mr. Rove?

A I don't even know that. I'm sorry. I just don't know.

Q Communications, would you consider that's the White House press office?

A That seems clear enough.

Q Did you know before December 7 that those various units of the White House had approved this plan?

A I can't say that I knew that; and maybe the reason I think is that I don't have memory of seeing this line.

I recall reading this message up here, because I remember the Johnny Sutton piece of this, but I just don't recall the reference to who at the White House was involved and signed off on the idea.

Q Mr. McNulty, when you were the U.S. attorney in Virginia, did you ever have occasion to fire an assistant U.S. attorney?

A I don't recall having to do that.

Q Prior to this, have you ever fired any employee that worked under your supervision?

A I don't want to say, I haven't. I've had 24 years of public service. So you're asking me a question that's going to require me to do some scrolling through my brain. I don't want to take too much time to do it, because long pauses -- I just can't say right now that I recall doing that.

Q As a management technique, even if a person is not a softy, do you think it's appropriate to give a person some notice and an opportunity to improve on performance before you fire them from a job?

A Yeah, I do believe in that.

Q Any were any of these U.S. attorneys given any notice of their termination prior to being told on December 7?

A By that, you mean notice that they were going to be terminated --

Q Yeah. Well, notice that they were in jeopardy.

A -- or they would be asked to resign?

Q Unless they improved their performance, they would be terminated.

A Well, not to try to sort of split hairs on this, but just to make sure that the record is reflective as the full context, in the narrow sense, there's no U.S. attorney in this group that was notified that they were being considered -- to my knowledge, being considered or asking

for their resignations.

At the same time, I have to say that a number of these U.S. attorneys were well aware, in my view as the Deputy Attorney General, that they had done various things or conducted themselves in such a way that raised serious issues of concerns with the Department.

Q To your knowledge --

A Let me just add one more thing, so that -- I actually believed that on the day that they were called, some of them may very well have been able to immediately identify or understand something from the past time that they would connect, perhaps, to why they were on the list.

Q To your knowledge, was there any one of the seven who were called on December 7 who knew in advance that their jobs were in jeopardy?

A I would say that Kevin Ryan may have been in that category.

Q Anyone else?

A I don't think I would speculate beyond Kevin.

Q Because it --

A Because, to be fair, I don't think anybody would be -- would have that kind of knowledge or, maybe, gone -- let's put it this way: I don't know if they would have gone to that extent of thinking about the issues that have come up at the Department, the various conflicts that had arisen,

and how that might affect their future job prospects.

I don't know -- I don't know of anyone who -- other than Kevin, who may have gotten to that point in their thinking.

Q And you concurred with the plan not to advise these U.S. attorneys of the reasons for their termination when they were called on December 7, correct?

A I did. And looking back on that now --

Q Why did you do that?

A -- I think that was a mistake.

Why did I do it?

Q Yes.

A Well, I think a couple of things probably went through my mind at the time that this was presented to me. The first was, I accepted the premise that the -- let me say there's three points to this. The first is that I accepted the premise that the President had the right to seek the removal of a political appointee for a variety of reasons so long as none of them were improper; and I knew of no improper reason that was behind any of these efforts.

So I, number one, was deferential to the notion that these were Presidential appointees who could be removed for a reason, and that there were reasons that I could identify with each of them. So it was deferential to that point and I believe there was a sense in which this was an appropriate

exercise at that kind of authority on the part of the administration.

Secondly, I also accepted the premise that engaging in a discussion about the reasons was going to be a very difficult and perhaps fruitless enterprise because having laid those things out for those individuals, it would unlikely result in an agreement that's a fair, resolved or appropriate response to and so forth. So there was a sense built into this plan that going into the details, that would trigger kind of an extensive debate that would be counter to the first premise, which is that the President has the right to make these management decisions.

And then the third point is, I also accepted the notion that by telling the U.S. attorneys less, and in a quiet fashion, that they would have then the opportunity to establish some timetable for themselves in which to exit, that we were going to be flexible on the exit dates, and that because we were all in a position of limited time of service as political appointees, that this would be seen as something that -- though unwelcome, would nevertheless be workable.

And, frankly, if you look at the record of the reaction in December and what various folks did, there's some credibility to that, that their responses were such that they went about their business at that point. They

announced -- take, just picking the example of Paul Charlton, he sometime shortly after that announced that he was departing from the office. He lined up a job in a law firm in Arizona and he was going about moving on.

So I bought into that premise that it would be kind of a quiet process; that they would move on, and there wouldn't be as much of a disruption for them or of a public nature for them. And so it was those premises, looking back on it now, that left me thinking that this plan was sufficient.

Now I look at it --

Q Now you look at it, you recognize that it's wrong?

A Now I look at it, I just have -- you know, I don't think it was fair to not talk to people about what the issues were. I agree with the Attorney General's expressions of regret that he mentioned in his hearing a couple weeks ago -- last week or whatever. So I share concerns and I have concerns about the method in which this was done.

Q And did you explain to any of the successors of these individuals the reasons that their predecessors were terminated?

A Did -- would you repeat the question?

Q Did you or anyone else at the Department explain to the interim U.S. attorneys or the acting U.S. attorneys who succeeded these seven, the reason that their immediate

predecessor was terminated?

A As I consider that today, I can't recall having any conversation with any of the interims about those. I've met with some of the interims. I've met with a fellow from Seattle, and I've met with the woman from San Diego, Hewitt, but I didn't get in a conversation with them about what had happened with the U.S. attorneys. We just kind of talked about the office.

Q Did any of the U.S. attorneys who were terminated call you after receiving the message that they had been terminated?

A I received a few phone calls. That's right.

Q Who called you?

A Well, according to the time -- I mean, according to the phone records that have been provided to the committee, I think they indicate that Dan Bogden called, Carol Lam called, Margaret Chiara called. And I don't think David Iglesias called at that time; I think he called later, around -- after the holidays.

I think those are the three that called me.

Q And did those people ask you what the reasons were?

A Well, I don't recall actually having a conversation with Dan. Once again, I guess before that inclusion is another heartless act on my part. I think we had decided, to some extent, who talked to whom, or there was some

informal understanding of that; and Bill Mercer was involved in talking to some people. So I didn't recall -- I didn't call Dan back, because I knew somebody was talking to Dan; I think it was Bill.

As to Margaret, she definitely wanted to know, and Carol wanted to know, and I -- as I recall, stuck with the plan of not going into that information with them and having a conversation about it.

Q With respect to Ms. Lam, did you tell her that you would get back to her and tell her the reason in a subsequent call?

A I don't remember doing that.

Q Let me read to you from an answer that Ms. Lam has provided to the committee and see if this refreshes your recollection.

She writes, "Following the call from Michael Battle informing me I was to resign effective January 31, 2007, I called Deputy Attorney General McNulty to inquire why I was being asked to resign. He responded that he wanted some time to think about how to answer the question because he didn't want to give me an answer that would lead me down the wrong route. He added that he knew I had personally taken on a long trial, and he had great respect for me. Mr. McNulty never responded to my question."

Does that refresh your recollection?

A Not particularly. But, I mean, I certainly have no reason to question her memory of that.

You know, the only thing that I can recall is that when I talked to the U.S. attorneys, I was mindful of the guidance, or the decision, that had been made that we were not going to go into the details. And yet, I'm sure I was mindful of wanting to be honest with the individuals, and so if her recollection of how I formulated that was to say, I didn't want to say anything that would lead her to believe something different -- you know, with Carol Lam, though I have tremendous respect for her as an attorney, I did have a lot of concerns about her performance.

And so, on my mind in that call would only have been the fact that there was a history of things that had come up, and that I had to decide whether to go into those things or not. So I was not doing -- and a failure to call back, or whatever, why, I can't explain that. But if she expected that, and I said that, I don't know why I didn't follow through with that.

Q When you say you had concerns with her, isn't what you mean, that you had concerns about the office and certain -- the statistics they had in prosecutions in certain areas like immigration and gun matters?

A That's correct.

Q So it was not personal?

A Oh, no, not personal.

Q It's not misconduct by her. It's the activities of the office in terms of the priorities of the Department; isn't that correct?

A Correct. It was the performance of the Southern District of California.

Q Well, let me ask you this. I am not a management expert but I am puzzled by this.

If, by the termination, you intended to effect the priorities of the office, but you didn't tell the U.S. attorney that she was in jeopardy and that she could change that, you didn't tell her what the reason was, and you didn't tell the successor what the reason was, how does this termination -- this unexplained termination help change the policies of the Department -- of the office in San Diego that the Department wants to change?

A Well, there are a couple things built into your question there. On the last part, what I hear you saying is, does this actually accomplish the good of trying to fix the office.

Q How would they learn that's what they should be doing, and that's what you wanted and you intended -- I'm trying to explain my question; that by the termination, you intended to effect these changes and the practices of the office, if you didn't explain it either to her, to her

successor, or to the public?

Mr. Hunt. Do you want an answer to that question now or to the three-part question you asked before?

Mr. Nathan. It's the same question. It's the same question.

Mr. McNulty. Well, let me see if I can do it this way. I think, of all the -- well, different kinds of reasons.

The shortcomings of the office in the area of gun prosecution and immigration was a very apparent thing for a wide audience of people, not just Main Justice, but these numbers are out there in lots of different ways.

The gun numbers themselves are just -- and I -- and I know that a lot of folks in the room here have a lot of problems with the Carol Lam situation. So forgive me with the harsh sound of this. I really view the gun prosecution numbers just shocking, that they were so low after Jim had brought it to her attention -- Jim Coleman, excuse me, former Deputy Attorney General -- and then they went down after she and Jim talked about what she was going to do to change it, as a real indifference to the number two priority of the Department of Justice.

And, therefore, getting to your question, I understand that what you're trying to get at is the notion of how that is good management. But the reality is that as a result of the change that's occurred in San Diego, there is a

recognition -- and ATF has seen this -- and immigration, unfortunately, folks have seen this -- that there is a different recognition of the importance of those cases.

So I'm not here to say -- I can't say today or agree with your premise that this effort has not accomplished a change; to my knowledge, it has accomplished some change already.

BY MR. NATHAN:

Q But is the change in the Southern District of --

A Is it a model study for management? I wouldn't hold it out that way.

Q You're suggesting there has been a change in the priorities and prosecutions in the Southern District of California since Ms. Lam left in January?

A My testimony is that, as I understand it -- from some information that's not very scientific or systematic, so the statistics might contradict me; so I want to make that clear in the record -- but from my understanding and talking to the interim U.S. attorney, Karen Hewitt, and some things I have heard from law enforcement agencies, they've actually increased their focus on gun prosecutions; and that priority is being addressed clearer.

Again, let it be clear in the record, I have not looked at the gun stats for the last 3 months to verify that.

Q Did you look at the gun stats at any time between

October 30 and December 7 of 2006?

A No, I didn't look during that period of time.

Q And did you ever check to see that, in fact, as Ms. Lam suggests, violent crime in San Diego was at a 25-year low at the time that she left the office?

A No. I can't say that I was aware of that, but I certainly was aware of the fact that violent crime is -- in that same State -- if I had known that statistic, it would not have jumped out at me, because violent crime has been down in many places around the country.

Q Would it jump out at you if the prosecutions of State and local gun matters and gun prosecutions in San Diego were very high?

A It would not surprise me. And I -- if you're getting to what I think you're driving at there is, I appreciate the fact that part of our Project Safe Neighborhoods strategy is to encourage State prosecution.

So I don't -- I don't devalue that as an accomplishment, but --

Q Looking at the numbers --

A Let me finish my thought here.

-- very frankly, we expect our U.S. attorneys' offices to -- and they have to increase substantially over the past 5, 6 years, their Federal prosecution of gun crimes; and San Diego is not the only place where there are good district

attorneys.

We have in the Eastern District of Virginia, we have excellent district attorneys. But we still had a responsibility to enforce Federal gun laws, and I look at the stats around the country during this span of time, and some very small districts, Southern District of California has -- on the top of my head about 110 AUSAs, and they're very busy people and they have a very heavy workload. And we can talk about that issue. But the fact is that districts with the same kind of workload, like the Western District of Texas, still has literally hundreds of more gun cases prosecuted every year. And I just see it as being a real resistance to something that was laid out for our U.S. attorneys by the President of the United States as the top domestic enforcement priority for this administration.

Q Let's go to your preparation for the Senate testimony.

A Okay.

Q What did you do to prepare for that testimony?

A Well, first of all, as a general matter, having been involved in the matter from late October until February 6, I felt that I was pretty well aware of the circumstances that have brought us to the point of having that Senate hearing.

I had a prep session, like we typically do before a hearing; it was held in my conference room, and I don't

remember how long it lasted, but it was more than an hour. It was like multiple hours. And typically what we do when we are getting ready for a hearing, especially ones that are significant is, we invite or we get in the room the key components that have some connection to the subject.

So I recall that the preparation session involving a number of people from Legislative Affairs, the Executive Office, U.S. Attorneys, Public Affairs, Kyle Sampson and people from my staff, and Dave Margolis, I mentioned him.

Q Before -- how short before the February 6 testimony was this meeting?

A I recall it being the day before.

Q So before February 5 -- let's say that's the day before -- had you asked for any documentation on this matter?

A I may have. I don't recall.

Q But you don't recollect? Did you ask for anything?

A Once I was -- here's what happens. Most of the time when you get a hearing put on your schedule and -- somebody begins to work on preparing you materials --

Q Right.

A -- and a notebook shows up, and it's full of all kinds of nice tabs with lots of information. A lot of people work hard on preparing it.

So I don't know for sure -- I don't know specifically

what I asked for or what was just prepared for me, but I was certainly provided lots of information.

Q Well, did you get documents even if you didn't ask for them?

A Yeah. My notebook has been presented to you, all in its entirety, and that's -- you'll see the hand-written notes I've got in there and you'll see the summaries of vacancies and who has been named for various things.

Q Well, I would ask your counsel to advise us after the deposition what the Bates stamp numbers of that document are. I don't see a document in its entirety that looks like that, but I have seen pieces, so I will go over the pieces with you.

Ms. Burton. Just a minute. We've produced the entire notebook. So, you know, I don't know exactly what you're asking.

Mr. Nathan. I'm just asking for the Bates stamp numbers.

Mr. McNulty. Of what?

Mr. Nathan. Of the notebook, so I will know what documents were in the notebook.

Ms. Burton. I don't think the documents are presented in that order, but I will check.

Mr. Nathan. All right. Thanks.

BY MR. NATHAN:

Q Did you read what was in the notebook prior to the briefing session?

A Yeah, most of it.

Q What was in there, as best you can recollect?

A I am cheating. It's right here.

Q Do you have it right here?

A In my materials, I have my -- the stuff, again, you received, but it contains summaries of the districts.

You know, it has a section of information about Tim Griffin's background. It had a copy of the statute that the Senate was focusing on.

It had my -- these are my notes that I prepared while I was working on my preparation, and I think that's what we're going to look at in a moment.

Q Right.

A So I flipped through this information. This is background information about qualifications of various U.S. attorneys -- more information than I needed to have.

Q Would it be agreeable when we take our lunch break that we have a chance to look through that notebook and just see --

A Yes. I think the only trick will be -- is whether or not, in the course of anything you're still dealing with in terms of what's not produced, but it's in there. But I think this has all been produced.

Q That's my understanding. So there shouldn't be any objection.

With some more specificity, who was present for the prep session that you said may have gone for more than an hour? Was Monica Goodling there?

A Well, Monica was actually, as I recall, only there briefly. Monica Goodling had -- she and Will Moschella, as I remember, left at the start of my prep session, because they were going to be involved in what was our budget rollout to the media that day. And Will was the one who was taking the lead in that and Monica, among her duties, was also to work on budget matters.

So I remember seeing Will and Monica in the room at the start, and then I remember them leaving pretty quickly.

Q Do you know who prepared that notebook, who assembled that?

A I can't say for sure I know who prepared my briefing book.

This is not the briefing book right here. This is a book I prepared for here, but it contains -- this contains all of the documents that we've produced to you, and it contains the contents of my briefing.

Q Who did you task with the responsibility for putting together your briefing or delivering to you a briefing book?

A You know, I don't recall tasking anybody for it;

it's just -- again, when I get -- I get that put on my schedule, someone takes the responsibility to ensure that the appropriate documents and background information are pulled together.

Mr. McNulty. Let's have this marked as the next exhibit, please.

[McNulty Exhibit No. 8
was marked for identification.]

BY MR. NATHAN:

Q I'm going to hand you, Mr. McNulty, what's been marked exhibit 8 in this deposition. Is this your handwriting?

A Yes, it is.

Q And can you identify what this document is? Let's say the Bates stamp is from 229 to 234.

A This is something I prepared during my preparation time. So some of it could have been written at the time of my prep session, though my best recollection is that what I did was, after my prep session, sometime that night -- that later that day or that evening, as I typically do, I kind of got a moment where I get away from everything and I just kind of think through, what are the things that I want to make sure that I sort of say clearly at a hearing or whatever needs to be done.

So this is sort of the topics that I anticipated coming

up at the hearing, and various points that I believed were important to make.

Q And to the best of your recollection, this was something that you wrote after you'd had the prep session with the individuals who you described already?

A That's correct.

Q And the top line on the first page says Sending a Message, and the bottom of that page says, "Our intent was for this to send no message," underscore "no." Is that correct?

A Correct.

Q Did you think that firing eight U.S. attorneys without explanation would send no message to either the rest of the U.S. attorney community or to the public at large? Is that what this is suggesting?

A What this is suggesting is, I anticipate -- so I'll get to your question. Let me recollect my thoughts here.

I anticipated that the Senators would be concerned about what message these removals were sending. And one of the -- the title of the hearing was the politicization of our firing of U.S. attorneys or something like that, so I knew that was going to be an important issue.

So what I was doing was thinking through how I felt about that matter. And at first I felt that it was an important question, because we don't want to send the wrong

message to the U.S. attorneys, and so it's important for us to know what we think about it.

Secondly, I felt that if you looked at it on the totality of the circumstances, there would be a fair reason to conclude that there was -- there was no basis, that a message or a bad message was being sent to the other U.S. attorneys.

Why did I think that it wasn't sending a bad message to the U.S. attorneys? Because I believed that, first of all, we wouldn't want to do that. So if I thought it was true, we wouldn't want to do that.

Secondly, it wouldn't affect -- we wouldn't send a message about public corruption. You can see what I say in these notes about the way I look at how public corruption cases are a very high priority, and that we have a strong record in this area.

Thirdly, that I think U.S. attorneys have too much integrity to receive a message like that. That is, I think that -- and thank you for letting me go on here a little bit if you don't mind.

Q Sure.

A My experience at the Department of Justice is that prosecutors, especially prosecutors, both at Main Justice and also out in the field just don't think in terms of partisan politics when they do their job. They leave -- to

the extent they have any connectivity to that, they leave that at the front door, and when they are in the office and they're working on cases, it's a very nonpolitical, nonpartisan environment. That's the -- that's the lifeblood of the U.S. attorneys office. That's what makes them so particularly special, and I think it's true about the Department of Justice as a whole, the Main Justice.

So I have seen too many U.S. attorneys who just are committed to doing the right thing, and their AUSAs especially, that they're not going to receive any intimidation or message that there was even one that someone thought was being sent.

So that's my point there. U.S. attorneys have too much integrity to even receive a message. If they think they have a case to make intense a Republican or a Democrat, they're not going to be thinking about whether it's a Republican or Democrat; they're just going to be making their case.

And that's because the agents -- and that's number four; that's because the agents and the prosecutors who are involved, they don't slow down for a heartbeat. They don't take any of this stuff into consideration. They just keep plowing forward. That's the way the system is designed.

And. Therefore -- the last point I am making, the way we did it, looking back on it now, we can all agree it was

very seriously flawed. But at the time when we did it, we thought that by doing it quietly, people -- and again, as I said a moment ago, the way it kind of unfolded in December at first appeared to have some of that potential, that individuals would be expressing their intent on leaving, and that they would go off quietly, and people would not be reading a lot into it. And I think until mid-January or so, that's how it was working, that was the intent.

Thank you for letting me tell that.

Q Did you believe, as of February when this had already come out and you were testifying, that the actions of firing eight U.S. attorneys would send no message to the remainder of the U.S. attorney corps?

A I did not think at the time that the decision was being made -- what was the date you mentioned?

Q I'm now talking February 5, when you testified, right?

A When I testified. At the time I testified, it was still my view that the other U.S. attorneys were not being sent a message or being -- or perceiving that a message was being sent, yes.

Q And we have your testimony. We see what you said. And when you testified, you were of the belief that this process started in October of 2006 and that there was limited White House involvement; isn't that correct?

A Correct.

Q And that's the message that you also provided when you had a private briefing with the Senate a week after your testimony, correct?

A That's correct.

Q But in your -- in your subsequent testimony on February 14, you had specific reasons for the eight U.S. attorneys, correct?

A Seven, yes.

Q Didn't you also discuss Mr. Cummins?

A I basically had laid out the Bud Cummins story pretty clearly on February 6. There wasn't a lot to talk about at that point.

Q So on February 14, you talked mainly about the seven?

A Yes.

Q Prior to that briefing, what did you do to prepare for that briefing?

A I don't recall having a session like we had for the hearing itself.

Q I apologize.

A I don't recall having a session like the one that we had before I testified, probably because I had already gathered information and had been prepared. And because I was involved in the initial late October-early November

consultation, I had information.

But what I do remember preparing or getting ready to do is trying to summarize the best I could what were the larger impressions of the Department, or I should say, the views that existed about individuals. And so when I came to the February 14 briefing, I tried to make it clear that what I was going to lay out did not represent just my reasons for not objecting, but the reasons that existed even beyond me that were connected to the performance of these individuals.

Q Well, before the briefing on February 14, did you ask the Attorney General what his reasons were for firing these U.S. attorneys?

A I don't recall doing that, no.

Q And so when you say you had your reasons for not objecting and then you found other information about other activities, who was knowledgeable about those other activities? Who are you referring to?

I'm not talking about the seven U.S. attorneys, but the people in the Department in the decision-making chain. Did you consult with any of them as to why they either put anybody on the list or didn't object to their being on the list?

A Well, by February 14, there would have been many conversations about the individuals being on the list, and so --

Q Conversations with whom?

A Well, with Kyle Sampson, with Monica Goodling, with Bill Mercer, with Mike Elston. I'm not sure what I might have talked about with Mike Battle, David Margolis, and maybe a couple of other people who had been -- again, by the time you get to February 14 -- involved in the process.

Q Was there any single meeting in which you called these people you've just described together to say, what are the reasons that we can provide to the Senate committee for these terminations?

A There was no such meeting that I recall holding like that.

Q These are separate conversations that you had with these various individuals?

A Right.

Q In which you asked them what?

A Well, I saw my responsibility on February 14 to provide as much information as I possibly could about the reasons relating to the performance issues for the seven people; and so I was trying to prepare myself to provide as much of that information as I could.

Q But these reasons are, in fact, post hoc justifications. They aren't the reasons that anyone ascribed prior to December 7 for either going along with this or putting a name on a list; isn't that right?

A I don't accept that formulation of it. I really don't.

Q Okay.

A And I think that the -- it's very difficult to distinguish between a reason that could be cited today and a reason that existed prior to December 7, if you accept -- okay, if you accept Kyle Sampson's explanation of the process.

Q Do you accept Kyle Sampson's representations to you, as you sit here today?

A Okay, now that's -- do I accept his representations to me?

Q No. I'm asking you, based on your knowledge of him now and everything that you know about, do you think that he is a credible source; and that you would rely on his -- on the accuracy and voracity of his representations?

A I don't want to express a judgment about what I think about Kyle Sampson.

Q Why?

A Because I just don't think it's appropriate. I'd rather deal with the facts of it.

Q I am asking, based on the facts that you know; I'm not asking for an uninformed opinion. Based on everything that you now know, did you find him to be a credible source of information about this matter?

A Well, I think the record is clear that Kyle did not provide information as to what he knew, what he was doing, until the documents were discovered on March 8 that he had. And so that fact speaks for itself.

Q Doesn't that color your willingness to accept his representations?

A But I think --

Mr. Hunt. I'm not sure what representations you're now talking about.

Mr. McNulty. When I got into this, and I was saying that Kyle has explained a process which, regardless of what -- how people view Kyle's credibility or his representations at different times, that explanation of going around and talking to people -- well, I guess I should defer to you all, because you are getting more information about it than I do.

But we started on this road because I was trying to say that the fact that something was identified in February as a reason for seeking a person's resignation, or connected to their performance, doesn't mean that that concern did not exist prior to December 7.

BY MR. NATHAN:

Q But it also doesn't mean that anyone gave that reason in advance of December 7.

A It does not automatically mean that, no.

Mr. Flores. Could we have the initial question about post hoc justification reread? Could we have an answer to that question?

Mr. Nathan. We have an answer.

Mr. Flores. This is nothing different.

Mr. Nathan. I urge us to go forward. If we're concerned about the time of the --

Mr. Flores. Could I have the question reread in case I would like to ask it?

Mr. Nathan. Well, could we do that at the break, Mr. Flores?

Mr. Flores. So the reporter could note --

Mr. Hunt. We are concerned about the time, but we're also concerned about making sure that the question's answered and that the witness is given a full opportunity to explain himself in the answer.

That's -- if you really want the information, you should want to allow an opportunity to answer the question.

Mr. Nathan. Mr. McNulty, if you have anything else to offer at this point, I'm happy to put it on the record.

Mr. Hunt. Well, it's hard to know what question's left because he was interrupted several times. So --

Mr. Flores. That's right. I would second the concerns expressed.

I do think this is important information and we should

be able to hear it.

Mr. Nathan. I will be guided by what you want to do here. And so you tell me, you want to take the time to go back to the questions and answers? I'm happy to do it. And we'll just have to take as much time --

Mr. Hunt. That was a question from the House counsel.

I am saying that I agree with the notion that the witness should be permitted to answer. And if he believes that the witness did not have an opportunity to answer a question that he thinks is still out there, then he should be afforded an opportunity to have that question read back to see if the witness has anything else to add to it.

Mr. McNulty. Well, maybe I can jump in and say this. Where I was -- what I was thinking, I didn't perhaps have a chance to say clearly.

At the hearing that the Attorney General had before the Senate recently, I think it was Senator Graham who made a suggestion that, in his view, a lot of this justification was made up after the fact.

Q Sounds like stretches, he says.

A And the Attorney General said, I respectfully disagree with you. And what the Attorney General, I think, meant by that and I know if I was the witness what I would have said was, I don't think that's fair, I think that can be something that somebody tries to conclude at the end of

this process looking back. But it's -- but there were lots of concerns that existed at the time these actions were taken in different people's minds, and I know what I thought and that's what I'm here to talk about in terms of why I didn't object.

Q Right.

A But I don't think that because it wasn't upon my mind that it didn't exist prior to December 7 and forms the basis for a judgment made about one of the U.S. attorneys.

Mr. Nathan. All right. Let's have this marked as the next exhibit. Is this 9?

[McNulty Exhibit No. 9
was marked for identification.]

BY MR. NATHAN:

Q I'm showing you what's been marked as Exhibit 9, which is an e-mail from Monica Goodling to Michael Elston, your chief of staff, and Kyle Sampson dated February 12, 2007.

A Yes.

Q And it has an attachment called U.S. attorney chart - leave-behind.doc.

A Mm-hmm.

Q Have you seen this before?

A Yes, I have.

Q And was this prepared by Ms. Goodling in preparation

for your briefing with the Senate Judiciary Committee?

A That's my understanding.

Q And is this the format that she did with the district and the acting interim and status of the potential nominee?

A Yes.

Q Was it your intention to leave this with the Senators?

A Yes, I believe we did.

Q And did you?

A I believe we did.

Mr. Nathan. I would like to show you the next exhibit which -- let's have this marked as -- is this No. 11? 10.

[McNulty Exhibit No. 10

was marked for identification.]

Mr. Hunt. This relates to the question you asked before the break, I believe, or maybe it was right after the break, about us providing the Bates numbers for his briefing book. Those Bates numbers are --

Ms. Burton. 219 to 423.

Mr. Nathan. To what, 423?

Mr. Hunt. This would be part of it.

Mr. Nathan. So this is the first portion?

Ms. Burton. Exactly.

BY MR. NATHAN:

Q Let me ask you to take a look at Exhibit 10, McNulty Exhibit 10. And I take it from what your counsel has just said, Mr. McNulty, that this document was prepared prior to your testimony on February 6, 2007, to the Senate Judiciary Committee.

A I don't know if it did predate the testimony before the Senate. I recall its being prepared for the briefing.

Q That's what it would have looked like to me, but that's why it's quite confusing.

You tell me that that's what was in the briefing book provided to the Deputy Attorney General on or before February 5, and my view is, this was prepared in connection with the briefing on February 14.

A Right. And the confusion could be that a copy of this --

Q Was later put into your book?

A -- existed, right. Exists in both kinds of --

Q Right.

A -- sections.

Q So it was prepared in connection with February 14. You could have taken a copy and put it back in the briefing book that you had for the earlier time?

A That could be the answer.

Q Who prepared this document, Mr. McNulty?

A Well, to the best of my knowledge, Monica Goodling

prepared this.

Q And the one I've given you has handwritten on it, handwriting on it. Can you identify whose handwriting that is?

A It's my handwriting.

Q It's your handwriting. So you got the typed version sometime prior to February 14 correct?

A Correct.

Q And in about that time frame, a day or two before that?

A Something like that, yes.

Q And then at some point prior to February 14 you put handwritten notes on it --

A Correct.

Q -- in connection with your upcoming briefing to the Senate?

A Correct.

Q To your knowledge, what sources did Monica Goodling use to prepare the typed portion of this document?

A I don't have personal knowledge of that.

Q Prior to her having this typed, did you meet with her and give her your information about the reasons for the termination of these individuals?

A I don't recall a meeting that was specifically for that purpose, but I -- but by this date, I would have had

numerous conversations, because at this point the matter had evolved in such a way there have been numerous conversations about the reasons, the justifications associated with the U.S. attorneys.

So I would have an expectation that what she put into this chart would include my own thinking as well.

Q Did you have those conversations with Ms. Goodling or with others?

A Well, by this point, there have been -- there would have been multiple conversations where I may have talked to her directly or there have been meetings where she was present where the subject of the U.S. attorney was being discussed. But this would reflect from Monica's perspective if she -- if I'm correct in that she prepared this, and that's the best of my knowledge, it would reflect the information that she had gathered, which would include, quite likely, information from me.

Q What did you know about Ms. Goodling's role in the selection of the names on the list in the first place?

A I don't know anything about that.

Q You don't know whether she participated in that?

A No, I don't know that because I -- as I've said here several times, the way it came to me, I just don't know what role Monica Goodling played in the establishment of that list that I was asked to react to.

Q You knew that Monica Goodling was the principal liaison between the Department of Justice and the White House, didn't you?

A Yes. Yes.

Q And she would have had conversations with people at the White House concerning the termination of U.S. attorneys and the replacements, their successors?

A Theoretically, though I have no specific information about --

Q Theoretically, if there were discussions --

A She might very well be involved, right.

Q Did she ever tell you about any of those discussions?

A I can't think of anything that she did.

Q Did you ever ask her about those discussions?

A No, I don't think at any time I did.

Q What instruction did you give to Monica Goodling in connection with her preparation of this document entitled U.S. Attorney Resignations?

A Well, I have a vague recollection of saying to either her or to Mike Elston, my chief of staff, who's most likely the person I would have said this to -- but it might not have been Mike -- that it would be helpful for me to have a chart that included the important information I needed to communicate, or I would get asked about at that

briefing. I have some, again, vague recollection of thinking that a summary like this would be helpful.

Q And did you ask that it incorporate -- as you can see, it does in the right-hand column -- a summary of the most recent EARS report of those offices?

A Yeah. I recall, again, vaguely, that I knew it would be important to be able to respond or to provide information about the EARS reports at that briefing. One thing that was very much on my mind, and you can see it in the transcript of my hearing on the 6th, is that I was trying to address this EARS thing as aggressively as I could.

Q You were trying to minimize EARS, weren't you?

A No --

Q That's what you were doing.

Mr. Hunt. Let me just say that you and the witness are both professionals. He has tried to answer you --

Mr. Nathan. Absolutely, I agree.

Mr. Hunt. -- in a professional way; and it would be much appreciated if you would take a professional tone in the manner in which you ask him questions. That would be greatly appreciated.

Mr. Flores. We support that completely.

Mr. Nathan. I think the record reflects, and I think Mr. McNulty agrees, that there has been a completely

professional tone throughout.

BY MR. NATHAN:

Q Mr. McNulty, isn't it a fact that you were trying to minimize the impact of EARS at your testimony?

A Yeah. That's not how I would look at it. I was trying to make the record clear, and I was trying to be as truthful as possible.

And it's very reasonable that the Senators would be wanting to know about those EARS reports and what they say, because those are a principal way that anybody looking at the process would say the offices get evaluated. But having been in this business quite some time and knowing about EARS reports, I also feel strongly -- and I think I have expressed it enough already -- about the minimal, the limited nature of those reports. And therefore, I wanted to make sure the record just reflected what I think is the truth.

I wasn't trying to minimize the story. I was just trying to make sure it was thoroughly explained.

So at my hearing I tried to say on multiple occasions, Senators, when you see those reports, don't read into those something that is going to be seen as contradicting what I'm saying. And then I anticipated that they would ask me about them again a week later, and I thought it was important to get the good information as well as the negative information

so I could be honest about what the report said.

Q Just so we're clear, prior to December 7, you did not ask for the EARS reports and you didn't look at them before you --

A I had not seen them.

Q -- before you concurred?

A I would like the record just to show that that kind of reflects my sense of the value I see in EARS reports when it comes to the U.S. attorney personally.

Q Okay. With respect to the column that's marked Leadership Assessment, what does that mean, "leadership assessment"?

A I didn't choose that term.

Q How did you understand it when you received the memo?

A I paid virtually no attention to the heading of it. All I was looking for was information that existed among you know a variety of folks as to the performance concerns relating to individuals. That's what I wanted to be able to communicate.

Q And when you made these handwritten notes, did you consult with anyone or was this based on your personal experience and opinions?

A Well, what I did when I made the handwritten notes was, I looked at what was provided to me, it was done very

quickly, and I was thinking about what I wanted to say if I had the opportunity to say it at the briefing on the 14th.

And I scratched things out that I thought, you know, that's not my way or my thoughts as to how I would express it. The handwritten notes are things that were more reflective of what I would want to say at that point. So it was my sort of quick touch-ups of this.

I don't even think I had an opportunity to say much of what's on here. I might have had some opportunity with some people, but we skipped over some individuals at that briefing, so I just tried as best I could to hit highlights as we went through.

Q But -- let me understand this, though. This does not reflect the reasons that were in the mind of the Attorney General when he terminated these individuals; isn't that correct?

A I think that's a -- I agree with what you are saying. Let me just state in my own words.

I don't know what the reason was in the mind of the Attorney General at the time he accepted the recommendations and approved them.

Q Exactly.

A And this may --

Q It may or may not?

A Correct.

Q And these are the reasons, in essence, that you didn't object to the terminations, the list that was provided; isn't that right?

A These are -- by that, you mean the handwritten notes or do you mean --

Q Well, the entire document, to the extent that you accepted them and repeated them.

Mr. Flores. Counsel, could you please stop cutting off the witness when he is trying to give answers to questions that I would like to be answered?

Mr. McNulty. This document reflects more than my own thinking because it's a compilation of people's own thinking, as well, and it reflects my own thinking, but not necessarily all of it in terms of the text that's there and my handwritten notes.

BY MR. NATHAN:

Q Your thinking, now going back to December 7, your thinking in terms of not objecting to the listing of the individuals, correct?

A It reflects in general terms, but not necessarily entirely, my thoughts for not objecting back at the time I was shown the names.

Q Right. And you don't know -- even as you sit here today, you don't know when these individuals were put on the list, by whom they were put on the list or what the reasons

were of the people who put them on the list in the first place?

Mr. Flores. Objection to the form of the question.

Mr. McNulty. It's a long one. Let's go back over.

I don't know sitting here today -- go back over please?

BY MR. NATHAN:

Q You don't know sitting here today when the individuals were placed on the list?

A Mm, that's correct.

Q You don't know who placed them on the list for termination?

A That's correct.

Q And you don't know the reasons that the people who placed them on the list did so?

A That's probably why I didn't go with the whole string. I don't know -- I have a sense of the reasons because those are the reasons that were apparent to me, and so I assumed they were apparent to others who -- if others were consulted.

Q But let me give you an example. If those people were placed on a list before the events that are described in these reasons ever occurred, then it's not possible that these reasons were the reason the person was placed on the list in the first place; isn't that right?

A If these reasons were placed on the list --

Q No, no. If the individuals were placed on a list --

A Yeah.

Q -- at a time before any of the events listed in these reasons occurred, then that is not the reason that the person was placed on the list in the first place; isn't that right?

A Let me say, I think I understand what you are saying.

If what you're saying is that there's something on this list that occurred in the time --

Q Correct.

A -- subsequent to --

Q The placement on the list.

A -- the placement on the list.

Q Then it wasn't the cause of their going on the list in the first place, by definition; isn't that right?

A Yeah. I think that's a fair point.

Q And we'll go through them, and we'll see what we have. But this is -- this is your handwriting. Let's look at the individual statements and let's see what you wrote in the preparation for your briefing.

First, on the first bullet of Mr. Bogden, you struck out the whole first point, right? That's your cross-out, right?

A That's my crossout.

Q Right. And you also crossed out that he was resistant to one leadership priority, right? You made it that he's resistant to an obscenity task force.

A I just want the record to reflect the cross-outs do not mean that I am rejecting that notion.

Q What do they mean?

A What they mean is, only as I am thinking about how I am going to communicate this to the Senators and staff the next day, or whenever I was preparing these thoughts, that I was going to keep it short, or I was going to switch my wording, or I was -- the scratches would mean that I would choose not to use those actual words, because I knew I would be under some pressure there to have to read and talk.

So an example would be the second bullet. I didn't feel it's necessary to say, at least one leadership -- this maybe would be extra words. So I wanted to say he was resistant to the obscenity task force, that would have been --

Q What was your basis for believing he was resistant to an obscenity task force?

A It was my understanding at this point that there had been a matter that came up in Las Vegas involving the prosecution of an obscenity case.

Q Did you know anything about it?

A I personally did not know about it. But as I said

to you, this list reflects more than my own personal knowledge.

Q All right. And you put down general assessment?

A Let me correct the record, please.

When I said I didn't personally know about it. I don't have a clear recollection about what I knew about that. I think I had some -- had some knowledge back in the fall of the fact that there was an issue involving obscenity cases, but I just can't say I have a clear recollection of what it involved.

Q Did you think it involved more than one case, which apparently Mr. Bogden did not think warranted the resources of his office? Do you have any knowledge?

A I don't have enough knowledge. I don't have enough -- I don't have a clear memory of knowing much about the details of that back in the fall.

Q All right. And you wrote -- is this -- this says "general assessment, colon."

A Yes, right.

Q And it says, "lack of energy and leadership for highly visible district with serious crime issues." Is that what you wrote?

A Yes. Yes.

Q Is that the reason you were going to give for Mr. Bogden's termination, to the Senate?

A Yes. That reflected my thinking and preparation for how I would try to express that concern.

Q And then you put down the second bullet, good job on gun cases.

A Mm-hmm.

Q Why did you put that down?

A By that point, I had been aware of that being true. I mean, I just -- that's why I would have written it down. It just would reflect my understanding as of this date in February as to what went on in Nevada.

Q With respect to Mr. Bogden, he's now been terminated, correct? Is there an acting in Nevada?

A Yes, there is.

Q Who is it?

A I believe it was the first assistant.

Q Do you know his name?

A I have just forgotten it. I'm sorry.

Q Has the process of terminating Mr. Bogden brought any renewed energy or leadership to the Nevada office --

A Well --

Q -- as we sit here today?

A I haven't had a chance to evaluate anything, what's going on.

Q Have you had an opportunity to look for it?

A I have not had an opportunity to look for it.

Q Have you had a plan to nominate a new U.S. attorney in Nevada?

A I'm sure there's one. I am not involved.

Q You are not involved in that process?

A I'm not.

Q So you don't know where it stands, if at all?

A I don't know where it stands, no.

Q Okay. Did Senator Ensign talk to you about Bogden's termination?

A Yes, he did.

Q What did he say?

A What happened with Senator Ensign was, I had two different conversations with him. The first was in December after he was notified and he wanted more information as to why Dan was asked to resign; and I explained to him what generally is reflected here in this box, that there was a view that Dan was not a dynamic and energetic and forward-leaning type of U.S. attorney, and that he had a district that was growing in its nature in terms of challenge -- fast-growing geographically, excuse me, demographically fast growing; and we had seen a number of issues associated with terrorism threats.

And so I had tried to explain to him both the challenges that were presented in this district and what we thought was the sort of ability and leadership strengths of

the -- or weaknesses of the U.S. attorney for that.

And I also mentioned to him, as best I recall, the concern about both Project Safe Childhood and the obscenity initiative and the importance of bringing those cases and someone who would be forward-leaning on that.

Then, later in March, he called the Department and he wanted to be briefed because after Will's -- Will Moschella's hearing, he heard -- I don't know if he watched that hearing or whatever he did, but he picked up that Will Moschella had characterized Dan's performance in a way that was, in his mind, not performance related; and he was concerned that that was not what he'd heard or understood in December.

So he called the Department and said he wants someone to come over and talk to him. So I was the one who went over and talked to him. I tried to explain to him, no, Will's answers at the hearing the day before are not inconsistent with what I told you earlier; he was just explaining what performance encompassed, it encompassed a lot of different things, and in his case, it had to do with leadership-type of performance.

Q I'm going to go through all of these when we come back. But I'm going to ask you one, turning to page 222 of this document. And with respect to Mr. Iglesias and it says on the number 2 bullet, "Perceived to be an 'absentee

landlord'" -- and that's your underscoring there right?

A Mm-hmm.

Q -- "who relies on the first assistant to run the office."

Where does this term "absentee landlord" come from? Had you ever used that before, before this document was prepared?

A I have no memory of that.

Q Did you ever hear that term before with respect to Mr. Iglesias?

A I can't say that I -- I don't have any memory of having heard it before.

Q Did you ever ask Ms. Goodling where she got that term from?

A No, I did not ask her where this word came from, where this language -- and by the way, my underscoring it doesn't mean that I was emphasizing it. Again, it was only a way of preparing my thoughts as to what the language was on this, and drawing my eyes to it when I would be talking.

Q Did you do any due diligence before the Senate briefing with respect to the absences of Mr. Iglesias from his office?

A Well, this is an important point.

Q Yeah, it is.

A And I don't -- when I see that word "absentee

landlord," and if I -- and I defer to those who are actually briefed, because I just don't recall the words I chose; but that word does not mean for me or the language does not mean for me absence physically from an office. It just doesn't -- those two things are not connected in my mind.

We have U.S. attorneys who are out of their offices for a variety of reasons for all -- we have lots who are in the military service and they're out for those reasons, we have those who are dual-hatted and they have to -- they're in D.C. and not at their offices, because they're doing two different jobs.

So I don't personally connect physical location of a U.S. attorney with performance. That's not something that's in my mind.

What I think of -- so when I see the word "absentee landlord," I saw that term or understood that term at the time to mean more management style and approach rather than one's physical presence and so forth. Now there are things that U.S. attorneys do that -- where they travel a lot that are less justified.

And in the case of John McKay, I was concerned that in his promotion of the LinX program, he was traveling around the country a lot to do that, I did have some concerns about that. But this just did not register that same kind of thought in my mind.

Q First of all, did you use this phrase, "absentee landlord," when you briefed the Senate?

A Well, I don't remember, but there are people in the room, who were there, so I don't --

Q Well, you were the speaker?

A Yes.

Q What is your recollection?

A Well, I may very well have used it. I just don't remember specifically.

Q And when you used it, did you explain he was -- he's in the office, but he's not doing management?

Mr. Hunt. You just said he used it, but he just said he didn't recall using it.

Mr. McNulty. I don't recall using it. So therefore, I am not going to further speculate as to what else I might or might not have said about it.

BY MR. NATHAN:

Q Let's say -- did you tell the Senate when you -- the Judiciary Committee, when you did the briefing, that by "absentee landlord," you mean somebody who's in the office, but not doing the management technique as opposed to someone who is outside the office, traveling?

A I'm sorry. I don't remember, and I'm sorry to anyone who heard that, who's actually here now, that I can't recall what I said at that meeting. It was a little bit of

a tough sled ride there for me.

Senator Schumer was sitting as close, or closer, to me than he is right now; and he was on my grill the whole time, and, you know, not in a rude way, but he was driving that meeting along.

And so I was on my toes, and I just don't recall sitting here now words that I actually did use or did not use, although -- I mean, there may be some things that will come back to me, but this one just doesn't jump out at me.

Q Number one, I asked, did you do any checking to see how many days of the year Mr. Iglesias was out of the office?

A No, I have no knowledge of that.

Q What was the basis for believing that when he was in the office he was an absentee landlord?

A Well, again, this language did not -- does not reflect what I -- necessarily reflect what I was thinking pre-December 7, when I was given the names and I had an opportunity to object.

Q Well, does it reflect anyone's thinking before December 7?

A It reflects someone's thinking.

Q Whose?

Mr. Flores. Counsel, I must object again.

Could you please let the witness answer your question

after he's asked? We're interviewing a sitting Deputy Attorney General of the United States. This is an extraordinary opportunity for committee staff, and I would like to handle it appropriately.

Mr. Nathan. Thank you, Mr. Flores.

Mr. Flores. You're welcome.

BY MR. NATHAN:

Q In whose view was this, that he was an absentee landlord?

A I don't know the answer to that.

Q Did you participate in the preparation of Mr. Moschella for his testimony in March of 2007?

A No.

Q Did you accompany him and others to the White House in advance of his testimony?

A Yes.

Q Was there any instruction provided at the White House, concerning that testimony, that you recollect?

A Yes.

Q What was it?

A As I recall that meeting, its purpose was to impress upon all of us at the Department the importance of being able to explain the reasons for why the U.S. attorneys were asked to resign. I think the concern was that we had not done that because we were -- we were being too reticent; and

as a result, the clear impression which was going to come up much more the next day, because of the U.S. attorneys themselves testifying, was that it was for other reasons that were not proper. And therefore, the concern was, make sure that you lay out what your justifications were.

And so that was the -- and we also discussed, as I recall, the position we would take on the legislation that was going to be discussed by the House.

Q Who instructed you at the White House to provide the reasons for the termination?

A There wasn't any one person who made that, alone, clear. There were a number of folks there, and it was sort of a consensus of the group that we needed to be clear on that point.

Q Was Mr. Rove present for this meeting?

A As I recall, he came in after the meeting started, didn't stay very long, and left early or --

Q And what do you recall him saying?

A I don't have any clear recollection of whether or not he spoke. I can picture where he was sitting, but I just can't recall whether he actually -- if I -- you know, pushing my memory at its limit, I think he said something, but I just can't remember what it was he said; and I just think it was lumped into the general point of, you all need to explain what it was that you did and why you did it.

Q And did anyone at the White House offer any explanations for the termination of any of the U.S. attorneys?

A No, no. That wasn't the discussion at that meeting. They weren't -- it was -- you know, as I said, those are the two subjects that I recall being discussed.

Q With respect to the subject being forthcoming, with respect to the reasons, did anyone from the Department of Justice describe what the reasons were?

A I don't recall much conversation about that.

I have some recollection of a discussion about maybe one, maybe Carol Lam, but I think it was done more as an illustration of the reasons. I don't recall us spending time talking about it as much as -- but that subject, vague recollection of that subject coming up with at least one person or so.

Q Were there any suggestions from the White House of how to phrase the issues of the termination, the reasons for the termination?

A I don't recall that.

Mr. Nathan. I want to have this marked as the next exhibit, please.

[McNulty Exhibit No. 11

was marked for identification.]

BY MR. NATHAN:

Q I'm handing you now what's been marked as McNulty Exhibit No. 11, which is an e-mail exchange that we received for the first time last night, and it's marked AG 1235 to 1237, and you will see that you are not listed as a recipient, but you are mentioned.

A Yes.

Q Do you recall this article that appeared in The Washington Post over the weekend prior to Mr. Moschella's testimony?

A Yes, I do.

Q See the sentence at the end of the first -- the first page that's in the newspaper story that says, "Officials portrayed the firings as part of a routine process."

Do you see that?

A Yes, I do.

Q Did you consider this to be a routine process?

A No, I did not.

Q And it says that "the White House did not play any role in identifying which U.S. attorneys should be removed or encourage the dismissals."

Do you see that?

A Yes, I do.

Q And did you believe that over that weekend of the 3rd and 4th of March?

A Yeah. I mean, that's generally right. I'm not sure if those are my -- I'm not sure.

Q Generally right, that you believed that at that time?

A Yeah. Until I saw the e-mails that Kyle, the documents that were produced on May -- on March 8, my understanding was that there was no -- I certainly don't -- I just have two words for you to remove.

To this day, I have no information to suggest that the White House played any role in identifying U.S. attorneys to be removed. I have no information to suggest that's not true.

And encourage the dismissals, that language -- you are asking me how I view that, then and now, is that until I saw the -- until I saw the documents that Kyle had on March 8, I did not appreciate that there was anything in the category of encouraging us to do what we did in October or November.

Q Right. So you believed it was true when you read the story -- first of all, when you talked to the reporter in advance of the story and when you read it in the story, you thought it was accurate at that time, correct?

A Yes. I would have -- again, I don't have any -- I can't say that I'm the official that's referred to there.

Q No. I wasn't asking you to attribute that.

A And as far as, do I believe it was true at the time.

Yes, based upon what I knew at the time, I would have found that to be accurate.

Q Right. And now that you know that it's not accurate, and you learned that after March 8?

A Well, what I know now -- I wouldn't agree with that characterization. What I would say now is, we would have to look at what would encourage -- this is not very precise language. These are general terms. "Encourage the dismissals" has to be interpreted in light of all the information that has been produced. And you see the back-and-forth that went on between Kyle Sampson and the White House and so forth.

Q I want to turn your attention to the second page of this document that's about the article, and it says, "The seven prosecutors were first identified by the Justice Department senior leadership shortly before the November" -- presumably November 2006 elections. Do you see that?

A Mm-hmm.

Q And do you believe that was accurate when you discussed this with the reporters and when you read the story over the weekend of March 3 or 4? Correct?

A I believed this to be accurate as of that date, and I don't know if I discussed that sentence with those reporters or not.

Q Yeah. I wasn't asking.

A I know. The question is a little complicated.

Q But as you discussed it with reporters, that's what you believed, whether you said it to them or not.

A Whether I said it to them or not -- I gotcha there. Right, that's consistent with my understanding of how the process -- how the process worked.

Q As of the weekend of March 3 and 4?

A Mm-hmm.

Q Correct?

A Yes. I don't know today if that's not incorrect.

Q Well, we'll go over that when you come back, I guess. I wanted to call your attention to the top of this exhibit.

A Oh, I'm sorry. I understand why -- yes, because you are referring to the fact that there are other e-mails that identify individuals.

Q No. What I'm referring to is the process started in December of 2004, and there were lists drawn as of February of 2005; and a statement that this was done shortly before the November elections of 2006 is absolutely untrue?

A Well, what I would say --

Q I'm not saying you knew it was untrue.

A And I understand that.

What I'm saying to clarify my own words, to make sure that I'm not misspeaking in any way, because I think I said,

"as I sit here today," and I want to make sure that as I sit here today, I can think of communications that are inconsistent with that sentence.

Q Yes.

A Okay.

Q But I want to call your attention to the first e-mail in this chain on the first page of it, 1235. It's from Mr. Sampson to a number of representatives of the Department, two of them from the Public Relations Office, the head of the Office of Legislative Affairs, your principal Associate Deputy Attorney General, your Chief of Staff and Monica Goodling, correct?

A Mm-hmm, yes.

Q And it says, "Great work, Brian," referring to Mr. Roehrkasse, correct?

A Correct.

Q And it says, "Kudos to you and the DAG," and you were the DAG at that time, correct?

A Yes, correct.

Q So Mr. Sampson is telling everyone, including Mr. Moschella, who is about to testify 2 days later, that this story is a good story for the Department, correct? That's what "kudos" and "great work" mean?

A You can read into it what you think.

Q How did you read it?

A He appears to be satisfied with this story, and he's thanking Brian and me for it. It's a classic example of Washington, D.C., getting credit for something it may not deserve.

I don't know if I deserve kudos for this or not. All I know is that I got on the phone with these two reporters and answered some questions.

Q I wasn't focusing so much on the kudos as to the message that Mr. Sampson is sending to a witness who was -- Mr. Moschella, who was about to go up before the House Judiciary Committee, suggesting that the essence of the story on March 3 is an accurate and good -- and good story from the Department's point of view; isn't that right?

A Well, I have no views on -- well, I can't confirm that as being what's in there.

Q Well, tell us what happened on March 8 with respect to your learning that the facts in the story were not accurate.

A Well, sometime in the course of that day -- I believe it was later in the day, rather than earlier in the day -- I was informed by Kyle that there were documents that had been produced, or we had received a request for documents, and then in the process of collecting the documents, there were documents that now existed.

I physically looked at a few of them, didn't really see

all of them. In fact, to this day, I have really not seen all of them, although I haven't gone on the Internet and looked at all the documents, so I have never seen, to this day, listings of good, bad and whatever of U.S. attorneys.

But in any event, I was informed that there were these documents, that they contained information about things like ranking U.S. attorneys and about suggestions on replacements and so forth. And my initial reaction was to be very concerned. It struck me as being extremely problematic that we had not had this information in sort of a public record at that point.

I went home that night very disturbed by this whole thing, returned the next day still very concerned; and fortunately, the Department, in my view, did the right thing, and quickly tried to identify as many of these documents as possible and communicate to the Congress the beginning of the next week that this is what we have come up with. Here is this information.

So I was relieved -- or, I shouldn't say "relieved"; I was just satisfied that we were getting that corrected message out as quickly as possible.

Q You say these were documents. But these documents reflected the activities of Mr. Sampson and Ms. Goodling among others from the Department along -- prior to October of 2006; isn't that right?

A That's correct.

Q And they, of course, knew about those activities quite apart from whatever's in the documents; isn't that right?

A Well, I'll let you make that assumption.

Q Well, do you make that assumption?

A Well, they are documents that they had prepared, so that's fair to say, that they were aware of the things that they worked on.

Q Well, did you ask Mr. Sampson how he had let you go up and, first of all, testify to the Senate on these issues, about this matter; how he allowed you to go to the press and tell a story that turned out not to be true and how he allowed Mr. Moschella to go to the House of Representatives and provide information that was not accurate, it was misleading and incomplete?

A I was very disappointed, but I can't tell you that I had -- I had brief conversations with him over a period of a couple of days -- well, Thursday night when I first saw this. Virtually -- very little on Friday.

I recall the day starting with an effort to try to figure out who was going to get all the documents together and ensure that we have got the whole story. That was a very brief morning discussion.

I don't recall seeing Kyle Sampson after that until

Monday morning when he was in the office early on, and I learned of his -- of his resignation to the Attorney General. So I don't recall having much of a conversation or interchange with Kyle about these things.

I was concerned -- we were busy Thursday. The Attorney General -- this was the night before the whole national security letter matter hit the news, as well. I think Friday was when the FBI and the Attorney General were going to make an announcement about the national security letters. So I remember Thursday evening being very hectic where the Attorney General was actually calling Members of Congress and alerting them to the information that would be coming out about national security letters.

I remember Kyle was focused obviously on what this information is that just came up, and I was sort of trying to just sort of figure out where we were and what we were doing. It was pretty overwhelming.

Q I understand that you were interested at that point in getting the documents delivered and getting the information out to the committees?

A Right.

Q But did you ever make an effort to find out from Mr. Sampson how he had allowed you and your principal associate, the deputy, Mr. Moschella, to go to committees of the Congress and provide incomplete and misleading

information about this process?

A Well, what I will say is that I did not ask Kyle questions about what he was thinking or how he allowed our efforts at the Department to go forward over the past few months without providing this information. I did not view it that way.

What I do remember is just expressing to him my disappointment and my concern about the seriousness of the situation.

Q Did you ever have this discussion with the Attorney General?

A Yes.

Q What was that discussion?

A I pretty much said it the same way to the Attorney General. I can remember calling him that night, that Thursday night, when we saw this information and just expressing that this was very serious, that these documents provide a lot of information, that we're going to make our credibility affected in terms of how we had been explaining the situation to everyone, and then I talked to him further on that point Monday, I think it was -- or, no, excuse me -- Friday. The next day I talked to him.

Q Isn't it a fact that the Attorney General is listed in these documents as having been involved in this process actually, even when he was a White House counsel, prior to

January of 2005?

You've seen those documents now, haven't you?

A Yes, I have.

Q So did you discuss with him that night or anytime after how he allowed this incorrect message to come out when he knew it was not consistent with his own knowledge and own participation in this process?

A I didn't have a conversation like that with the Attorney General.

Q You've never had that conversation with him?

Mr. Flores. I object to the form of the question. There were a lot of factual conclusions, and I'm not sure they have been demonstrated at all.

Mr. McNulty. Yes.

I hope that -- thank you. I hope the record does reflect that you did have a number of assumptions in there. And I'm not sure I agree with all of those about the Attorney General, what he knew, when he knew it, and whether or not he had allowed that to go forward in such a way.

My answer focused on what I said to the Attorney General, and I did not --

BY MR. NATHAN:

Q What did he say to you about Mr. Sampson's actions?

A I don't have any clear recollection of him saying much to me about that.

Q Did you recommend that Mr. Sampson be fired?

A No, I did not. I did not recommend it. I didn't put it in those terms, no.

I mean, I talked about how serious I thought it was, but I didn't think it was my place to recommend -- make that kind of recommendation.

Q To your knowledge, was this resignation requested by the Attorney General?

A I don't know the answer to that. That was a conversation that occurred between them, between the Attorney General and Mr. Sampson.

Q Have you talked to Mr. Sampson since February or March 13?

A I have not.

Q Did you ask Ms. Goodling how this could have happened?

A I did not. I have never talked to Monica Goodling about this -- about these documents not being produced at the --

Q But you didn't ask her about her role in this matter prior to the fall of -- fall of 2006?

A No, I did not ask her.

Mr. McNulty. Why don't we take a break for lunch.

[Recess.]

RPTS SCOTT

DCMN BURRELL

[1:50 p.m.]

[McNulty Exhibits No. 12, 13, 14,
and 15 were marked for
identification.]

Mr. Nathan. Back on the record.

BY MR. NATHAN:

Q Mr. McNulty, I want to show you a document that we have marked as Exhibit 12, which is an e-mail from Kyle Sampson to David Leitch, dated January 9, 2005, and ask you whether prior to today you have seen that e-mail.

A I have seen this e-mail prior to today, though I haven't -- I probably read it fully at one point.

Q All right. Is this one of the e-mails that you saw around March 8th when Mr. Sampson told you that there were documents that were available in addition to what had previously been described to you?

A No, I do not recall seeing this document at that time.

Q What is the earliest you recall seeing this?

A My first recollection of this is when it came to light in the oversight process. Right now, I'm kind of blanking on at what point this came out.

Q All right.

A My knowledge of this is when it came out in production to you all or something like that.

Q I want to call your attention to the bottom e-mail, the first in the chain. The subject here is the question from Karl Rove, and it is an e-mail from Colin Newman, who was someone at the White House, to David Leitch, someone at the White House.

Do you know who Mr. Newman or who Mr. Leitch is?

A I know David Leitch. I do not know Colin Newman.

Q Who is David Leitch?

A Well, at the time David Leitch was in the White House Counsel's Office as, I think, Deputy General Counsel to Attorney General Gonzales when he was the Counsel to the President.

Q All right. I want to call your attention to the statement there which states that Karl Rove stopped by to ask you -- that is David Leitch -- how we plan to proceed regarding U.S. attorneys, whether we are going to allow all to stay, request resignations from all and accept only some of them or selectively replace them.

Do you see that?

A Yes, I do.

Q And does that lead you to conclude that the initiative for the termination of U.S. attorneys began with Mr. Rove or began at the White House?

A Hmm. Well, it leads me to conclude that there was a discussion on this subject at that time, but in and of itself as a statement, I can't say that it would invariably, in my mind, connect with what eventually occurred in October.

Q Are you aware of an earlier process within the Department of Justice regarding the process of terminating U.S. attorneys, anything prior to this question from Mr. Rove in early January of 2005?

A I am not aware of any other effort to identify names for removing U.S. attorneys other than the one that was presented me in late October.

Q That was of '06?

A '06, correct.

Q And this is referencing January of '05?

A Yes.

Q Okay, and then I want to call your attention to the top e-mail on this page of Exhibit 12, and this is from Mr. Sampson to Mr. Leitch, you said who was at the White House Counsel's Office.

"Judge and I discussed briefly a couple of weeks ago."

Do you understand "Judge" to be Alberto Gonzales at that time, the White House Counsel, and who thereafter became the Attorney General of the United States?

A Yes, I do.

Q It says in paragraph 3, "We would like to replace 15 to 20 percent of the current U.S. attorneys, the underperforming ones. (This is a rough guess. We might want to consider doing performance evaluations after Judge comes on board.) The vast majority of U.S. attorneys, 80 to 85 percent, I would guess, are doing a great job, are loyal Bushies, et cetera, et cetera." Do you see that?

A Yes.

Q Now, does that suggest to you that sometime at the end of 2004 or at the very beginning of 2005 Judge Gonzales, as White House Counsel, was interested in replacing 15 to 20 percent of the current U.S. attorneys and had been discussing that with Mr. Sampson, who was his Chief of Staff?

A Well, given that I have no knowledge about this independent of what I am reading, I can only make conclusions based upon the face of this document.

Q Right.

A What I see on the face of it is that Kyle refers to discussing something with the Attorney General, and then he says "my thoughts are." Whether or not what then follows are the thoughts of Attorney General Gonzales and those discussions, I just don't know.

Q Well, let me make one correction, and it is just based on the document. That's all.

When he is having discussions with Judge Gonzales, Mr. Gonzales is White House Counsel. He is not the Attorney General of the United States; isn't that right?

A This is, I think, going on at the time that he has been nominated to be Attorney General, and he is not Attorney General yet.

Q Right. So when he was not Attorney General, he was in the White House?

A Correct.

Q Because it talks about after Judge comes on board.

A Yes.

Q I assume "on board" means with the Department of Justice.

A Right.

Q So that in every respect it appears from this document that the decision or the discussion, the proposal, to terminate 15 to 20 percent of U.S. attorneys came from the White House, either from Mr. Rove, who raised this question with Mr. Leitch, or from Judge Gonzales, who at the time was White House Counsel; isn't that right?

A I don't know if I agree with the premise or the way in which you have stated it only because, on the face of this document, what I see is that a discussion has occurred between Alberto Gonzales, White House Counsel, as you point out --

Q Right.

A -- and Kyle Sampson, who -- at that point, I'm not sure if he was employed at the DOJ or at the White House, and then he says "my thoughts are," and I don't know if these are Kyle's thoughts or the product of the conversation.

Q Well, he says "we" would like to replace, doesn't it? Who is "we"?

A Well, I don't know.

Q Who do you understand to be "we" as you read this document?

A I could see that a person would conclude by that that he is referring to the White House Counsel at the time -- the future Attorney General and himself -- but I can't be sure about that. I just have to assume that from what I am reading.

Q Well, my question to you is after you did see this e-mail, did you have any discussion with the Attorney General to ask him what is the background here? When did this all start, what did you know about it, and how did you let me go up and testify that this started in October of '06?

A I did not have any conversation -- I have not had any conversation with the Attorney General discussing the contents of this e-mail.

Q Basically, having read the e-mail, when the Attorney General said "I had very little involvement in this matter," does that appear to you to be an accurate statement?

A I don't want to speculate as to whether it is accurate or not.

Q So you can't testify here as to, based on the knowledge that you have had in learning more since your testimony in February and seeing the e-mails, whether what the Attorney General said in January of '07 about his involvement to the Congress was accurate?

A The Attorney General was asked this question a number of times in different ways at his hearing recently, and he made his best effort in explaining it, and I am going to defer to him on that explanation.

Q Okay. Let me show you what has been marked as Exhibit 13, which is an e-mail from Kyle Sampson to Harriet Miers in March of '05. Do you recognize that document?

A Generally, yes. This is one of the documents, as I mentioned to you before lunch, that I have not reviewed in its unredacted form, and I am familiar with this document as the documents were identified, and I vaguely recall it as being one of the documents anticipating we may go into --

Q Yes.

A -- that Kyle may have shown me.

Q My very question. Uh-huh.

A So I think, as best I recall that day, that this is one of the documents that I understood to exist or saw.

Q So then you knew that the list had been prepared or a list had been prepared as early as March of '05, correct?

A Correct.

Q When you saw this, did you go through the names that were on that list?

A No, I did not.

Q Let's do that now.

First of all, you will see the code that is on the first page that a "bold" reference is "recommend retaining; strong U.S. attorneys who have produced, managed well, and exhibited loyalty to the President and Attorney General." If it is a strikeout, it is "recommend removing" because they are "weak U.S. attorneys who have been ineffectual managers and prosecutors" and who have "chafed against administration initiatives, etc." If there is nothing, there is "no recommendation; have not distinguished themselves either positively or negatively."

Do you see that?

A Yes, I do.

Q All right. Now I want to call your attention to the first page of this. As you will see, "Kevin Ryan" is listed in bold as an outstanding U.S. attorney, strong, has produced/managed well.

On what basis would anyone say that Kevin Ryan, who you told us this morning had a lot of management problems, was a strong U.S. attorney who should be in bold there?

A Well, as I react to these characterizations, I am going based upon my knowledge of these U.S. attorneys as of this time period, okay?

Q Yes, of course. It's early '05.

A I can't speculate as to what Kyle was thinking. I was in Eastern Virginia.

Q At which time you were the U.S. attorney in Eastern Virginia, but you were also the chairman of the AGAC at that time, weren't you?

A No. Hold on. Let me make sure.

Not yet. I think -- I didn't become chairman of AGAC until the summertime. This was March of '05. I was Vice Chairman, though, at that point, yes. By the way, I have never figured out where I am on the list either, so I just --

Q Well, we can't tell from this, but we would be eager to look at that as well.

A Right. I would say that, with regard to Kevin Ryan, my only explanation here would be that Kevin had an evaluation of his office in '03, and I believe it was in March of '03, and then there was one in March of '06, and while I have said repeatedly that I think the evaluations

are of limited value, occasionally -- because what you do in these reviews is you talk to AUSAs and get the sense of morale and so forth, and when there are serious management problems, those do pop up more in an EARS review, and the '06 EARS evaluation for Ryan came back very negatively.

Q So there was a change in circumstance after '05. Is that what you're saying?

A It is quite possible that what was going on in the office was deteriorating over the period of time, and this may not have reflected the situation that came to exist by '06.

Mr. Flores. I would like to have one thing read back.

You were concluding your answer to the initial question, and Mr. Nathan began with another phrase, and I lost what you were saying in that. So if I could have it read back.

[The reporter read back as requested.]

Mr. Flores. Was that the end of your answer there or had you said something about --

Mr. Nathan. Mr. Flores, let's proceed.

Mr. Flores. No, we will not proceed. You were speaking over the witness. I want to hear the information so as not to waste time later.

Mr. McNulty. I appreciate that. I think I completed my thought. I don't recall now if there was something more

I wanted to say there, but thank you for asking.

Mr. Flores. Thank you.

BY MR. NATHAN:

Q Now, calling your attention to page 2 of this document, do you see that David Iglesias' name is in bold?

A Yes.

Q You will recall that "bold" means "recommend retaining; strong U.S. attorneys who produce, manage well, exhibit loyalty to the President and to the Attorney General."

Now, did something happen with respect to Mr. Iglesias between March of '05 and November of '06 with respect to those characterizations?

A I think that a number of things happened, but based upon my personal information or knowledge, all I would know is that -- among the things that I picked up was the phone call from the Senator on December 4th.

Q Do you mean October 4th?

A Right, October 4th, expressing his concerns, and I don't have a record of other information that I can lay out at this point.

Q Right. Now, let me go to the third page.

Do you see that Mr. McKay's name is stricken there?

A Yes.

Q This is in March of '05 -- correct? -- early March?

A Yes.

Q Are you aware of any actions that Mr. McKay had taken with respect to the LinX project that had occurred before March of '05?

A I am not aware of anything -- I am sure that he had engaged in his work on the LinX system prior to that, but I am not aware of whether or not that would be viewed positively or negatively at that time.

Q Was there anything that you know of that had happened negatively with respect to Mr. McKay and the LinX project prior to March of '05?

A Not according to my personal knowledge.

Q All right. So we can agree, can't we, based on your answer earlier this morning, that when his name is stricken there, it has nothing to do with the LinX project?

A I don't know if I can agree with that.

Q And why is that?

A Well, because you are looking at something that was done by somebody else on March 2nd or thereabouts in 2005, and I have no idea what was going through the mind of a person who prepared this document, so I don't know.

Q Had you heard anything, any criticism of Mr. McKay -- as of the end of '04 -- about his not bringing prosecutions in connection with the very closely contested gubernatorial election in the State of Washington?

A No, I wasn't aware of that subject.

Q Let me go to what we have marked as Exhibit 14 and present this to you, Mr. McNulty.

You will see on this document, which is an e-mail from Kyle Sampson to Harriet Miers, the White House Counsel, copied to Bill Kelley, her deputy at the White House, "please treat this as confidential," and this is a description, according to the e-mail, that Ms. Miers has asked the Department whether the President should remove and replace U.S. attorneys whose 4-year terms had expired.

Do you see that?

A Yes. What paragraph is that?

Q The first paragraph, the very first paragraph.

A Yes.

Q Do you see that he says that he recommends that the Department of Justice and the Office of the Counsel of the President work together to seek the replacement of a limited number of U.S. attorneys? Do you see that?

A Yes. Yes.

Q All right. Does that suggest to you that the statement that the White House Counsel's Office was only involved after selections had been made by the Department of Justice is not an accurate statement?

A Well, on its face, what it suggests to me is that a recommendation is made about this work together, but it

doesn't necessarily follow that that actually occurred just on the face of this document.

Q Well, do you know what occurred?

A Well, I know that it says, "I recommend that the Department of Justice and the Office of the Counsel to the President work together to seek the replacement of a limited number of U.S. attorneys."

To the best of my knowledge, the Department of Justice identified -- I don't know of any information -- let me put it this way -- of those names being identified other than by the Department of Justice.

Q If you will look at the list on this exhibit -- is this 14? If you will look at the list, you will see that a number of names have been redacted, so I assume that that means that those first two that are redacted were people who were being proposed for a termination but who openly were not terminated and are still U.S. attorneys.

Is that your understanding of what that redaction suggests?

A I think that's right.

Q Then with respect to those who are in the group, you will see that there are only four here, including Ms. Chiara, Mr. Cummins, Mr. Ryan, who only in the previous year and before the '06 EARS is now on the list for termination, and Ms. Lam. Do you see that?

A Yes.

Q Mr. Iglesias is not on this list, is he?

A No, he is not.

Q Do you have any knowledge of how this list was developed?

A I do not.

Q Let me show you now what has been marked as Exhibit 15, which if you'll hold 14, you will see that 14 is a later iteration of 15 that I am handing you now, which was a memo -- it looks like it's a draft -- dated January 1, 2006 for the Counsel to the President from Mr. Sampson regarding U.S. attorney appointments. This appears to be a draft that was then sent about 8 days later to Ms. Miers.

What I want to call your attention to are the names on this list, which are the same as on that night -- that is, Mr. Cummins, Mr. Ryan, Ms. Lam, and Ms. Chiara -- and there is handwriting on here. Do you see that?

A Yes.

Q Do you see that on the page that is Bates stamped 1141 it says "other problem districts"?

A Yes.

Q It lists Mr. Charlton and Mr. Bogden.

A Yes.

Q Do you know whose handwriting that is?

A No, I don't.

Q Do you recognize Monica Goodling's handwriting?

A I don't think I would necessarily.

Q As of sometime between January 1 and January 9 of '06, do you have any basis for the knowledge of why Mr. Charlton or Mr. Bogden would be put on a list for termination?

A No, I don't.

Q Did anything happen with respect to the proposal to tape record conversations or confessions in Arizona? Did that occur by January of '06?

A I think it occurred after that because it occurred during my tenure as acting or deputy, and so it came up in the springtime of '06.

Q So that couldn't explain his being there.

What about this obscenity case? Did that come up during your tenure, too?

A As I recall, that was in the summer/fall time frame of '06.

Q Yes. So that couldn't have happened in January of '06 or have been known, could it?

A I am not aware of that being an issue at that time.

Q Right. Was there any other reason that had been attributed or any justification that had been suggested about Mr. Charlton besides the -- oh, the death penalty.

When did that occur that he asked for the death penalty

to be reconsidered?

A That was in the late spring and summer of '06. There is only one issue that I can think of that might -- that predates this.

Q What would that be?

A That is the resource issue down in his district. It is a little sensitive because it involves Senator Kyl, so we don't go around making a lot of noise about it, but it involved getting additional prosecutors to the district of Arizona, and I believe it occurred in the '05/'04 time frame.

Q Well, did Mr. Charlton oppose getting additional prosecutors?

A No. What happened was he worked -- as best I recall the story. I was not the deputy at the time. He worked with -- excuse me. The summary of it, as I understand it, is that he went around the process and dealt directly with Senator Kyl on getting additional prosecutors in Arizona. As a result -- and I believe this was during the late -- my memory is a little vague here. It might have occurred during the end of Ashcroft's time as Attorney General and maybe at the start of Gonzales', but as a result, we had to pull AUSAs out of larger districts like Southern New York and Northern Illinois and shift some slots down to Arizona. I think Jim Comey was the deputy at the time.

Q Was anybody assigned that event as a reason for Mr. Charlton's termination in December of '06?

A Yes, that has been referred to it.

Q Who said that?

A It might even be on that chart that we looked at a moment ago having to do with -- it might be stated in very vague terms such as "did not follow DOJ process for getting additional resources," but I do recall that that had kind of created frustration among the leadership for the spot it put the Department in.

Q With respect to Mr. Bogden, that issue dealing with the one obscenity case, had that occurred by January of '06?

A I believe that occurred after that date.

Q After that date. So that couldn't explain why someone, perhaps Monica Goodling, was suggesting the addition of Mr. Bogden as of January of '06 to the list to terminate?

A Well, I believe, at that time, that case was following that date.

Q Right.

A So, for the record, just -- I mean I appreciate what you've established, and I just want to make sure that it's clear for the record since I referred to the resource issue.

Q Sure.

A That resource matter did trouble the Department

leadership because it did kind of force us into having to do -- which is always a very difficult thing, and that is move AUSA positions from one place to another. We didn't have AUSA slots just to put in Arizona, and so I think it is important for the committees, in their search for reasons that were going on with Paul Charlton, just to appreciate the significance of that circumstance, and that circumstance may have been indicative of Paul's style, which was not to take "no" for an answer.

Mr. Nathan. Can we have this marked as Exhibit 16?

[McNulty Exhibit No. 16

was marked for identification.]

BY MR. NATHAN:

Q I'll show you Exhibit 16.

First, I want to -- let's see where this begins. So go to the end of the document, which, as you know, with an e-mail chain, that is the first one there.

September 13th, 2006 at 2:39 p.m. This is an e-mail from Harriet Miers, White House Counsel, to Kyle Sampson regarding U.S. attorneys. Do you see that?

A Harriet to Kyle, right.

Q It says, "Kyle, any current thinking on holdover U.S. attorneys? Any recent word on 'blank' intentions?" Someone's name has been deleted.

Do you see that this initiative is coming from

Ms. Miers about the termination of U.S. attorneys? You know, "where are you now on this?"

A On its face, what it suggests to me is that there is a question about holdover U.S. attorneys, which are a category of individuals, a small category of individuals. That language -- again, I don't know. I didn't know anything about this document until I saw it after it was produced --

Q Right.

A -- but on its face, "holdover U.S. attorneys" would refer to those who are held over from one administration to another. I don't think that --

Q No. This is September of '06.

A Right.

Q This administration had been in office since January of '01, right?

Mr. Hunt. I think he was trying to get to that, actually.

Mr. Nathan. Okay.

Mr. McNulty. I just think that we don't refer to the U.S. attorneys who have finished their first 4-year term as "holdovers." That's not the terminology.

BY MR. NATHAN:

Q Well, you may not, but did Mr. Sampson? Because he responded to her, as you will see from this, saying,

"Harriet, the U.S. attorney ranks currently break down as follows," and he has the list of, including Mr. Cummins, the process of being pushed out and the ones we should consider pushing out -- Mr. Charlton, Ms. Lam, Ms. Chiara, Mr. Bogden, and Mr. McKay. Those are all people who were appointed for the first time in the Bush administration and whose 4-year terms had or were about to expire, aren't they?

A Yes. Where is that language you read? Did you say Kyle actually referred to --

Q Well, you see, what this is --

A You started to read there. Where is that where you read that?

Q Three lines down of the first page --

A The first page.

Q -- where it says, "Harriet, the U.S. attorney ranks break down as follows."

A Okay. Got you.

Q What I understand this to be is -- and I'll make the representation to you -- a draft of an e-mail that Mr. Sampson intends to send to Ms. Miers, but first he has sent it to Ms. Goodling, who was then giving him her views on whether that should be sent to Ms. Miers.

A Right.

Q Do you see that?

A I do.

Q Then if I call your attention to what Ms. Goodling says in the top e-mail at 4:17 p.m. on September 13th, she says she added a section dealing with Washington, D.C., and then she says I recommend removing a U.S. attorney who was on the list because, she says, "there are plenty of others there to start with, and I don't think" -- I, Ms. Goodling -- "don't think she merits being included in that group at this time."

Do you see that?

A Yes, I do.

Q Now, is Ms. Goodling the one who was making the decisions about who deserves to be on this list and who doesn't?

A You can draw your own conclusions from the language of this. I don't know what was going on at this time, but I see the e-mail and what you're referring to.

Q Did you ever ask Ms. Goodling whether she made recommendations about who should be on the list and who shouldn't be?

A No, I did not.

Q And you didn't ask her whether she had had conversations with the White House about who should be on the list and who shouldn't be either, did you?

A I don't recall those conversations, no.

Q Do you believe that Ms. Goodling misled you in your

preparation for your testimony to the Senate and your briefing of the Senate?

A I haven't reached that conclusion. I believe that information that has come to light as a result of this process is information that the Senate would very much have wanted to have at the time they were gathering information from me, particularly, but I haven't reached a conclusion that any one person misled me in that process.

Q Well, don't you believe that Mr. Sampson misled you?

A Mr. Sampson has explained that he was not focused on this information when he was preparing me to explain the reasons for why those U.S. attorneys were terminated, and I am not going to question his explanation.

Q With respect to that, let us talk about Mr. Cummins and Mr. Griffin who came in.

Isn't it a fact that, for a time, it was suggested that Mr. Griffin come to your office to work in your office?

A I have heard that, but I don't know when I learned that for the first time.

Q Isn't it a fact that you didn't let him work in your office?

A I don't recall a conversation to that effect, but again, I have heard that as well, so I just can't pinpoint when that might have -- that conversation might have taken place, and I want to at some point today -- excuse me. Just

real fast. At some point today, just so it's in this record -- and obviously, this is kind of an assumption you're all making, but I just want to make sure it's clear.

I have an extremely busy schedule, and when I get in I usually run from one thing to the next, and people are often grabbing me in the hallway and asking me questions, and I am trying to juggle a lot of things at the same time, and so I just want you to understand that if I don't recall a conversation it's because I want to be careful what I do remember, and if I had a conversation like this it could be that it's one of those literally dozens or maybe even hundreds of things that I'm trying to talk about or to deal with in the course of the day.

Q You don't recall asking for Mr. Griffin's resume in connection with whether he would be placed in your office before he was sent to Arkansas to become the interim U.S. attorney? No?

A That doesn't ring a bell.

Q Okay. Do you recall seeing an e-mail in which Mr. Sampson said, "Getting Mr. Griffin appointed was important to Harriet, Karl, et cetera"?

Mr. Hunt. If you're reading from a document, could you let the witness see it?

BY MR. NATHAN:

Q I will definitely let you see it, but I want to know

your recollection. Do you recall seeing such a document?

A I recall that document coming out to the public. That's when I saw the document.

Q Yes. I'm not suggesting that you saw it contemporaneously --

A Right.

Q -- or that you saw it before you testified, but you have seen it prior to today?

A Yes.

Q Okay.

A I have heard it thoroughly discussed before today.

Mr. Nathan. All right. Well, let's have it marked as an exhibit. I think that will make life a little easier for everybody.

[McNulty Exhibit No. 17

was marked for identification.]

BY MR. NATHAN:

Q Mr. McNulty, I have now had handed to you Exhibit 17, an e-mail from Kyle Sampson to Monica Goodling on the topic of another Griffin article, which I think we can agree that Mr. Griffin was the acting or interim United States Attorney in Arkansas, and the original message on this is from Mr. Sampson to Christopher Oprison.

Do you see that?

A Yes, I do.

Q Mr. Oprison works at the White House?

A I don't know him.

Q You do not know him?

A So I will assume that's true.

Q You don't know the name?

A It doesn't ring a bell.

Q Okay. Now I will just call your attention to the last item in paragraph 4, which says -- this is the notion of using the Attorney General's appointment power that came in the reauthorization of the PATRIOT Act, and he says that Mr. Sampson is saying, "I'm not 100 percent sure that Tim Griffin was the guy on which to test drive this authority, but know that getting him appointed," that is, as the interim U.S. attorney, "was important to Harriet, Karl, et cetera."

Do you see that?

A Uh-huh.

Q Okay. Did you ever discuss that with Mr. Sampson that getting Tim Griffin was important to -- I assume we can agree that "Harriet" is Harriet Miers and "Karl" is Karl Rove, can't we?

A Yes. Yes.

Q And it was important to those two people that Mr. Griffin be appointed?

A I never talked to them about this.

Q Are you aware of a letter that was sent by Assistant Attorney General Hertling on the issue of Mr. Rove's involvement in Griffin's appointment?

Mr. Hunt. A letter to whom?

Mr. Nathan. A letter to the Congress, to the majority leader of the United States Senate.

Mr. Hunt. Do you have a copy you can show him?

Mr. Nathan. Yes, I do.

Let's have it marked as next.

[McNulty Exhibit No. 18

was marked for identification.]

BY MR. NATHAN:

Q Have you seen this letter before, Mr. McNulty?

A Yes, I have.

Q Did you see it before it was sent to the Senator?

A I don't think so. I don't have any -- I may have been copied on e-mails. I have no memory of reviewing this or being involved in this when it was being prepared for the first time.

Q Are you aware that it contains inaccurate statements?

A I am aware that the Department has sent a communication to the Congress regarding the contents of this, and I believe that is for the purpose of correcting whatever impressions are in here that are not accurate.

Q Let me call your attention to page 3, to the last bullet point on that page, just above "we appreciate the opportunity to respond to your inquiry."

A Yes.

Q It says -- and I am quoting -- "The Department is not aware of Karl Rove playing any role in the decision to appoint Mr. Griffin." Do you see that?

A Yes.

Q Is that one of the statements in here that was corrected by the Department?

A I believe so. If you have the corrected -- sitting here now, I don't have clear recall of what the revised communication said, but it is my understanding now that that was one of the issues addressed in our revised communication or in our correction.

Mr. Nathan. I don't have that right here, but I want to go to a different point if I can and we'll come back to that.

Let us have this marked as the next exhibit, please.

[McNulty Exhibit No. 19

was marked for identification.]

BY MR. NATHAN:

Q I am handing you now Exhibit 19.

Before we get to 19, as you sit here today, Mr. McNulty, do you know who prepared the letter that

Mr. Hertling signed?

Mr. Hunt. Are you talking about Exhibit 18?

Mr. Nathan. Exhibit 18, yes.

Mr. McNulty. I'm not certain who prepared this.

Before I answer that question, I would want to reread or refresh my memory of a letter we sent to the Hill. I just don't recall that.

Mr. Nathan. Okay. You don't recall.

Mr. McNulty. I'm not certain. I mean it could have been Kyle Sampson who wrote this, who drafted this letter. I just don't recall.

BY MR. NATHAN:

Q Well, if you'll look at Exhibit 19, would that refresh your recollection that Mr. Sampson was relied upon to provide the information for that letter?

Mr. Flores. I will note that it's now just past 2:30. I will have questioning that I need to do, and I'm concerned that I am going to be --

Mr. Nathan. Okay. I appreciate that. I'm doing the best I can.

Mr. Flores. Thank you.

Mr. McNulty. I'm familiar with this. I have seen this e-mail before.

BY MR. NATHAN:

Q Right. In that e-mail, the White House is asking

for as accurate information on this subject as possible,
aren't they?

A Where are you referring to in that?

Q Can I come over there? Because I don't have a copy.
Can I share that with you?

A Yes.

Q Allow me to approach.

Mr. Hunt. Not granted.

Mr. Nathan. Let me withdraw that last question.

BY MR. NATHAN:

Q With respect to this exhibit, this is a memo from Kyle Sampson to Michael Beck at the Office of Attorney General, regarding the response to the inquiry that came in with respect to Mr. Rove's role. Let me call your attention to the second page and the third bullet up.

You'll see it says, "I am not aware of Karl Rove playing any role in the Attorney General's decision to appoint Griffin." The last bullet point is "Hertling should sign."

A Yes.

Q This is written less than 2 months after Mr. Sampson wrote in the earlier e-mail that the appointment of Mr. Griffin was important to Kyle Rove and to Harriet Miers. Do you recall that?

A I recall just looking at that e-mail, what you are saying.

Q So let me now show you one more document in this chain of this date that this one is, February 23rd.

Let's mark this as Exhibit 20.

[McNulty Exhibit No. 20

was marked for identification.]

BY MR. NATHAN:

Q You'll see that, on February 23rd, there is an

e-mail from Mr. Oprison at the White House to Kyle Sampson, saying, "Fred -" do you think that could be Fred Fielding? This is in the text.

"Fred, as I, want to ensure that it is absolutely consistent with the facts and that it does not add to the controversy surrounding this issue." Do you see that?

A Yes.

Q So the White House Counsel is saying, in answering this question that Mr. Hertling is going to sign about Karl Rove's role -- he says this to Mr. Sampson -- we want to be sure it is absolutely consistent with the facts.

Do you see that?

A Yes, I do.

Q Mr. Sampson reiterates and allows them to send a letter signed by the Assistant Attorney General, Mr. Hertling, that he is not aware of any role by Karl Rove in the appointment of Tim Griffin; isn't that right?

A Well, as a result of this e-mail, this communication went forward. Is that the point?

Q Yes.

A Yes, I see what you're saying. Yes.

Q So now I'll ask you: Do you put any reliance, any credibility, on statements made to you by Kyle Sampson about the process by which these United States Attorneys were chosen for termination?

Mr. Hunt. Well, these "statements" you were just referring to were not made to the witness.

Mr. Nathan. I understand.

Mr. Hunt. Oh.

BY MR. NATHAN:

Q These statements were made to White House Counsel and to Mr. Hertling, saying this is an accurate representation of what happened, and you can take it to the bank that Karl Rove had nothing to do with this when, 2 months before, he puts in an e-mail that this was very important to Karl Rove and to Harriet Miers; isn't that right?

A Yes, and the one piece of this saga about this letter that I also have on my mind is that when he testified -- when Kyle Sampson testified -- though I don't have a perfect recollection of it -- I believe he said something to the effect that he was assuming that about its being important to Karl rather than his having knowledge.

So, in light of that, I appreciate the point you're making, and I have had some very serious concerns throughout this process about the information that was provided and when it was provided, but that does not lead me to the conclusion that everything someone has told me is not true.

Q The press has suggested that the Attorney General was upset at a part of your testimony when you testified

before the Senate, particularly, I think, with respect to Mr. Griffin. Can you tell us what the Attorney General told you was the reason that he was upset with your testimony?

A I have never talked to the Attorney General about that subject, and I wasn't aware that he was upset with my testimony until I read the e-mails that were released. So my understanding is that in his own mind he thought that there was some performance issue associated with Bud Cummins and that when I said at the hearing that Bud Cummins was asked to resign not for performance reasons but for making an opportunity for Tim Griffin to serve as U.S. attorney, that I was not telling the full story.

Q Well, if you'll look at the exhibit, the March 2nd, 2005 e-mail from Mr. Sampson to Ms. Miers dealing with Mr. Cummins, you might see where the Attorney General got the notion that there was a performance issue with respect to Mr. Cummins, wouldn't you?

Mr. Hunt. I'm looking for that. I'm sorry. Number 13? All right. Hold on.

Mr. Nathan. Number 13. It's one we marked this afternoon.

Mr. McNulty. Yes. Yes.

Mr. Hunt. Would you mind either reasking or rereading it because I was trying to find the document?

Mr. Nathan. No. I'm happy to reask it.

Mr. Hunt. Okay.

BY MR. NATHAN:

Q If you'll look at the second page on Mr. Cummins, you'll see that his name is stricken out.

Do you see that on the second page?

A Yes, I do.

Q If you'll look at the code, it says a "strikeout" means a weak U.S. attorney who has been an ineffectual manager and prosecutor. Would you think that the Attorney General had some basis for believing that Mr. Cummins was asked to leave on a performance basis?

A I don't know the basis for the Attorney General's view that there was a performance issue associated with Bud Cummins and whether it was this document or some other. I just don't know the answer to that.

Q Has the Attorney General ever told you that Senator Domenici ever told him that Mr. Iglesias was not up to the job?

A Has he ever told me that?

Q Yes.

A I understand that to be the case now.

Q I'm asking whether he ever told you that.

A Did he ever tell me that? He may have. I mean, I have had a number of conversations with him over the period of these last several months, and so he may have told me

about his conversations with Senator Domenici at that time.
I think he did, yes.

Q But did he tell you when those calls took place?

A I don't know if he told me, because I knew when these calls took place, because when the matter came to public light after David Iglesias' statements in late February, the Department released information about the call the AG got and the call that I got, so I knew of the time frame that he had talked to Senator Domenici.

Q But you don't know the subject matter of those calls?

A I have an understanding in my mind right now of what the subject matter was, so I'm pausing to try to understand when I got it.

Q Right. When did you get those?

A Either at the time that the matter came up -- that is, I was informed. By that, I mean --

Q What do you mean?

A -- by the time of late February of this year --

Q '07?

A '07.

-- when David Iglesias revealed that he had received those two phone calls in October, and the Department then in response to that whole story explained when we had received calls from Senator Domenici.

Sometime from that date until now, I have learned -- it's my understanding that the Senator told the Attorney General things similar to what he told me on October 4th.

Q But you don't know anything contemporaneous about those calls?

A I don't.

Q And you don't know what the subject matter was --

A I don't --

Q -- of those calls?

A -- not based on anything I was told at those times.

Q Not based on any knowledge you had at any time prior to February of '07?

A That's right. Prior to February of '07, I had no knowledge of the substance of those calls or I was also not aware of those calls. That is to the best of my recollection. It may have been when I -- as I said before, my best recollection is that I told the Attorney General or Kyle about the call I got, and I don't recall today, sitting here, that I was told that the Attorney General had received a couple calls, but I might have been told at that time.

Q Are you aware as you sit here today that on October the 4th, 2006, the same date that you had your conversation with Mr. Domenici, a poll was released in the House race between Heather Wilson and Patricia Madrid which showed that

Heather Wilson was now trailing Patricia Madrid by 10 percentage points?

A No, I'm not aware of that.

Q Are you aware now of the call that Mr. Iglesias got from Senator Domenici about a corruption case in New Mexico relating to Democratic politicians?

A I'm aware now that Mr. Iglesias has revealed a phone call that he received and that Senator Domenici has confirmed that he made a phone call, and I'm not clear exactly on the substance.

Q In October of '06?

A In October of '06, right.

Q And you are aware that the Department had, in fact, returned an indictment against Democratic politicians in New Mexico sometime subsequent to the election and to the termination of Mr. Iglesias?

A That is correct.

Q Do you have any reason to believe that the call from Mr. Domenici was not related to this poll showing that his candidate, Ms. Wilson, was trailing the Attorney General, Ms. Madrid, or the case that came out later where the Department had brought an indictment against Democratic office holders in New Mexico?

A I have no basis for knowing whether there was any connection between the call I received and the facts or the

issues that you're talking about.

Q Have you ever contacted the Senator and asked him if that was what led him to say that Mr. Iglesias was not up to the job?

A No, I have not.

Q Did you ever ask him what led him to make that suggestion to you?

A No, I have not.

Q Are you aware of any other complaint that Senator Domenici has against David Iglesias other than not bringing this indictment against these Democratic office holders prior to the election of November of '06?

Mr. Hunt. That question assumes that that was his understanding or the basis for the Senator's concerns.

Mr. Nathan. Okay.

Mr. McNulty. Yes. Could you rephrase that? Because I'm not sure I can answer that.

BY MR. NATHAN:

Q Okay. Well, leaving aside whether or not the Senator was upset about not having an indictment prior to the election, which is what he asked Mr. Iglesias to do, do you have any reason to know what led the Senator to be upset with David Iglesias and to make this call to you in October of '06?

Mr. Hunt. I'm just going to register the same

objection, but you can go ahead and answer it if you can.

Mr. McNulty. Thank you.

I just would say I have no information as to what was on Senator Domenici's mind or what motivated him to make the call that I had on December 4th with him other than what he stated in the call.

BY MR. NATHAN:

Q Mr. McNulty, do you have any knowledge of the background to the indictment of a woman named Georgia Thompson in Milwaukee?

Mr. Hunt. I just want to be careful, so I will note for the record that, as you know, the witness will not talk about any pending investigations.

Mr. Nathan. This is not a pending investigation.

Mr. Hunt. I'm not saying it is or is not.

Mr. Nathan. This is a completed litigation of which, if you don't know it --

Mr. McNulty. I know it.

Mr. Nathan. -- the 7th Circuit issued an opinion in which it stated that Ms. Thompson was innocent and entered a judgment of acquittal. So I'm confident, once there is a judgment of acquittal, there is not any continuing investigation of Ms. Thompson.

BY MR. NATHAN:

Q Would I be right about that?

A I don't know the answer to that one way or the other.

Q With respect to that matter which ended in an acquittal by the Court of Appeals and a declaration that she was innocent, are you aware of that case?

A My knowledge of that case is limited to what I have seen in the media. I have no personal involvement in that matter.

Q Are you aware that that prosecution was discussed in the gubernatorial election in Wisconsin because the indictment and the trial preceded the closely contested gubernatorial election in Wisconsin in 2006?

A Only by media reports have I heard of that.

Q Mr. McNulty, will you agree with me, in the fair and impartial administration of justice and the acceptance by the public of a fair and impartial administration of justice, that perception is very important?

A Perceptions are an important part of our overall work at the Department of Justice.

Q With respect to the termination of Ms. Lam, isn't it a fact that the U.S. attorney community and the public recognized that one of the most significant prosecutions in the Southern District of California was the indictment and conviction of Congressman Cunningham?

A In my words, I would say that the Cunningham

prosecution, successful prosecution was a major accomplishment in the Department of Justice.

Q And that is one of the things that Ms. Lam is most known for in the U.S. attorney community and in the Southern District of California; is that right?

A That may very well be true.

Q In addition to that conviction that she obtained, her office was also investigating at the time of her termination a very high ranking official in the CIA.

Mr. Hunt. Again, I have to --

Mr. Nathan. No. It resulted in an indictment. This is a public matter.

Mr. Hunt. To the extent he can answer questions that are public knowledge, that's fine, but to the extent you're asking anything that would tend to confirm or reveal something that is not public, he can't answer.

Mr. Nathan. No. I'm only asking about publicly available.

Mr. Hunt. Okay.

Mr. McNulty. I'm aware of the indictments of two individuals out of the Southern District that are connected to the CIA.

BY MR. NATHAN:

Q And one of them involves a person who was the third ranking official of the CIA; is that right?

A That is my understanding.

Q Before that indictment was brought she was terminated, wasn't she?

A Right. She was asked to resign on December 7th, and I believe that indictment was returned near the end of her tenure in February.

Q So I'm asking you to give us your views with respect to what is a fair and reasonable inference on the part of the public and of the U.S. attorney community. We have unexplained terminations of seven U.S. attorneys -- correct? -- as of January of '07, completely unexplained.

A We have seven resignations --

Q Seven resignations which were asked for --

A -- which takes a great deal of effort to try to explain.

Q But at the time no explanation was given to them or to anyone else about it as of December 7th?

A On December 7th, the individuals were asked to resign and were not told what their reasons were.

Q All right.

Mr. Miner. I'm going to object. There's too much cross talk, and I think it's almost impossible for the court reporter to take it down and for this transcript to be used, so if everyone could be mindful of that.

Mr. Hunt. Thank you.

BY MR. NATHAN:

Q So we have seven U.S. attorneys who are asked to resign with no reasons given, correct?

A Yes.

Q One of them, Ms. Lam, had brought this highly publicized conviction of a prominent Republican Congressman, correct? One of them had received a phone call, a few weeks before his termination, from a Senator in New Mexico, asking him to return an indictment against the Democratic office holder prior to the closely contested congressional election in his State, correct?

Mr. Hunt. Are you asking the witness his personal --

Mr. McNulty. I don't know if that's the whole substance of that phone conversation, but that's one of the ways in which it has been characterized.

BY MR. NATHAN:

Q Yes. A third one is U.S. Attorney McKay, who you know from the documents here, who was criticized by Republicans in the State of Washington for not being more proactive during the dispute over the election results on the gubernatorial election in 2004, correct?

Mr. Hunt. I will object to that again as assuming something that he said that you know. I don't think it has been established that --

BY MR. NATHAN:

Q Well, have you seen the documents, for example, where Ms. Miers said to Mr. McKay we are not going to make you a U.S. District Court judge because there was a lot of criticism of you because you didn't go after voting fraud in connection with the State of Washington's gubernatorial election?

A I don't know if I've seen it, but I think I am familiar with what you're talking about there in terms of a conversation between Ms. Miers and Mr. McKay.

Q With respect to U.S. Attorney Charlton, you have seen the press -- I'm not asking you to confirm it, but there have been leaks in the press about the investigation of a Republican Congressman and a land deal corruption charge not yet brought, but that is in the press, of a prominent Republican Congressman in Arizona that was ongoing prior to Mr. Charlton's termination, correct?

A The press reports along those lines --

Q Yes.

A -- seem to be generally like that or that seems to be one of the issues.

Q And Mr. Biskupic, the U.S. attorney in Milwaukee, returned an indictment against a person who has now been adjudicated innocent who was affiliated with the Democratic administration in Wisconsin, and he continues to be the U.S. attorney in Milwaukee; isn't that right?

A He continues to be the U.S. attorney. That's correct in that case. You've summarized that case correctly.

Q All right. So now we'll talk about the perception of why these people were fired and the connection between public corruption cases.

Isn't it a fair matter for the public and for Congress to infer that those who indicted and pursued Republican office holders lost their jobs, and those who didn't pursue Democratic office holders as timely as some Republicans wanted and those who pursued innocent people in the Democratic administration retained their jobs?

Isn't that a fair way to look at this matter?

A I don't think so.

Q Tell me why not.

A Well, I appreciate the effort you've gone to to summarize those things, but I view it very differently.

One thing that -- there are a number of things I'm sure you and I fully agree on. We fully agree on the fact that the rule of law and the fair administration of justice is precious to our way of life, and it is the thing that is sort of the crown jewel to America and to all the world, and so it is critically important that not only are cases pursued without any concern for politics, but it is also important that there be no perception of that.

Q Right.

A The fact is that public corruption cases are a high priority in the Department of Justice, and they are taking place around the country, and if you and I were sitting here today having a conversation about -- if you and I were sitting here today having a conversation about seven other U.S. attorneys and not these seven, I would bet you that there probably would be three or four public corruption cases going on in those particular districts. Public corruption cases are going on all over the country all the time.

If the Department of Justice were in a position where it could never remove a U.S. attorney -- which everybody seems to concede that removing U.S. attorneys in some fashion or another can be done. There are a lot of prudential judgments about how it should be done, and I appreciate those concerns, but everybody seems to concede that it can be done. We know that with the change of administrations it is done, and therefore, if it were the case that a public corruption matter, investigation, case were being prosecuted every time there was a change and that it undermined the fair administration of justice, we would never be able to change U.S. attorneys.

So I don't accept the premise that because these districts had public corruption cases going on in them that

it is fair to say that it undermines public perception about the administration of justice. I believe -- and I know in your experience with the Department of Justice that you probably know this as well or maybe even better than I. I believe that these cases are in the domain of nonpolitical, career investigators, assistant United States attorneys and U.S. attorneys who are bringing valuable leadership quite frequently, but if any one of these professionals thought that a case were being undermined or harmed by the removal of a U.S. attorney, they would scream to high heaven, as they should.

So it is my view that we have to find a way to manage U.S. attorneys and make changes when necessary to live with transitions from one administration to the next and yet at the same time work together to make sure that we are not undermining the perception of the public that the rule of law is being jeopardized by these changes.

Q When you looked at that list that was presented to you to tell the Attorney General that you accepted it, did you give any thought to the existence of public corruption cases in those districts, including the Cunningham case and the others we have discussed, to say that this was not a good idea because it might create the wrong impression in the U.S. attorney community and with the public at large?

A It's a good question. Senator Schumer asked me that

question at my hearing, and it is something that is worth considering reflection to.

I did not think through the public corruption implications of the specific U.S. attorneys when I was asked if I objected to these particular U.S. attorneys' being included, and the reason I didn't think that way is revealed in my previous answer, that as a U.S. attorney I instinctively don't view the removal of a U.S. attorney as jeopardizing a case.

You know, if I get a call as a U.S. attorney and I'm told to clear out in a day, as some U.S. attorneys have been told in the past, or in 2 months or 3 months, I would be very disappointed perhaps but my first thought wouldn't be, "oh, there goes a terrorism case in Eastern Virginia or a public corruption case in Eastern Virginia," because I would know that the people who work in the U.S. Attorney's Office in Eastern Virginia, just like in every other district, are going to keep that case going strong; there is going to be a person replacing me who will keep it going strong, and so when I -- the point I'm making here -- and I'm not summarizing. I'm just saying that, when I got that question put to me about the effect it would have, it just wasn't basic to my nature as a U.S. attorney to think that it affected an ongoing case.

Q But I suggest to you that your view on that is a

little limited, with all due respect, Mr. McNulty. The question is not whether an existing case will be stopped because the U.S. attorney is terminated.

The question is: With respect to the remaining 80 U.S. attorneys who say, "if I go against Republican officials, my tenure here is going to be limited, and if I go against Democratic officials, I'm going to get the John Marshall Award for prosecution," how could they have any different view when they see that those who went against Republicans, like Carol Lam, or who didn't bring an indictment against the Democratic candidate before the election are terminated and a guy in Milwaukee who prosecutes an innocent person remains in office?

That is the question, not with respect to some existing corruption case in that office where agents are working on it, but where is the U.S. attorney in the other jurisdictions going to lead his office for the remainder of his tenure, and how would that affect it?

A Three or four quick things.

First of all, there are other U.S. attorneys. You have to factor into your analysis there are other U.S. attorneys who are now investigating, who will investigate in the future Republicans. That is certainly indicia of some lack of chilling effect upon U.S. attorneys. It is an important point to keep in mind.

It is also true that it assumes that there is no other basis for the resignations of those U.S. attorneys, and I know you're working hard at trying to -- I don't say that negatively. I'm sorry -- distinguish between those reasons and these others, but I'll maintain with you that there are justifications, and just the -- you know, if you're a U.S. attorney right now and you're looking at this whole affair and you're looking at San Diego -- you and I will never know this for sure -- and if we could take a poll of every other U.S. attorney, I would be prepared to bet you more than a pint that the fact is that they would say that the reason for Carol Lam's departure is about the gun numbers, which most U.S. attorneys were really surprised to see how she was able to not do gun cases when they were being forced to do gun cases and those immigration numbers rather than say it is because she was following up on whatever the Cunningham case involves. I don't think you'll find the U.S. attorneys think that way.

Q Let me ask you about that.

First, you said, if an agent thought that this were having an effect, he should scream bloody murder.

A You're going to mention San Diego.

Q Didn't the FBI agent in San Diego scream bloody murder with respect to "it's politics"?

A I don't know if it was bloody murder or what he

screamed, but he did make a public comment.

Q And then he was criticized by the Department for making the comment, wasn't he?

A I don't know for sure how that occurred. I would have to verify it.

Q First of all, is he leaving his job any time soon?

A My understanding is he is retiring for no reason associated, to my knowledge, with this.

Q So he raised a matter, and he is no longer going to be --

A Senior FBI officials, Special Agents in Charge, are retiring very quickly these days, and I don't know if you should assume this has anything to do with that. The Director of the FBI does not believe that. He stated that before the Senate in his testimony, and I wonder -- you know, look. The Special Agent in Charge in the Southern District of California, I'm sure, had a very positive, good relationship with Carol Lam and wanted to be supportive, and I appreciate that and admire that, but whether or not that reflects his genuine view that his agents are somehow not going to be as successful in doing their work and that the AUSAs will not be as successful in doing their work -- I would really be surprised that that is actually his view.

Q With respect to the public perceptions both by U.S. attorneys and the Congress and the public, do you recognize

that the adverse perception is influenced by the fact that there were no reasons given at the time, that there are no documents prior to the termination setting forth what the reasons are, and no explanation was provided contemporaneously with these events?

A I think that's a fair criticism of the process. The process has not served the Department well in being able to explain, justify the actions that were taken by not having a clear record, by not providing those individuals with the information. I accept that criticism.

Q And while I'm not going to take you up on your wager -- which I assume is lawful, but I don't know.

A That's true. I have to be careful.

Q There have been press reports and others stating that morale in the U.S. attorney community has been very adversely affected by these activities, and there has been criticism of you and the Attorney General in that community; is that true?

A Well, it's not a simple answer "yes" or "no," and I have no doubt that the U.S. attorneys have had -- that many U.S. attorneys have had concerns about what happened, there was disappointment. The disappointment that the U.S. attorneys have had towards my conduct is something that causes me great personal pain. These were people who I view as friends and colleagues, as I served with most of them.

As we try to assess the morale of U.S. attorneys, it is a mixed bag of reaction. Some U.S. attorneys come from professional circumstances where they view this as Washington stuff. Others view it -- particularly those who come from the ranks and who work their way up, they're very concerned, and they've expressed that. So we've had a mixed reaction.

I personally have talked to a lot of U.S. attorneys, have put a lot of time and effort in the last few months in trying to address the harm that has been done to them, and I think progress is being made, but I do think that this whole matter has taken its toll in some ways upon the U.S. attorneys, and I'm hopeful that that can be substantially improved upon with time.

Q Has it also taken its toll on the career prosecutors at Main Justice and on assistant U.S. attorneys around the country?

A You know, that's a little more complicated, too, because my experience with prosecutors and with civil attorneys is that most of them just love their jobs and go about their work and try not to pay too much attention to a lot of other things that go on, and so as I have inquired about that I have also received some assurances from a number of U.S. attorneys who say, "My folks are great. They're working hard. They love their job. They're doing a

great job. Things are fine." That's not to say I haven't heard concerns expressed about people who feel like there's a cloud over the Department and its credibility, so I understand that, too, but I do believe that the morale -- as I sit here today as Deputy Attorney General and in my responsibility for overseeing the day-to-day operations of DOJ, I do believe that the morale of the troops is good because I think they are highly motivated people who like what they do and who believe that they've got great jobs.

I got a kick out of seeing a press release recently by the individual who runs the Association of Assistant United States Attorneys. Predictably, among the assistants, the view may be, you know, "we rank higher on the list what we are being paid, the budget cuts in our office, the lack of adequate support staff, and the desire for retirement. Those are things that rank high on our list."

You know what? That kind of rings true with me in terms of the way AUSAs work. They've got a job to do; they like doing their job, and the things that bother them the most are the things that affect that environment.

Q This was a poll that was taken?

A No. I saw a release by the Executive Director of the National Association of Assistant United States Attorneys.

Q Does it ring true with you that a Washington

Post/ABC poll shows that two-thirds of the American public believe that these firings were for political reasons and not for performance reasons?

A Well -- and I say this with all due respect to everyone here who has put a lot of time and effort into this because I understand you have to do your job, but I would be less than honest if I didn't say that I believe that poll reflects the fact that for the past 4 months we have been on the receiving end of a ton of criticism and news stories and so forth. So I'm not sure, and that reflects, perhaps, perception, but I'm not sure if that's a fair perception of what actually occurred.

Q Has the Attorney General asked you whether he can continue to be effective as the Attorney General?

A No.

Q Have you volunteered an opinion on that subject to him?

A No.

Q Do you have an opinion on that subject?

A No.

Mr. Nathan. Okay. I think I have no further questions.

Mr. Hunt. I just have one comment, though.

Mr. Nathan. Yes.

Mr. Hunt. That is that -- and you didn't ask me that

question as a career official with the Department of Justice, but if somebody wants to boost the morale of career officials with the Department of Justice, Congress might boost the pay of career officials with the Department of Justice to match the private sector or at least get it somewhere in the neighborhood. That would do more than anything to boost morale.

Mr. Nathan. I'll mention that. When I see the budget chairman, I'll mention that to him.

Mr. Flores. We can go off the record.

[Recess.]

Mr. Flores. We'll go back on the record. Thanks.

EXAMINATION

BY MR. FLORES:

Q Mr. McNulty, again, thanks very much for making yourself available for us for the length of the day today.

A You're welcome.

Q I don't expect at this point that I'll need the full time remaining. I'm going to have a number of questions. I'm a little more narrative. I'll have maybe a few questions about some documents, a few clarifying questions about your testimony, and I hope to be done before too long.

Let me start with something you mentioned in your earlier testimony, which was the turnover in your class of U.S. attorneys when you were at the Eastern District of

Virginia.

Do you know if there was anyone in that class who resigned voluntarily following performance issues that were brought to him or her by senior DOJ management?

Mr. Nathan. Did you say "involuntarily"?

Mr. Flores. "Voluntarily."

Mr. Nathan. Resigned voluntarily because of performance problems. That's your question?

Mr. McNulty. From time to time, issues arise with U.S. attorneys. They may be the subject of an OPR investigation. They may be the subject of -- these issues may be the subject of information that has not yet gone to OPR but will be going to OPR, and so, in terms of the use of the word "performance," I think this might fall more into a category called "misconduct," but there is sometimes a gray line between performance and misconduct and issues that come up in the course of those attorneys' tenure.

The way those are dealt with historically at DOJ -- and to my knowledge, the process has not changed for many years moving from administration to administration -- is that David Margolis in the Deputy's Office will handle the matter, and he will deal with the Executive Office; he will deal with the OPR if it is an OPR, and he will have to deal with whoever is doing personnel at the Department, and typically, that is somebody out of the Attorney General's

Office, and they will have to check with White House Counsel's Office or some White House personnel because it may involve seeking the removal of a U.S. attorney. Those are very confidential matters. They rarely -- local media sometimes will pick up on them and speculate as to why somebody has departed the office. Frequently, the reasons given by the individual will be not clear, but they may very well be connected to a problem that has come up. That goes on from one administration to the next, and when you do David Margolis' deposition, he can give you a feel for the frequency and the spacing of when those things arise.

So, in answer to your question, there very well may be or were individuals who were in my class of U.S. attorneys; that is, the first term of this President and into this second term, who fell into the category of resigning, being asked to resign, being encouraged to resign because of conduct or of issues that are associated with performance. Again, that line between conduct and performance can sometimes be a little gray. Most of the time it's going to be a conduct-related thing, and it won't be like a failure to follow DOJ priorities.

BY MR. FLORES:

Q But is it your testimony that sometimes it may be the latter or some other --

A It may be, but it is going to be -- and again, I

don't mean to make this difficult, but as to those things that fall into performance in more of the policy and priorities way, they tend to take more time to develop, and so it's not surprising that you would be well into a second term where those issues may have clarified versus earlier on in an administration where we are still kind of -- people are getting their footing, and their track record is being developed as to how well they're following the Department's procedures and policies and so forth.

Q Okay. Let me turn now to some questions about the U.S. attorney review process. We have been talking about specifically today --

A Yes.

Q -- the one that led to the request for resignations in December of last year.

In the course of that process from the time you first learned of it, did you exercise anything you would characterize as independent initiative of your own to make sure the process moved forward to a conclusion or otherwise was facilitated?

A I wasn't involved -- by "process" are you referring to the evaluations of U.S. attorneys with an eye towards seeking resignations?

Q Yes.

A I wasn't involved in that process at all. I wasn't

aware of it until I was approached in late October to get my reaction, and so I think your question is getting at what kind of role I might have played before that. I didn't have a role before that.

Q No. I was asking also after that time period.

Do you feel you did anything yourself to take initiative with the process, to exercise, embrace any ownership of it to ensure it moved forward to a good conclusion?

A I did some things, as I think I have mentioned to Mr. Nathan, concerning expressing some concerns about the substance of the plan, but I didn't take any initiative to ensure that the process continued forward. So if, hypothetically, in mid-November the idea of seeking resignation would have been abandoned or not pursued, I would not have personally taken up that issue. I was being asked -- I was being consulted with as to my views on the matter.

Q Okay. To the extent you haven't answered this question already today, please do so now.

Were there concerns that you had about either the fact of the process happening or the robustness of the process as you perceived it in October of 2006 when, if I recall correctly, Mr. Elston came to you regarding Kyle Sampson's contact with him about it? Did you have concerns on those

fronts about it?

A The only thing I recall at the time that I was presented with this was being somewhat surprised about the fact that it was going to be happening. I didn't know enough, at the time that I was approached, about the process. I have learned or I have heard more about this process as this story has come forward, but when I was approached in the time frame I have described -- late October or so -- I did not have any information to know what the process had been to have views as to its inadequacy or not.

I mean I certainly would have been able to know one of the things the Attorney General said in his hearing last week, which was that he believes that one of the weaknesses of the process was that I wasn't involved, and I probably -- that is a conclusion I could have reached at the time when I was first asked. I have tried to explain it a little bit to Mr. Nathan that that fact was balanced in my mind, to some extent, by the fact that I didn't handle the personnel, and no one in my office was involved in personnel with the exception of David Margolis' ongoing responsibilities in the selection of U.S. attorneys and in dealing with the issues, the concerns. So my mindset at the time was to be more deferential to the Attorney General's Office where especially U.S. attorney personnel matters were handled.

Q Okay. At the time that you learned of the process and as you were approached during it, between that time and December 7th of last year, did you have an assumption that the process by which recommendations and decisions to seek resignations of U.S. attorneys would be more robust than it turned out to be?

A Let me see if I understand the question.

Did I have, at the time I was approached, an assumption that the process would be more than it turned out to be?

Q Yes.

A I don't know if I can -- I don't recall any specific thoughts concerning my views of the process. One reason for that might be that, for most of the names that were on the list, I had some personal experience and in some cases extensive personal experience in dealing with the problems that I associated with those individuals. So I didn't spend much time thinking about how it is that, you know, most of the names were there, because I was aware of the issues and concerns that I had dealt with, and perhaps that's why I didn't have -- that's why I don't have a memory now of having specific concerns about the process.

Q Did you assume during that time frame that others in senior department leadership who you expected or knew were being consulted would have similar levels of knowledge upon which they might reasonably rely in making recommendations?

A Yes, I assumed at the time I was being consulted; it would have been reasonable for me to assume at the time I was being consulted. I just can't specifically remember what I was thinking at that moment, but it would have been reasonable for me to assume that others had the same information or similar information or some of the information that I had concerning these individuals so that if they had been consulted they would have been able to provide the same kind of information.

Q Okay. Let me jump now to the individuals. I'll come back to this generally, perhaps, later, but I would like to ask you some questions about whether there is any other personal knowledge you had about -- or that would have supported concerns you had with the individuals who were asked to resign that did not come out in the earlier questioning.

The first of those people whom I'll mention is David Iglesias. Is there any further information or belief that you had concerning his performance as a U.S. attorney that affected your opinion of whether his resignation should be sought?

A Well, as I said before, I picked up through conversations over -- at the time that I was deputy for a year at that point, I had picked up some conversations about the sort of approach that was taken, the aggressiveness, the

ability, and things that were less than positive.

In other words, I had some information that had just come to me in the course of that year, through conversations and so forth, that was related to the style or approach that he took as a U.S. attorney that were similar to or not inconsistent with the things that Senator Domenici said to me in a phone conversation. So prior to that time that I saw the name that I was responding to, there were other, you know, miscellaneous things that I had picked up in conversations that were consistent with that criticism by Senator Domenici on October 4th.

Q Do you recall with any more specificity what those might have been?

A Well, I recall a comment made to me by a judge one time at a meeting I was at in the summertime.

Q Of what year?

A What's that?

Q Of what year?

A That's the summer of '06.

He is a judge who sits in the Southwest. I believe he is on the -- I was at a bar event or a judicial conference event. That's what it was, the Standing Rules Committee, I think it was, in the summertime, and he had made a negative comment about not, you know, being aggressive. I just didn't even respond to it. I think it was just a passing

comment, but that's the only specific thing I can recall.

I just remember that when Senator Domenici made those negative remarks, it didn't strike me as being out of the blue or totally inconsistent with other things that I had heard. There are some U.S. attorneys who, if someone called me and made a negative comment about them, I may not have any association at all with anything else. I just don't remember reacting that way with those criticisms.

Q Do you recall what kind of aggressiveness the judge might have been referring to? Was it aggressiveness in prosecution in the office or was it personal aggressiveness or something else?

A No. I think it had to do with being effectively running the office and dealing with the problems that were existing in New Mexico.

Q Is that the only more specific thing you can recall about Mr. Iglesias?

A That's the only thing I can recall right now, yes.

Q Okay. Next, I would ask about Mr. Bogden.

Is there any other information that affected your view of whether his resignation should be sought?

A No, I didn't really have any other information on Dan Bogden.

Q Have you learned of anything since that would confirm the wisdom of the decision to seek his resignation?

A Well, what I have heard since is basically consistent with what I understood to be the case at the time of a lacking of assertiveness and aggressiveness and a dynamic nature. I think, when people hear that, they may be confused or really puzzled by that, and I may need just a moment to explain that point a little better, because inside the Department and its leadership that probably means more to many of us than it does to those on the outside. There are a number of U.S. attorneys who, from the moment they arrive, have an aggressiveness that seems to really push the office to another level, and it's not only just seen in statistics; it is often seen in the kinds of cases that come up, and it's seen in the way in which they interact in the U.S. attorney community and with the leadership that they exercise, and when you see U.S. attorneys like that, you start to set the bar kind of high for what it can be like to see a person who really takes initiative, and I think that sometimes U.S. attorneys are judged against that kind of standard, and so when they're seen as lacking in some ways in terms of assertiveness or aggressiveness, that's what is meant. It's meant that they are not performing at that highest standard of energy and initiative that can be done, and if you lay that up against a district where it's a higher profile district, it might be accentuated more, and that's how I have come -- that's basically how I understood

it and it was explained to me and ultimately why I didn't object and how I've come to continue to understand the situation there.

Q So it would be fair then to say that a U.S. attorney who fell short of that bar that you just described would present a situation in which the Department, in reviewing the U.S. attorney corps, could decide reasonably, "in this district, we can do better"?

A Correct. That's how I think the Attorney General himself looks at it as to where we can make change and where we can do better.

Q I'd like to ask you about Mr. McKay, but let me first get back to a question about Mr. Iglesias.

As you may know from testimony in front of this committee back in March, Mr. Iglesias claimed he was contacted by Senator Domenici and Representative Wilson in the latter part of last year.

Do you believe that, whether or not he would have ended up on the final list and his resignation would have been sought, it might have been a different story if the Department leadership had known of those contacts, for example, because he had reported them to the Department consistent with procedures?

A It's a good question, and I know the Attorney General addressed it, to some extent, at his

hearing.

My way of saying it would be it would have been a very important consideration or factor, in our perspective, on how we viewed comments that had been made. Comments that have been made have been general in nature and not case specific. These appear to have been case specific issues, and so it doesn't necessarily mean that the general comments were not still valid, but it might have been an important factor in our perspective. Beyond that, I'm not going to speculate as to whether or not we would have come to a different decision, but it would have been very, I think, important information to have.

Q Do you think that the failure of a U.S. attorney to report that kind of contact to the Department, consistent with procedure, reflects what you would call an example of very poor judgment, poor judgment, moderately poor judgment?

A Well, I appreciate that. I'm going to refrain from speculating as to how it reflects in terms of judgment, but I will say that I am still puzzled as to why it wasn't given the significance of it in his mind, at least as he has described it, and I can't speculate beyond that as to why it wasn't reported.

Q Okay. With regard to Mr. McKay -- I know you spoke of a number of issues earlier.

A Right.

Q But with regard to the information that you knew about with respect to his performance --

A Right.

Q -- that led to your opinion about whether he should be on/remain on the list, is there any issue that you have not already discussed or is there any further detail about the issues you did discuss that you would like to offer?

A Well, I would appreciate your giving me the opportunity to say something about that --

Q Sure.

A -- because this is something that has been connected to me more because of the letter that was written by a group of U.S. attorneys to me about information sharing, and so I would like the record to at least include my own full understanding of the issue, and I don't think I told this to Mr. Nathan, so I hope I'm not repeating myself.

When I became the U.S. Attorney in Eastern Virginia, I was one of five pilot spots that the Navy Criminal Investigative Service had selected for a pilot project on information sharing using a particular brand of technology known as LInX -- capital L, capital I, small N, capital X. This is a technology that brings the data that exists in police department records together so that, at one spot, you can, like a Google search, enter information about any particular thing you know -- the vehicle number, the license

plate number, the name of a person -- and you can search the data of other law enforcement agencies quickly and get hits just like a Google type of search, and then you can go in and look at the text of those reports. It's a very attractive and exciting technology for what is really the cutting edge in law enforcement work, the sharing of information.

John McKay believes to his core that this is the way to go, and he and I actually developed a good working relationship because Seattle, Norfolk or Hampton Roads, Jacksonville and a few other places -- Hawaii -- were the core places the Navy invested in in doing this.

RPTS CALHOUN

DCMN HERZFELD

[3:40 p.m.]

A But -- and then secondly, when Jim Comey was Deputy Attorney General, he was faced with this question: How do we take Federal law enforcement records, FBI, DEA, DOJ law enforcement agency records, and how do we share those into the same process technically with the locals who are sharing information.

John's view, John McKay's view, was that those records have to be shared as fully and as openly as possible; that is, looking into the full record of the Federal law enforcement agency. The Federal law enforcement agency has had some real concerns about that and technically can raise all kinds of challenging things.

So Jim Comey decided to set up a pilot where Seattle was chosen for a test of bringing together all the Federal records called 1 DOJ as our name of the initiative and to share those with the Northwest Information Sharing Database.

John describes that decision to create a pilot as a decision by my predecessor to endorse LInX, a brand of LInX, as the way of sharing information. That is not correct. What Jim was doing was promoting information sharing, an important thing, and using that as a pilot.

But in San Diego they have a different technology; in

Texas, in New York, in St. Louis, different technologies for how to share information, and LInX is just one brand among other brands, other styles, other technical abilities. In San Diego, for example, it's what's called a structured data system, where you go in and enter information, and you get back a screen, and some law enforcement people prefer that approach than the full test for a variety of reasons.

So what John McKay and I finally discovered in early of 2006 now that I was Deputy Attorney General, and when I became Deputy Attorney General, I decided that this issue was of importance to me and I was going to invest time and effort in trying to promote it in a fair way. One of the things I learned quickly from the people that know this stuff quickly at the Department is we have to be brand neutral. We can't endorse LInX. It's a proprietary product. It's owned by a particular group of individuals. We can't promote LInX as the exclusive way to share information.

We have to make sure that we promote information sharing and encourage the other districts like San Diego and other places to use their technology. This is way more than anybody in this room wants to know, I'm sorry. I'm almost done.

So as a result, I established a more neutral approach. John believes that LInX is the only way to go. And so from

the springtime on, he set himself about going around the country promoting LInX and criticizing the Department, not necessarily me personally, but criticizing the Department for its failures toward law enforcement information sharing, which was a big blow or a bad message to local law enforcement. Police chiefs around the country think information sharing is a key thing to do, and the Navy was being told that the Department of Justice doesn't support it.

And I was working hard and I had two people on my staff working very hard to try to educate the country that we were for it, but for it in a brand-neutral way, and where people wanted to do LInX, fine, but it was the choice of local law enforcement, not the choice of DOJ.

And he wouldn't listen to that. He just continued to promote that until he led up to that letter where in that letter he calls on me and got his colleagues to sign an endorsement of the LInX approach as well as an endorsement of mandating, it says in the letter, mandating that all the Federal agencies share their data in a full way, which DEA and FBI have very serious concerns about doing.

And so that's why I responded back in that e-mail that I was disappointed that I was being in a sense cornered or being put in a public way. That letter was shared outside the Department to sort of capitulate to what John's agenda

was on law enforcement information sharing.

Mr. Nathan. Can you just state the date of that letter, please?

Mr. McNulty. I believe it's August 18th or thereabouts.

Mr. Nathan. August 30th, 2006?

Mr. McNulty. I will look it up real fast. It is right here. The letter is dated August 30th, 2006.

BY MR. FLORES:

Q The tour that Mr. McKay took around the country to promote LInX, that include statements critical of the Department's position to officials outside of the Department or strictly to officials in the Department?

A No, outside the Department. Now, I want to be careful; I don't have chapter and verse on those statements. My information was largely coming to me from two individuals on my deputy staff, one of whom was full time responsible for the promotion of the law enforcement information sharing effort, and another who was spending a lot of time on it. And those two would report to me on a regular basis. One of those two I met with every single morning because I have a national security meeting every morning with that team.

So I was getting from them constant reports of John just said this, or John was over there doing that, or John saying the Department doesn't care about information

sharing. And it was just a repeated process.

Q Okay. Thank you. Don't intend to jump around as much, but there are a few more questions about Mr. Iglesias, the concerns you had about Mr. Iglesias prior to late October '06. I forget if you mentioned earlier, but had you shared those concerns with others in the Department?

A I probably had some miscellaneous conversations, but nothing that comes to mind right now.

Q Do you recall with whom those might have been?

A I don't want to guess because I really don't have any specific recollections.

Q I appreciate it.

Do you recall from whom else within the Department within that period that you picked up any other concerns about?

A I don't have any specific recollections.

Q To turn to Exhibit 5, this is the report on the District of New Mexico from November of 2005, that evaluation. If I could draw your attention to the fourth paragraph on the first page, appears under the heading "United States Attorney and Management Team." Can I ask you to just review that quickly, please?

A Yes.

Q Could you please answer for me whether when you read the first sentence, The first assistant United States

attorney, parens AUSA, close parens, appropriately oversaw the day-to-day work of the senior management team, effectively addressed all management issues, and directed the resources to accomplish the Department's and United States attorney's priorities, close quote, that that statement could refer simply to whether the first assistant U.S. attorney was doing well those responsibilities that had been delegated to him by Mr. Iglesias, leaving totally aside the question of whether that delegation had been appropriate?

A That's correct. I read it that this is the evaluator's efforts, and their typical way to be as positive as possible to attribute to the first assistant the good work that first assistant was doing.

Q What is your opinion of the importance of that delegation to whether Mr. Iglesias was exercising sufficient leadership in his office or otherwise sufficiently performing as the U.S. attorney in that office, if you have one?

A Would you repeat the question?

Q I guess I could rephrase it. Do you think that making such a delegation of those categories of authority is consistent with the sufficiency of performance in the office that you would expect of a well-performing United States attorney?

A I don't think there's enough in that information to shed much light on the question of the adequacy of the performance of the U.S. attorney in and of itself. I think that could be interpreted in a variety of ways, and I would be cautious as to how I would interpret that as reflecting positively or reflecting less than positively on the U.S. attorney himself. It just states that this work is getting done by this first assistant, and I don't want to read more into it than appropriate.

Q I appreciate that. My question was not precisely that, it was more to if there had been just a delegation in the U.S. Attorney's Office, what would that mean in terms of whether the U.S. attorney was fully discharging his responsibilities and performing well? If you can offer an opinion.

A It's hard to say in the abstract. It could be a positive statement about someone who understands how to delegate, and could be a statement that raises questions about how engaged personally the U.S. attorney is. It just, again, could range. I don't want to try to read too much into that.

Q Okay. If I could turn your attention also to Exhibit 6. This is the letter from Michael Battle to Mr. Iglesias in January of 2006. Just a simple question. Based on your knowledge and experience, is the time between

January 2006 and the time on which David Iglesias appeared on the list of attorneys of his resignation to be sought sufficient for performance problems in U.S. attorneys' performance sufficient to seek his resignation to manifest themselves?

A There would be enough time between January and November for a person to have issues of concern arise. I am not saying specifically in relation to David Iglesias, I am just saying there is enough time in there because it wouldn't be in the category of priorities necessarily because that would be a very limited period of time to get that. But certainly there could be some policy issues that would arise.

I would say that, for example, John McKay's situation, more things came up to affect him. And Paul Charlton, for that matter, would be another example, in the January time -- excuse me, in the '06 time frame than may have existed at the start of '06. So generally speaking, issues could arise in that time period.

Q Turn to Mr. Ryan. The documentation in his case is rather robust relatively. Let me ask simply with regard to performance issues that informed your opinion of whether he should be on the list of those whose resignations were sought, is there anything else that you would like to mention or about which you would like to offer further

detail?

A No. I think that the Ryan situation really focuses on the performance evaluation that occurred in the spring, as best I recall -- I think I have used March in that interview, I think that's the date -- and then the subsequent special team that went out in October of '06. Those two documents, essentially that second document really summarized the significant issues there.

In the case of Northern District of California, interestingly it notes in, I believe, the second evaluation that with regard to priorities, that office was doing a good job. The issue there was all about morale and the performance of the management team.

Q Let's turn now to Mr. Charlton. You have mentioned a number of things that bore on consideration of him in this process. Is there anything else about his performance that you would like to add to what you earlier said that formed your opinion?

A Well, when I reacted to that name when I was consulted, I think two things were foremost in my mind. The death penalty matter -- without taking half as long as I took for LInX, the process we have at the Department of Justice for deciding to seek the death penalty or not is a very well-established process that involves multiple stages. The U.S. attorney is given a great deal of opportunity to

weigh in and express a view in regards to that U.S. attorney's preference to seek or not seek the death penalty.

It begins by coming to the Criminal Division of the Capital Case Unit and presenting a recommendation. The Capital Case Unit is made up of individuals, largely career individuals. I think they put together panels, and occasionally they may not have a noncareer person on the panel, but for the most part that is a very standardized process. They do a lot of capital case review, and their job is to make sure that we have a policy of uniformity in our decisionmaking.

They go over the evidence carefully. They meet quite frequently with the U.S. Attorney's Office, get all the input necessary. Then it comes to my office after the Assistant Attorney General Criminal Division signs off on what the Capital Case Unit has recommended. Comes to my office; I have a team within my office which reviews the recommendation again, and I have experienced prosecutors who look at the case, look at the Capital Case Unit's review, and thoroughly analyze it, bring it to me. And usually they bring it to me through my chief of staff or through my PADAG, depending on who's the most experienced person available to kind of look at the matter, and then it comes to me for final review.

If I see that the U.S. attorney disagrees with the

recommendation, I spend a lot of personal time going over it because I don't like to -- I give deference to the U.S. attorney. I prefer we go with the U.S. attorney's recommendation. So I want to know very carefully why the U.S. attorney's recommendations are not being accepted.

Then I make a recommendation to the Attorney General. In the Attorney General's Office, it goes through another review. By the time the letter is signed that says seek or not seek, that is the end of a process that has been lengthy and involved a full opportunity to voice interests or concerns.

To my knowledge, the only time that a letter to seek or not seek was not followed was this incident with Paul Charlton. What happens sometimes is that a change of circumstance occurs in the case. Evidence is lost, witnesses unavailable, a plea opportunity comes up. Then there is a standard process for submitting it again, having reconsideration based upon changed circumstances, same evaluation, back-up, and we take the death penalty off.

In this case, to the best of my memory, Paul was informed that he should seek the death penalty in late May. He turned around and informed the court that no decision had yet been made and got a time delay, and then I think the record shows that there was a conference call in August, I believe, where he and I spoke about his desire to appeal

this decision.

And when he initially did not accept the letter from the Attorney General to say you will seek, it struck a lot of people at the Department as a rather significant thing, because we had not had anyone just -- it's so well established that you have to follow the Attorney General's decision once that decision is made. It's an essentially an order from the Attorney General. It took folks involved in that aback, and we then proceeded to deal with his desire for us to change our way of thinking. And I had a personal conversation with him about that in August. So that case, by the time I saw his name on the list in late October, that case was pretty clear in my mind.

And then, quickly, the FBI videotaping matter was another very significant thing, because prior to this occurring, Paul, without talking to anyone else, established a process for requiring that any confession in Arizona be videotaped for purposes of evidence in a Federal criminal prosecution.

Well, Bob Mueller personally called me about that because the fact is if the FBI just as one agency is held to a standard like that in one Federal district, then defendants in other districts where their confession is being used in a prosecution will be able to argue that why should we rely on the testimony of the agent when in Arizona

they are videotaping, and we should have videotape in this district. And some judges may be persuaded by that, and it could have caused a real significant effect across the country.

I called Paul and said, Paul, you have made this change you never even talked to me about, and his response was basically, well, don't tell me I can't do it because I have already done it. So I had to figure out how we were going to sort of cope with that. So that was a very significant thing on my mind at the time I saw his name.

Mr. Nathan. May I, as a point of privilege here, because I think it is very important to put on the record, may I ask a few questions about this taping policy?

Mr. McNulty. The taping policy?

Mr. Nathan. Because isn't it a fact that Mr. Charlton told the Department he was going to start this policy, but he never did start the policy? He stopped it at your request. And you asked him to submit a proposal for a pilot program on this so it could be reviewed by all the agencies; isn't that true?

Mr. McNulty. The way I remembered it was. He announced it publicly that this was the new policy. I found out about it and contacted him, and fortunately it had not yet gone into effect. The FBI had not yet started to do that. And because he expressed real concern about the

effect it would have on him personally for having announced it and not being able to do it, I tried to find an accommodation and tried to work with him to see if we could do some kind of pilot in Arizona that would allow him some way forward.

Mr. Nathan. I would like to have this marked as an exhibit and put in the record here.

Mr. Flores. Why didn't you bring it up in your earlier questions?

Mr. Nathan. Because there is no insubordination by Mr. Charlton with respect to the taping. He obeyed you not to start it.

Mr. Flores. I am going to stop you right now. I need to finish my questioning. I would like to get to the Senate people.

Mr. Nathan. I am not trying to suppress. This is an exhibit. I would like to make this point --

Mr. Flores. No, I need to ask my questions, sir. I need to ask my questions. We have heard your questions. I am not trying to suppress any information. We have the document for the record. I need to ask my questions.

Mr. Nathan. If that document is in the record, it will be sufficient.

Mr. McNulty. I will say that I did not mean to suggest in this instance this was insubordination. My point was

that this was a policy or a judgment, put in the category of a judgment. This was an area of what I would consider to be an exercise of poor judgment, not disobeying a direct order.

Mr. Hunt. Do you want to explain any more about why you thought it was poor judgment?

Mr. McNulty. Thank you. My thought is that it was poor judgment to go forward with a significant policy that would have national implications without first getting approval from the Department of Justice, working with the law enforcement agencies, and then announcing it as a policy of the district.

BY MR. FLORES:

Q Let's turn now to Ms. Lam. I know you discussed her detail earlier. With regard to her, is there any other information that informed your opinion of whether her resignation should have been sought at the time that you were consulted that you would like to discuss in more detail?

A I think we have talked about the gun statistics and the immigration numbers.

Q Thank you.

One person we haven't discussed much is Margaret Chiara. Same question for her: Is there more in terms of issues you would like to identify that affected your opinion, or is there more detail you would like to offer

with respect to her?

A Well, we haven't talked about her, so I guess there is nothing that affected my view when I saw her name. I say Margaret Chiara would be someone who would -- on that spectrum of subjectivity and level of dissatisfaction would have been -- there would be less of a serious and established concern that would exist compared to some others. But what I understood and why I did not object is because I understood that there were management problems that had persisted in the office, and that there was a real fraction or division within the office that was holding it back from being able to do better, and so that is what I was thinking at the time when I saw that name.

Q Turn to Mr. Cummins, as some of the questions earlier touched on there was an issue about whether there are performance-related questions about him. As I recall it, you were asked about the Attorney General's reaction to your testimony on February 6th before the Senate. And you had offered your understanding that at least some of that be -- on his part was you understood him to have performance-related concerns about Mr. Cummins. When you state that that was your understanding of what was in his mind, is that based in whole or in part on speculation about what was in his mind, the Attorney General's mind?

A No, it's based on the explanation that I have heard

by -- I can't recall if I heard by the Attorney General directly. I think he mentioned this at his hearing in the Senate, but I don't have clear recollection of how he did that, but that at the time that came out, that e-mail, the Department of Justice, there was a Public Affairs Office explained that it was about that, and that's how I basically learned -- not that I read in the paper, but I learned it from individuals in the Department who had the information as to why he was upset.

Q But you didn't discuss with him precisely why.

A No, I never discussed that with him.

Q So you're not certain why he was upset.

A No, but I would say my certainty as I sit here would be stronger if I could recall more precisely what he said in the Senate, and I had this recollection that he said in the Senate just that, that he thought this was a performance issue associated with Cummins.

Q I understand.

One question that came up earlier concerned whether you had received documentation of all the reasons for which these several resignations were finally recommended to be sought, either at the time of the November 27th meeting or on December 7th, earlier or some other time. Were, to your understanding, the others in senior Justice management who were involved in this we'll call it an informal review of

U.S. attorney performance aware of the information you have just recounted that affected your opinion, and if so, to what degree?

A I have always assumed that the information that I had in mind was known to other people as well. These were not private matters which I was only involved. Knowledge of Kevin Ryan's evaluation or Paul Charlton's cases or Carol Lam's priorities, these were all known issues. Many people have been involved in them, discussed them in different ways.

I think the question is were those concerns that I had concerns that others had as well? I think the answer is yes. Every concern I can think of right now exists with other people.

Q In the minds of other people.

A In the minds of other people, sure.

Q If I recall correctly from Mr. Sampson's public testimony, he described this process at least in part as a consensus-based process. He aggregated information and tried to find a consensus about whose resignation might reasonably be sought, if that's a fair characterization. Do you think that consensus-based approach to gathering information that supported the recommendations might have had something to do with the fact that no document cataloging the reasons that supported the recommendation was

circulated to the group at the November 27th, 2006, meeting or at some other time?

A Yes. I think I know what you're suggesting there; that if what he describes as his process is accurate, and he went about over a lengthy period of time seeking the input of a number of individuals, then that may shed some light on why there was no single collection at one point in time to try to put all that together because it extended itself over a period of time. That may be one way to explain that.

I think that the Attorney General said at his hearing that he felt that the process was lacking for some of that reason. I believe the language he used was it needed to be more rigorous and more structured. I agree with that characterization.

Q In your opinion, to any degree, might it be fair to infer that the reason that such a document wasn't prepared is that the information was gathered largely from the same group of people to which such document would have been presented?

A That's an interesting point. According to Kyle's explanation of the process, he was talking to many of the same leaders in the Department or people in the Department who also were in a position to object, for the most part. I mean, it doesn't overlap entirely, but I think there is something to the notion that he was soliciting views,

according to what he says, of some of the same people who were then being asked for their reaction.

Q Do you recall who first articulated the concept of this process we have been discussing being a review to determine how the administration put together in the last 2 years of its tenure with U.S. attorneys?

A I don't think I do know the answer to that. You're asking me who initiated the idea?

Q Who articulated that concept, framed it that way? Was it yourself?

A That language seems to have been used in different contexts at different times, and so there may have been a number of people involved in choosing to phrase it in that fashion. I think on its face it describes fairly the nature of the effort itself, but I can't attribute that language to any one person sitting here today.

Q Leaving aside the controversy that the resignations have generated, do you think that the fact of the resignations, indeed the position of the Department, is to do better in each of these districts over the last 2 years of the administration?

A Well, to be fair, I have not done the kind of review of where those districts are today to give that an adequate answer. I certainly think in theory it's the case. I think that for some of the districts, to my knowledge, right now

-- and as I said, I haven't given it a full review, but on an anecdotal level, based upon what I know now as to things that have been occurring, I think San Francisco would be a glaring example of positive. Scott Schools is the interim U.S. attorney out there, and Scott is a career DOJ person who is an expert on management issues. And I have checked in with Scott on at least one occasion, and I have had other people who have checked in on him and reported back to me, and he seems to have done an extraordinary job of turning office morale around and creating a different atmosphere in that office. So I can say anecdotally again with regard to that office, I think we have had a substantial improvement on the morale.

I have similar anecdotes I could share, without taking too much time, in just other offices that seem to have had improvements in different ways that were concerns.

Q Please do, if you can briefly.

A Well, I have mentioned -- and I should probably hesitate on the San Diego thing because I should go back to statistics since we've talked about those numbers, but I will hold off. I know Karen Hewitt, the interim U.S. attorney, has made a conscious effort to try to reach out to both immigration and ATF, as I have been told that, and to try to increase the number of cases in those two areas.

In the case of immigration, that office already had

large loads. It was a mixture of types of cases in particular in that increase.

The interim in Michigan seems to be very well liked and off to a good start. I think I will just stop there.

Q I know you have cataloged quite a few performance issues that arose when each of these people's resignations were requested. Can you offer brief views about the relative importance of performance in each of those areas for the U.S. attorneys?

A Before I start talking, make sure I get that question clear. The importance of performance in the areas of?

Q In the areas which you have described with each one of those.

A Like policy.

Q Policy, performance, aggressiveness, morale.

A I think in the area of policy, that is a very important area of focus for the management of the Department of Justice. This was a subject of some discussion at the hearing that both the House and Senate had with the U.S. attorneys. And I think the U.S. attorneys were trying in a reasonable way to explain how you balance local interests with priorities. I think that was a fair -- as I recall it, I think that was a fair and reasonable effort to get into that.

I know that most U.S. attorneys understand, however, that priorities are the essence of leadership at the national level, and that Presidential elections are about priorities, and if we didn't have the ability to communicate to the field that an area is especially important and needs to be addressed, we would not be effective. I think that is true about every administration.

I said at the hearing I had in the Senate that very regularly Senators and House Members at various oversight hearings will raise with Department of Justice officials the concerns they have about certain areas of law enforcement. Now, if we could not turn around and deliver, that would all be lip service.

So if a Senator says, you know, I'm concerned that with these subprime lenders, we are seeing people of less substantial means falling into bankruptcy and foreclosure, and we have to increase our efforts against bank fraud, mortgage fraud particularly, and I want to see you do that, and the leadership of the Department of Justice said, yes, we agree with you, Senator, bank fraud, mortgage fraud is a serious problem, and we're going to get around it; and then we turn around at the U.S. Attorney's Office, which we have in a couple of weeks, and I'll be down there talking about priorities, and I said, folks, this subprime problem is a serious one, and we've got to get on it, and they all shook

their heads and went back to their districts and ignored me, what kind of effective Department would we be?

So I think priorities are important. You have to balance those out. I see it as a U.S. attorney's job is to take the priorities and then to look at the district and understand other priorities that are more local and try to pursue both as much as possible. And so that's one example I think is very important to the success of the U.S. attorney, that you embrace priority, and you don't essentially ignore what the Department is trying to communicate. That's why the gun thing is so important, because that really was our signature domestic policy priority.

With regard to policies, that is going to vary. It's a wide term, and it's going to vary from death penalty policies to advocating change to a policy without the agreement of leadership of the Department of Justice, and thus creating turmoil within the law enforcement community.

Management, it speaks for itself how important it is. And so I don't know if I ventured way off from the question you have asked me, but that issue of just how serious these things are in terms of overall performance I think needs to be underscored.

Q Anything you would like to add about any of the other issues, or would you like to move on?

A Happy to move on.

Q Let me just take a second here. I'm reviewing some of the questions I prepared on individual attorneys.

To the best of your knowledge, was it information obtained from you that caused Kyle Sampson to put any of the people whose resignations who were sought on his list?

A I don't know the answer to that question. All I know is what Kyle has said about his process, and Kyle has said that he went about talking to people and adding names for aggregating information. He may have picked up something that I -- because as I mentioned before, I talked to him regularly about the work of the U.S. attorneys, so he may have been referring to me to some extent. I just don't know the answer for sure.

Q Thanks.

With regard to your hearing before the Senate on February 6th, I think we discussed in some detail earlier what went into that process. I don't want to belabor it too much. I wanted to ask why you adopted the particular focus that you had in your testimony, first of all, about the performance-related bases for these dismissals?

A As we prepared for that hearing. I tried to gather the information that was necessary, and the story, and I pulled together the individuals who were involved in this to get their assistance. And so what I did was I walked that

group of people who are preparing me through the answer to this question about why these individuals were chosen in relationship to performance, and in doing that I noted and everyone agreed, as I recall, that the Attorney General on January 18th appeared before the Senate and referred to performance. I think he said something to the effect that we have undertaken a review of the performance of individuals.

So it was -- we reached a conclusion. I didn't do this by myself, I did this in this sort of cooperation with those who were helping prepare me. We kind of collectively agreed that performance was the term, and that the preference would be to talk in much more general terms, to say we have reasons, these are management decisions by the Department of Justice; the President has a right to remove Presidential appointees, but if that answer wasn't acceptable, that I was going to need to go further, I would use the terminology that the Attorney General had used before.

So when you read my transcript of that hearing, and you might note a certain defensiveness on my part because I have been singled out for a great deal of criticism on using performance-related, but that fact was when you look at that testimony and look at how I prepared for it, the initial notion was that I would refer to the fact that we had reasons, and if the Senators at that hearing insisted on

getting more information, I was going to offer to provide detailed information in a private setting, but then referred to it generally as performance-related.

And so that's what I did. I'm flipping to those notes that Mr. Nathan had referred to earlier where I have actually my handwritten notes for preparation at the hearing. You can see under the question why were these individuals, I had outlined what we talked about in terms of the answer; the Attorney General had acknowledged they were performance-related; number two, various degrees of dissatisfaction, not for cause, but for good reason. We decided not to discuss with the United States attorney because it would unavoidably lead to objections of comparisons, then I would offer information about them in a private setting; and that it was not necessarily based on an objective record. Then I had notes on the side, EARS reports will not be of much help. You should stipulate that point and rule out the intention to interfere with any case or rule out there was misconduct involved by any of the people.

So that explains why the phrasing "performance" was used on that day.

Q Did you ever intend to mislead or misinform the Senate panel about the matter that was before them?

A I have worked on Capitol Hill for 12 years. I have

a high regard for the process of the Congress to do oversight and get information, and I have a very high regard for the importance of truthfulness in everything, but particularly in testifying.

I have spent nearly 24 years in public service trying hard to develop a reputation of honesty. It was my full intention, and I still am confident that I went before the Senate with a desire to speak truthfully, and I spoke truthfully based upon what I knew at the time.

Q Based on your long experience in the Senate and in the executive branch, do you believe that you performed what reasonably normally would be done to prepare for the presentation of a story such as this, rephrase this, for the presentation of information concerning a matter to the Senate --

A Yes.

Q -- that it was exploring?

A Yes.

Q Was there any information that you were prepared to provide to the Senate committee that day, the 6th of February, that either because of limitation of time or the course of questioning or any other reason that you were not able to provide to them?

A Nothing jumps to mind. I mean, these notes reflect some of the points I was going to emphasize. I don't

remember if I had an opportunity to make them just this way. But nothing jumps to mind.

Q Based on the course of your testimony so far today, you confirmed much of the information you provided was based on your own personal knowledge of the individuals involved; was it not?

A You mean like on the 14th when I briefed in more detail?

Q No, on the 6th, or at least the statement that issued.

A The discussion on the 6th was much more of a general discussion, didn't get into specific individuals and reasons. As best I can recall, the subjects that were covered on the 6th, they were matters that I was personally aware of as a result of that time from October forward when I got involved in it.

Q Moving then to the briefing on the 13th, I believe it was, of February to the Senate in private, in preparation for that did you undertake a similarly -- did you undertake similarly an effort that you believe was reasonably required to provide to the Senate the information that it could reasonably expect at the briefing?

A Yes, I think I did.

Q Because of the course of the questioning, there were limits of time. Was there any information that you had

prepared to provide to them at that briefing that you were unable to provide?

A One thing I recall from the briefing was that Senator Schumer, as I described a moment ago, was anxious to move things along. There was a vote that occurred in the process of the briefing that kind of broke it up. It was a little difficult because some of the Senators presented particular concerns, and so we focused more attention on those individuals. Senator Murray was there, and she wanted to get into some discussions about John McKay in particular, and Senator Feinstein wanted to talk about Carol Lam. Senator Kyl showed up briefly and in a sense said he had looked into the Paul Charlton matter and had been satisfied. So we didn't really get into much detail about that.

So the point is that on February 14th, there were issues of more interest at that time than maybe on later dates. And so I got into things that the Senators at that time had a special interest in.

Q In that briefing did you ever intend to mislead or misinform Members of the Senate?

A At that briefing I went to it with the same mindset that I went to in my hearing on the 6th, which was to answer questions and to provide information truthfully.

Q Turning to the period after that briefing, it was reported in a number of press outlets. I have with me one

printout of one of them. It's from Roll Call, March 29th, 2007. I only have one copy. I can circulate it to anybody. I will ask that this be marked as exhibit, I believe -- what are we on now?

Mr. Hunt. 21, I believe.

Mr. Nathan. We added one. It should be 22.

[McNulty Exhibit No. 22

was marked for identification.]

Mr. Flores. Actually, on this copy I have a couple of little arrows to highlight a passage from me, so I will get you a clean and substitute this for an exhibit, if that's okay with everybody.

Mr. Nathan. That's fine.

BY MR. FLORES:

Q This article recounts a statement by Senator Schumer in a March 8th Meet the Press interview.

A Yes.

Q In that interview he is quoted as having recounted that you had called him after the release of e-mails earlier in March, presumably after March 8th, and called and told him that you were sorry for misleading the committee. That's not a quote, that's the newspaper's presentation, so I won't ask you to talk about that. There was a quote that says: I was not told these things were happening by the people who were supposed to brief me, close quote.

Mr. Nathan. Who is purported to be quoted here?

Mr. Flores. Senator Schumer.

Mr. Nathan. Was Senator Schumer quoting Mr. McNulty?

Mr. Flores. Yes.

BY MR. FLORES:

Q I won't ask you to read the whole thing, just that one passage. Is that an accurate quote of what you, in fact, told Mr. Schumer, or Senator Schumer, I apologize, or is there anything more to that particular statement to him?

A Senator Schumer and I had a conversation on the day that the information came out, which I believe was Monday, March 11th, and that conversation basically amounted to my expressing my disappointment that I was not able to provide the information that was now coming to light.

Senator Schumer and I may have a different memory of just exactly what we said specifically to each other. It was a very short conversation. And so I am not going to suggest that he has misstated what I said, but my memory of maybe how I phrased it is a little different than how he has characterized it. But essentially the conversation was just my expression of regret that the information that was coming to light had not been available to him and to the committee in the way that they would have rightly expected it to come to them.

Q So was that the sum and substance of the

conversation, or did you also offer any further information about the process of reviewing the U.S. attorneys or seeking their resignations?

A No. It was a very brief conversation.

Q Thank you.

To turn to the question of Mr. Moschella's testimony before the House committee, please correct me if I'm wrong, but I believe the documents, the e-mails, provide evidence that it was you yourself who requested that Mr. Moschella testify at that hearing?

A In the House hearing?

Q Yes. Is that correct?

A I don't know exactly -- I don't know if that's exactly the case. I don't mean to put you to the trouble of having to dig them up. I don't want to have the record reflect that if that's exactly not right.

The process of selecting witnesses for a hearing is pretty much a consensus effort; who's going to have to do it. I have done my service to the country in February, and I am happy to share that with someone, but I just don't recall -- the implication of what you're saying is that because I'm his boss, that I ordered him to do it. I don't recall that being the way in which it occurred; more a question of searching for a witness, who's the right one for this.

Q In your mind was there anything more to the suggestion or request, whatever it was, that Mr. Moschella provide the testimony other than the time in front of the Congress might be shared with someone else? Was there any more to your thinking about you yourself not being a witness?

A Well, no, there's only one other fact that comes to mind, and there is sort of an Office of Legislative Affairs protocol that is observed in these situations, and as much as possible I think they try to reserve the appearance of the Attorney General and Deputy Attorney General for full committee matters, and I believe this hearing was a subcommittee. That may have been something that Richard Hertling or Faith or someone else raised as an issue for why Will would be the more appropriate person to appear for the subcommittee, at this point I believe it is the subcommittee, administrative or oversight, Congresswoman Sanchez's subcommittee.

Mr. Flores. Off the record briefly.

[Pause.]

BY MR. FLORES:

Q With regard to Mr. Moschella's preparation for his testimony, did you endeavor to assure that he had all the knowledge that he would need at that hearing to testify accurate and correctly?

A I wasn't involved in his preparation, so I didn't have that as my focus.

Q Thanks.

On the 8th of March, if I'm recalling correctly, the issues raised by the information in Mr. Sampson's e-mails that had not been produced began to circulate in the Department, began to come to light. Did you have with Mr. Moschella a meeting about those e-mails to discuss their content or what they meant or what should be done about them, any other issue?

A Will and I spoke about that information at some length. We were both very concerned about the appearance that those e-mails would create and the significance of them. We were both disappointed that information had come out at that time, and so we discussed matters like that.

We discussed that Thursday -- I remember some conversations about that Thursday night, and that was the 8th; further discussions about that on that Friday. Because he's the principal associate, and we work together constantly during the course of the day, we were able to talk about that several times.

Mr. Hunt. Could you just clarify something you said briefly when you said something to the effect of we both were disappointed that the information had come out at that time? Would you just clarify what you mean by that?

Mr. McNulty. We were both disappointed, as I was referring to Mr. Nathan. Mr. Nathan asked me -- my point is only to repeat what I said to Mr. Nathan, which was that my characterization of the record of communications that was brought forth on the 8th and our recognition of that information, so that's what I'm referring to by that information.

BY MR. FLORES:

Q Did Mr. Sampson himself show you any of the e-mails he had identified or the documents that showed that the House and Senate committees had not gotten complete information over the extent of House involvement in the process or --

A As I said, I remember seeing some of -- a handful of the documents on Thursday when they initially were brought forth. That's the extent of the interaction I had with Kyle Sampson about the group of documents.

Q With whom, if anyone else, did you speak about the information the concerns had created for you that day, other than those you have already mentioned in your testimony?

A I'm sure I discussed my concerns with Richard Hertling, possible -- I remember talking to Tasia Scolinos about my concerns, maybe -- Mike Elston, my chief of staff; possibly Bill Mercer, the associate. I'm referring now to conversations that would have occurred from Thursday

forward, but I'm kind of focusing on the time frame of the first few days.

Q Sure, that's what I'm asking about. Did you have a meeting on the next day, March 9, with other senior officials in the Department about what next steps to take as a result of the discovery of the e-mails and other documentation?

A Well, I remember a meeting the next morning that involved Steve Bradbury, our Assistant Attorney General for the Office of Legal Counsel, and some other folks, maybe folks in his office. I'm not sure who all was there. It was a brief meeting. It was basically to talk about a way forward and how we were going to gather together all the information.

I remember Kyle was there, and it was one of the last times I have talked to Kyle. It was brief because what we concluded at that meeting was that Steve should take responsibility to get all the information together, to know what we've got, and that we should not do anything further at the moment until we had a full effort in trying to pull together all the information.

Q Thank you. If I can just review a few of the questions I wrote down earlier.

A Sure, sure.

Mr. Nathan. Did you issue a preservation of documents

order on the 9th?

Mr. McNulty. No, I didn't, and I'm trying to -- there was some communication, I think, that was connected to the Hill's request for information. So I'd have to go back and review what was being communicated at that point.

BY MR. FLORES:

Q If I could ask you, Mr. McNulty, to take a quick look at Exhibit 11 to this interview. I believe you said in an earlier question about this document that some of the e-mails produced in this case were inconsistent with statements in this exhibit. When you said that, did you --

Mr. Nathan. Some of the e-mails were inconsistent?

Mr. Flores. With this document or with the statements in this exhibit.

BY MR. FLORES:

Q When you stated that, did you mean to say that they could be -- that some e-mails other than this one could be read to be inconsistent with the broad terms in this statement, or that they were, in fact, definitively inconsistent?

A Well, what I meant to say was that if you're referring to this sentence on the bottom, why don't you identify for me what piece of that article you have in mind?

Q I believe that was the part we were focusing on earlier.

A And what I was trying to say was that this language could be reasonably interpreted as inconsistent with the information revealed in those e-mails, and an argument could be made that the word "encourage" is not very precise. So if someone wanted to try to advance an argument differently, that wouldn't necessarily be --

Mr. Flores. I need to wrap up with these questions.

Mr. Miner. Could you read that sentence into the record so it's clear what we're talking about?

Mr. McNulty. The sentence is in the Washington Post article dated Saturday, March 3rd: Officials portray the firings as part of a routine process, saying the White House did not play a role -- play any role in identifying which U.S. attorneys should be removed or encouraged the dismissals. The administration previously said that the White House counsel recommended a GOP replacement for -- I think the rest of that is not necessary.

BY MR. FLORES:

Q If I could ask you to briefly look at Exhibit 12 to this interview. This is the one e-mail from Kyle Sampson to David Leitch recounting a discussion between Kyle and the judge.

A Right.

Q Could you just refresh yourself about that document very quickly? I only have one question. That question is

in that the mention of the discussion that Mr. Sampson and the Attorney General had --

Mr. Nathan. The White House counsel.

BY MR. FLORES:

Q That's correct, White House counsel. Could it be that Mr. Gonzales and Mr. Sampson's discussion was simply connected to the administrationwide effort that was ongoing post the 2004 election to review PAS individuals? One component, of course, would have been the PASs who were serving as U.S. attorneys.

A Well, based upon the information that I have seen, it's my understanding that there was discussion about changeover that preexisted this, and those matters could certainly be connected. I would have to take a little more time to give you an answer with a little more certainty. I think I will study it a little more closely. I'm sorry.

Q That's quite all right. Let's move on because we have very little time left.

I would like to ask you a couple of questions about some of your earlier testimony. You had said at one point that you had no recollection of a discussion with Kyle Sampson about concerns regarding Mr. Iglesias. Later on in your testimony, I believe you indicated that you would have talked to Mr. Sampson and the Attorney General about the conversation and content of that conversation you had with

Senator Domenici in October of 2006 about Mr. Iglesias. I wonder if you can just reconcile those statements for me.

A Well, I'm not sure exactly how I put that first answer. First, I have said that it would be -- though I have no clear recollection, it would be most likely that I would have passed on information, the fact of the phone call from Senator Domenici to either and/or the Attorney General or his chief of staff.

Secondly, when I said something about my discussions, what I remember is that in the time frame when I was asked to react to the names I received, my best memory is that Dave Iglesias's name was one of the names that I was asked do I object to or not. That's all I can recall.

Now, I know that Kyle Sampson at his hearing with the Senate said that I observed or made the point that Senator Domenici would not object to his name being included. I don't have any personal recollection of saying that to Kyle, but that is certainly consistent with something I would have known at the time since I had received a call from Senator Domenici in early October, but I just don't remember saying that to Kyle.

Q If you can offer a reasonably well-founded opinion, please do, about the question of whether the individuals in the broad U.S. attorneys corps at the time resignations were sought, or really between '05 and '06, would have known or

did know some or all of the performance-based concerns with regard to the reason the resignations were sought that we discussed today.

A Generally speaking, U.S. attorneys would not be very familiar with what their colleagues were doing. Most of the interaction is on a very positive and more superficial level, and there would have to be some specific reason why they might be aware of a colleague's concerns.

My own sense is that the U.S. attorneys were probably aware of Carol Lam's gun statistics because we put those out in a pretty open way and tracked pretty clearly. I know I looked at my district's performance in relation to other districts. I'm sure other U.S. attorneys did the same thing.

As you may know, the matter involving John McKay involved other U.S. attorneys who signed a letter and who expressed concern about what John told them when they agreed to sign the letter, so there would be some knowledge there about John's issue.

Kevin Ryan's situation might have been known to some people, what was going on in San Francisco, although I don't have specific information that comes to mind about that.

That's probably as much as I can recall right now as to what might be known by other U.S. attorneys concerning their colleagues.

Q One of the e-mails that's been produced in this case recounts that the U.S. attorney corps understands as of the time of the e-mail the resignations, but had concerns about the way the individuals were treated. My question to you in that connection is would the U.S. attorneys corps understand the resignations so well if they understood or they had any reason to believe that the resignations had been sought to retaliate against U.S. attorneys for bringing prosecutions for political corruption grounds against Republicans or not doing something against Democrats, or to send a message to they themselves that they would be retaliated against if they had brought literally a corruption against a Republican or not done so against a Democrat?

A Three quick points. The first, I would say, is the U.S. attorneys would be very reluctant to conclude that U.S. attorneys were asked to resign in order to interfere with cases to retaliate. That would be something they would be reluctant to assume because they have the knowledge of the way the system works; they have a lot of respect for the Department as a whole, I think the leadership of the Department, even if there had been disappointments. And just my experience with U.S. attorneys, and knowing so many as I do, and having had lots and lots of conversations with U.S. attorneys over the last 3 months, I have not picked up that U.S. attorneys would fall into the category of those

who would suspect that. That's the first thing.

The second thing I'd say is that the U.S. attorneys very much recognize the fact that they serve at the pleasure of the President. And I have heard basically uniformly U.S. attorneys say, we know we can be told to go at any point.

Thirdly, the U.S. attorneys have been frustrated with the process. They have expressed a number of concerns about the way they have been informed, who informed them, what they were told or not told, whether or not they were given an opportunity to address their concerns. Those are the kinds of concerns U.S. attorneys have, sort of a fairness issue.

As I was saying to some folks at another time, it's interesting that the U.S. attorneys have kind of parallel thoughts that don't necessarily -- aren't necessarily consistent. One thought is that we serve at the pleasure of the President, can be asked to leave at any time for basically any reason; secondly, that the process needs to be fairer. And while those are not entirely consistent, I understand the sentiments that support both of them. I think that's the kind of -- that's what I have picked up after a lot of interchange.

I met with the Attorney General's Advisory Committee several weeks ago, and they gave me -- I spent an hour and a half with them to go over their concerns, and they went

out and had done research from other U.S. attorneys before they came to me. So I think I got a very good feel for how folks are thinking.

Q I only have two more questions. One is do you believe that any public perception that may exist that the U.S. attorney resignations we've discussed today are tied to public statements by people outside the Department alleging -- not demonstrating, but alleging -- that the resignations were tied to prosecution or lack thereof of public corruption cases?

A Yes. I think that the perception that exists, and I said this with some care when I talked to Mr. Nathan because I don't want to be disrespectful in any way, but I think publicly that perception has been affected to a large degree by statements that have been made generally in this matter. So I think I affirm that position.

Q One last question. Do you think that the controversy that has resulted from these resignations and the seeking of them will chill the likelihood of any future administration undertaking a performance-based review of U.S. attorneys and attempting to seek to remove those in districts in which the administration could do better for the remainder of its term?

A I think that's a very fair concern, and I know you're going to be interviewing Dave Margolis. I would

encourage you to ask him that question just because he has spent so many years looking at this issue of holding U.S. attorneys accountable. I discussed it with him, but I would be interested in knowing how he would phrase it in this circumstance.

Yeah, this definitely has to be put into the mix as we think about going forward how -- and for good and for bad. We have learned certainly from this experience some things we did wrong in dealing with U.S. attorneys in the future, and so improvements can be made, while at the same time I think that this has probably had an impact that might be of concern in the process of holding accountable if we would ever want to take seriously the notion that a U.S. attorney could be changed for reasons other than misconduct.

Q Just to be clear, is it your view that this controversy in part could chill that kind of endeavor?

A It's my view that it could chill it, yes.

Q Thank you very much. We are at 5:00. I thank you very much for your time today, and I apologize very much to my Senate colleagues that I wasn't able to finish earlier.

Off the record.

[Pause.]

EXAMINATION

BY MR. BHARA:

Q Mr. McNulty, I know it's been a long day, but we're

almost to the end. Let me ask you some questions based on the things that you have said already today. I want to ask you a question about Mr. Sampson. Are you aware of the fact that Mr. Sampson was at one point considered for the spot of U.S. attorney in Utah?

A I have read that. I am aware of it in a variety of ways. Yes, I'm aware of it.

Q Are you aware of whether or not Mr. Sampson at any time was considered for a U.S. attorney's spot in any other district?

A I'm not aware of that. I'm only aware of the Utah situation.

Q Are you aware of whether or not Mr. Sampson at any time expressed an interest in or lobbied for a position in any other U.S. attorney's office apart from Utah?

A No, I don't have any specific information about that.

Q Do you have a DOJ e-mail account? Am I right?

A Yes, I do.

Q Do you also have an outside e-mail account?

A No, I don't. Other than my family's e-mail? I have a family account.

Q You don't have a personal account, personal to you that only you use outside of your DOJ account?

A I'm sorry if I'm thick-headed here. My family has

an e-mail service, and I have one at work, the DOJ account.

Q With respect to your family account, have you ever communicated in connection with DOJ business on that family account?

A No. I have no recollection ever doing that.

Q You don't have a Republican National Committee e-mail account?

A No, I don't.

Q Have you ever communicated with anyone who was using a Republican National Committee e-mail account about the business of the Department?

A Not to my knowledge, no.

Q Since December 7th of 2006, to your knowledge, have there been changes considered or adopted in connection with the way that U.S. attorneys are evaluated and considered for possible removal?

A There has been talk about it, but to my knowledge, as of today, nothing specifically has been put in place as an actual change. The process has involved the Attorney General talking to a lot of U.S. attorneys as part of an effort to make an outreach. Ideas have been identified for ways to improve evaluation or increased communication. He has expressed a desire to see that happen, but I'm not aware of a process that has been adopted as of today that would make some specific change.

Q Are there concrete and specific changes being contemplated?

A I don't know the status right now of that effort. I don't want to say no to that because the Attorney General's Advisory Committee may have some tasking that they're working on involving that. We have not had a meeting with the Attorney General's Advisory Committee since he went about talking to the U.S. attorney as he did, to the best of my recollection, and therefore I'm not sure if I have a full feel for what's being considered right now.

Q Who's involved in that process?

A Well, we're in a real time of transition, and so that explains in some ways why there may be -- it may still be taking some shape. Kevin O'Connor has just come on as the chief of staff to the Attorney General. I think he has some notions about this. He may have -- the Attorney General and he may have talked to Susan Brooks in Indiana, but I don't know that for a fact, so we'll have to talk with Susan. She chairs a subcommittee of the AGAC. So if you're asking me who specifically is responsible right now for establishing a new process for evaluating performance of U.S. attorneys, I don't have a clear answer to that.

Q Are you involved?

A I'm not currently involved in doing that.

Q Why is that?

A Things are moving very quickly right now, and though that's been identified -- as best I understand, though that's been identified as an aspiration of the Attorney General, it's my own sense that because of the pressures of limitation of time and the pressures of the matters that are on our plate, it just hasn't come together as a specific project. I'm sure if and when that occurs, I will be involved in it.

Q Has the way in which officials at main Justice communicated with U.S. attorneys in the field been changed in any way in the wake of the firings on December 7th of 2006?

A The way in which the officials at main Justice communicate with U.S. attorneys in the field?

Q Correct, yes.

A The only thing I can identify that has occurred in the last month is the effort to gather information from the U.S. attorneys to understand their concerns and to look at ways that you can improve that communication or to address concerns they have. So I guess it's similar to the first question. I'm not familiar with anything that has been established as a change in policy. I think we're still in the process of gathering information about the concerns.

Q With respect to particular individuals who previously have communicated with U.S. attorneys about the

progress of their offices, have there been any changes; and in particular I want to ask you whether or not there has been any change in the degree to which Mr. Elston, for example, is permitted or does speak with U.S. attorneys in the field?

A Well, after this information about -- after the e-mails were produced and came to light, and I met with U.S. attorneys, and the attorney generals advised me and got feedback from them, and I grew in my understanding and appreciation for concerns about the ways in which we communicate or the perception that many U.S. attorneys have about the nature of the language that is used in some of the e-mails, or the tone. I have been careful to try to watch how that goes forward and to make a shift in some ways how U.S. attorneys are interacting with my office, because I'm sensitive to the fact that there may be some hard feelings, I guess, for lack of a better term, that relate to some of Mike Elston's communications.

Some U.S. attorneys don't fall into that category, and they continue to have some conversations with him, as I understand. But others have chosen to communicate with other people, and I tried to steer that process in a different way, I am still looking at that.

Q So I understand what you're saying.

At any point did you or any else make a deliberate

decision to curtail Mr. Elston's interactions with a subset or all U.S. attorneys in the field?

A I think the fair answer to that is yes in the sense that I shifted responsibility in the office to some extent, reassigned components, and I instructed Mike with regard to dealing with U.S. attorneys in the Executive Office of the U.S. Attorney that I refer him to let Will or some other people deal with the U.S. attorneys more so right now as we evaluate how we're going to go forward.

Q Is it fair to say the decision to curtail in some way Mr. Elston's communications with the U.S. attorneys in the field was the result of concerns about the conversation between Mr. Elston and Mr. Cummins that has been viewed by some of the other U.S. attorneys as an effort at intimidation?

A Well, I didn't focus on that particular communication as my reason for making the change because I did not hear from the U.S. attorneys any one example that was cited as the reason. I looked at more the totality of communications that presented a concern.

RPTS McKENZIE

DCMN NORMAN

[5:13 p.m.]

A So I wouldn't single that out as the reason for justifying a change.

Q But that was one reason among others?

A I think that could be viewed in the totality of communications that was of concern to the U.S. attorneys when they evaluated this whole matter. That's not conceding, however -- excuse me, just on the record -- that's not conceding that I believe that Mike's communication that day to Mr. Cummins was actually how it was intended to be what Mr. Cummins perceived it to be.

Q I understand. Separate and apart from the conversation between Mr. Elston and Mr. Cummins, what were some of the other considerations or concerns that you had in curtailing Mr. Elston's communications with U.S. attorneys in the field?

A Some of the other communications -- and I'll maybe, just because I'm weary here today -- I may not be able to list them off, but there were some other e-mails that U.S. attorneys took -- and not just Mike, but some other people in their communications, as perhaps disrespectful or not appropriate in the way they were talking about U.S. attorneys. And it was sort of that body of communication

that I perceived had created some concerns for U.S. attorneys. And there were some individuals who expressed reservations.

I should say that in the context of this matter, this has been an opportunity to talk to U.S. attorneys about things beyond this matter and some other things beyond this matter in terms of how I have -- how one U.S. attorney has dealt with a person on my staff, or another has dealt with a person on my staff. Those things have come to me and I'm trying to address those as well.

Q With respect to the gathering and production of documents from the Department of Justice to the Congress, are you aware of whether or not there has ever been a direction to employees and officials at the Justice Department to preserve documents, electronic or otherwise?

A I'm not aware of that particular issue. I have deferred it to the process that has been worked on with the Office of Legislative Affairs and other components that have been doing our search and so forth. So I haven't personally been involved in that. I am actually recused as to document-related matters because some of the documents that have -- are in somewhat of a controversy effect to my office.

Q Am I correct that some of the documents that have been produced have been produced from your files?

A I believe so. Sure.

Q So if there were an order or a direction to preserve documents, you would have received it, right?

A Well, theoretically. But that kind of order could come to my front office and not come to my actual desk. But then I would be orally told, You need to gather up all your documents. And that's what I've been told and that's what I've done.

Q Would you be troubled as the deputy attorney general involved in the drawing -- would you be concerned as a deputy attorney general, knowing there were investigations by two separate congressional committees in which documents are being made available on an ongoing basis to those committees, if a preservation direction order had not been issued, would that be concern to you?

A Well, as I look at this question about a preservation order and a production of documents, I have relied upon what I have assumed are established procedures that have existed between Capitol Hill and the Justice Department, going back many years, because producing documents for the Hill -- for Congress is not new, it's something that is done on a regular basis.

And so I don't know if a preservation order is something that is typically done. I know about the practice of preservation orders in the private sector. I just don't

know what the process would be in government and how that is done. And so therefore, I have relied upon those who are the career folks who are working with the Hill on this process.

Q Are you aware of the fact that a subpoena has actually been issued to the Justice Department for documents?

A I am aware that we have this extensive document request, yes.

Q In connection with the decisions to ask for the resignations of eight United States attorneys, you have discussed various people who were involved in that process; am I right? Am I correct that the chief of the Criminal Division would be in a position to be aware of the performance and abilities of various U.S. attorneys around the country?

A I think that's a fair assumption that the chief -- that the AAG for the Criminal Division would have some perspective on some of the U.S. attorneys, especially if matters have come up where problems have arisen in the district in dealing with the Criminal Division.

Q How many people at main Justice would have more intimate knowledge of how U.S. attorneys and U.S. attorneys' offices are performing in the day-to-day work of their mission than the people at the head of the Criminal Division

of Justice?

A I would put the people in the Criminal Division leadership among the -- at the top of the list of components, apart from the senior leadership in the Department itself, who would have regular interaction with U.S. attorneys' offices.

Q Do you know whether or not the current chief of the Criminal Division, Alice Fisher, was ever consulted with respect to the decisions to seek the resignations of these eight U.S. attorneys?

A I don't know the answer to that. I don't know that she was.

Q Does it trouble you further about the process that, someone who you've described as being in a position to know about the performance abilities of the various U.S. attorneys, was not part of this process at all?

A Among the weaknesses of this process, I think we could include an identification, or, I guess in this case, a lack of an identification of those who would be best suited. I believe the Attorney General, in his hearing before the Senate, said something to that effect, where he said that if he could do it again, in response to Senator Cornyn -- he talked about being clearer in identifying who should be involved in a review of U.S. attorney performance.

Q So as you sit here today you have no idea of the

opinion of the head of the Criminal Division as to the performance abilities of the eight U.S. attorneys who had been asked to resign in December of 2006?

A As I sit here today I would probably be able to speculate as to some things that the Assistant Attorney General would know about the U.S. attorneys, because some of the things that came up were associated with Criminal Division.

So if the question is, do I know if the AAG of Criminal would have familiarity with some of the issues and concerns that related to those seven U.S. attorneys, my answer is yes. If you are asking me, was she included in the process of gathering information for purposes of that decision, I don't know the answer to that.

Q Was David Margolis at the November 27 meeting that you described earlier today that included the Attorney General?

A No.

Q Do you have any -- do you understand why he was not at that meeting?

A Well, I think a fair answer to that question, which takes just a little bit longer than one word, is that David doesn't frequently participate in -- or rarely participates in an Attorney General-level meeting that is involving a variety of decisions. His responsibility and role includes

lots of important things within the deputy's office, but I can't think of too many times that he's participated in meetings at the -- in the Attorney General's Office.

And it may just be that when Kyle -- and I say Kyle because I think there's an e-mail that identifies that Kyle seeks -- put the meeting to the meeting together, and Kyle talked to -- Kyle Sampson talked to Dave Margolis all the time. But when he was putting together that group, I think he was putting together a smaller group, and pretty much everybody in that group was a political appointee.

Q Do you have any understanding of the level of involvement that David Margolis had in this process?

A Well, Dave and I talked about it a little bit. We tried not to talk about it more specifically because it's -- we have this effort to try to not coordinate our responses to the kind of questions you all will be seeking, so we've kept it very limited. But my sense is that David had -- David Margolis had regular conversations with Kyle about U.S. attorneys, in fact, more frequently than I did -- that is, more frequently maybe than Kyle and I talked about them, David and Kyle talked about them.

Q Just to get a time frame, do you have an understanding of what the time frame was of those conversations between Kyle Sampson and Dave Margolis?

A All through that period of time that Kyle may be

talking about where he says he was looking at the performance.

Q You are talking about prior to October 1?

A Prior to, yeah.

Q Did you have any understanding of whether or not when Kyle was consulting with David Margolis, that Dave Margolis understood this was a plan or contact that might ultimately result in the dismissal of these folks?

A I have no information to suggest he does know that. I don't know the answer to that question.

Q One way or the other?

A One way or the other.

Q In your conversations with Dave Margolis at any time before December 7, 2006, has Dave Margolis suggested to you in any way that he thought the process by which these people were asked to resign was flawed?

A I don't -- sitting here right now, I can't recall that conversation just like that, but if David were to say that that conversation occurred, it wouldn't surprise me because we have talked about this process, and it's weaknesses and so forth. I mean, we've talked about just the whole thing that's gone on.

So I just don't recall specifically his comments about the particular flaws in the process. That's my best recollection right now.

That may be a confusing answer. What I'm trying to say -- please let me repeat it. I've talked to him about the process. I believe he's had his concerns. I just don't recall specific things he said about the weaknesses in the process.

Q When complaints come in -- withdrawn.

When a U.S. attorney reports a contact with an elected official -- that is, one that should be reported to main Justice, what happens to that report?

A I'm not sure I know the answer to that question. I know they come in to either the Executive Office or to Legislative Affairs.

Q Do they happen on a regular basis, those reports?

A No, they don't. And that's -- I just -- I am not familiar with the system for sharing that information.

Q Here's why I ask the question. I believe you said earlier -- and correct me if I am wrong, and it has been suggested by other people -- that had David Iglesias made the report that he says in retrospect he should have made about his contact with Mr. Domenici, that maybe the result in Mr. Iglesias' case may have been different? Is that fair?

A I would say it may have been changed -- our perspective, yes.

Q What I want to understand is how one can know that

bit of information -- the report would have made its way to the ad hoc group that included Mr. Sampson and others, so that it would have affected the perspective of the people making those decisions, particularly given your statement to me a minute ago that you don't even know what becomes of such a report when it is made to the Department.

Mr. Hunt. I believe when he testified earlier though, it was, Had they known that? Were they aware of the contact?

Mr. Bhara. Right. But the question is, is who aware?

BY MR. BHARA:

Q If David Iglesias had made the report to the Department of Justice, it would have gone to some human at the Department of Justice, correct?

A Right.

Q In what way can you assure us with any degree of certainty that the report to some human at the Department of Justice would have made its way to this small group of people that included Mr. Sampson in connection with their deliberations, if any, over whether or not Mr. Iglesias should have been asked to resign?

A I don't have any information right now that would give you a response to that question because I'm not familiar with the process by which that information is passed along.

Q Okay. So can we just go back for a moment? So then am I correct that, based on what you understand to be true, that a suggestion that there might have been a different perspective on the part of the people making the decision about Mr. Iglesias is not based on anything firm that you can tell us, correct?

A It is based upon an assumption that if we had known -- now I understand your question to be pushing on the issue of -- but how would you know if you don't know a system for gaining that information. And I don't -- I don't know specifically of the system for passing that information along.

One thing that could very well be is that if that information is reported to the Assistant Attorney General -- reported to the Office of Legislative Affairs -- the Assistant Attorney General for Legislative Affairs would pass that information to the Deputy Attorney General's Office, maybe the Attorney General's Office. If it went to the director of the Executive Office, that individual may report up.

I meet on a weekly basis with the director of the Executive Office. So there are ways in which I can see how that information could be shared. It's just that I don't know with certainty right now if there is a protocol for sharing it.

Q Mr. Charlton is one of the U.S. attorneys who was asked to resign, correct?

A Yes.

Q Are you familiar with recent news reports that indicate that Congressman Renzi's chief of staff had a contact with Mr. Charlton that apparently was disclosed to the Department of Justice?

A I'm aware of that news report, yes.

Q Are you aware of whether or not there's a record of that contact with the Department?

A I'm not aware of that as of right now.

Q So in this different circumstance, let me ask you this: If it is the case that that contact was made, do you have any understanding of whether or not anyone who was involved in the decision to dismiss Mr. Charlton was aware of the contact between Mr. Renzi's office and the Department?

A I don't have --

Q I'm sorry -- Mr. Renzi's office and Mr. Charlton, which was reported to the Department?

A I don't have any information on that subject.

Q So as far as you know, in that circumstance at least, the communication between the office of an elected official and the United States Attorney did not enter into in any way -- into the calculation or deliberation over

Mr. Charlton's fate?

A Yeah. I have no information to suggest that it did.

Q Okay. So is there any basis to believe that in Mr. Iglesias' situation, had the report been made, that there would have been a different --

A There was some basis.

Q -- condition?

A There was some basis, and I appreciate what you're saying here. But there is some basis, and that is that the nature of the different kinds of contacts could distinguish how they're handled once they're into the Department.

Q You are aware of the fact that on or about March 13 of this year, the Attorney General had a press conference in which he described his role in this process?

A Yes, I am.

Q And are you aware of the fact that he is quoted in the media as saying, quote: I was not involved in seeing any memos, was not involved in any discussions about what was going on.

Are you familiar with that statement?

A I'm familiar with that statement, yes.

Q As you sit here today, is that statement accurate?

A The Attorney General has made a concerted effort to reconcile that statement with his own understanding of things, and I'll defer to his efforts to try to explain the

difference. I don't have an opinion on whether it's accurate or not.

Q With respect, how do you not have an opinion if you were involved in -- let me ask you a different question. Were you involve in discussions about what was going on?

A Was I involved in discussions?

Q Were you involved in discussions about what was going on in connection with the seeking of the resignations of the eight United States attorneys at some point?

A From late October forward yes.

Q Right. And were some of those discussions with the Attorney General?

A Yes.

Q So let me ask you again, do you have a basis for saying whether or not the Attorney General's statement that he was not involved in any discussions about what was going on -- was that a true or false statement?

A The Attorney General says that that meant -- what he meant by that was he describes what "discussions" meant, and therefore, he has attempted to reconcile that language that he said wasn't precise enough with what he actually did. And I defer to his explanation of that.

Q If you had said that you were not involved in any discussions about what was going on, would that have been a true or false statement?

A If I had said I was not involved in --

Q Any discussions about what was going on, given your involvement --

A Right.

Q -- would that have been a true or false statement?

A Well, it would be a true statement if my meaning had been some kind of more extensive process or effort to evaluate the U.S. attorneys, and I was not using precise enough language.

Q Has anyone at the Department -- separate and apart from Mr. Sampson and Ms. Goodling -- are you aware of whether anyone at the Department of Justice has offered to resign, threaten to resign, or in fact resigned, in connection with the decisions to terminate eight United States attorneys or what ensued thereafter?

A And you asked "offered to" --

Q Offered to resign. We can take them one at a time. Has anybody actually resigned other than the two I mentioned, as far as you know, and for reasons that are in part or in total related to the firing of the U.S. attorneys?

A Right. My understanding is that Mr. Battle's reason for resigning has nothing to do with it, based on what I was told: that he had an opportunity to go to a law firm, he was intending to go there, and that's just according to the

schedule.

And I had a lot of contemporaneous conversation with Mike throughout the -- or during the course of the process as he was making his transition. So I know his resignation didn't have anything to do with the U.S. attorneys. And I don't know of anybody else, sitting here, who has resigned. I don't know of anybody who has offered to resign or threatened to resign.

Q Do you know if the Attorney General has offered to resign?

A I do not know.

Q Have you asked him?

A I have not asked him.

Q Have you at any point since December 7 of 2006 offered to resign?

A No I haven't.

Q Do you understand the reasons why the Attorney General accepted Mr. Sampson's resignation?

A All I know about that is what he said at the time of his March 13 press conference. And I don't recall, sitting here now, whether or not that matter came up at the Senate hearing last week or so. I just don't have any recollection of that.

Q Do you think it was appropriate for the Attorney General to have accepted Mr. Sampson's resignation?

A Oh, boy. That's between the Attorney General and Mr. Sampson. And I think -- I would prefer to defer to the Attorney General for that. I'm sorry.

Q During your time working for the Attorney General, have you come to have an impression of the level of involvement and engagement the Attorney General has in connection with matters of importance to the Department?

A I worked closely with the Attorney General. I meet with him for a better part of 2 hours every morning, and he is engaged in the substance of the discussions that we have during those hours we spend -- the better part of an hour -- talking about national security matters, and frequently has questions and concerns that he probes with the others we meet with, and the subjects, and he regularly has questions and concerns that come up in our senior management meeting that occurs every morning.

I interact with him throughout the day. And one of the things I appreciate about the Attorney General is that he's someone who is not afraid to make a tough decision. When I present him some issue, he has a courage about him to move to making some resolution of the matter.

Q Are there any issues of importance to the Department in which you think that the Attorney General is disengaged, not involved enough?

A You know, I want to be really respectful to you and

I really appreciate your tone and so forth. But we're getting into some issues that are kind of far afield from the U.S. attorneys matter, and I know you could make the connection, I'm sure. But essentially what I'm doing is being asked about my opinions of the Attorney General as the Deputy. It's not something I am very comfortable with doing.

Q I understand your concern, and I don't mean to put you on the spot but there have been issues raised in connection with this investigation, I think legitimate ones, by both committees about the level of involvement of the Attorney General. And, in fact, the Attorney General himself, I believe, has put the matter at issue by saying, quite forthrightly, himself, in his written testimony and I think in his oral statement, that he probably should have been more involved.

Mr. Hunt. What you said --

A Let me answer. I'm sorry. I would be happy to respond to his role in this U.S. attorney matter and what I have observed and what I know. It's the questions about his leadership and other issues, apart from the U.S. attorneys, is where I am a little more uncomfortable voicing my opinion. And I don't want to go into a pattern of being nonresponsive to you. So I just want to tell you, I'm feeling like that's getting outside of the oversight of what

happened with the U.S. attorneys.

Q Have you ever been present for any conversation involving the Attorney General where he discussed in any way his conversations with the President about any U.S. attorney's office?

A No.

Q Have you ever been present --

A Go back. Please restate that question.

Q Have you ever been present for any conversation that involved the Attorney General in which he described a conversation that he had with the President about any U.S. attorney's office or complaints about the U.S. attorney's office?

A And one thing you should just know for -- just for the record, because of the investigations that have been going on, our communication with the Department of Justice has not been very good with each other about this matter, because we have really sort of shut down the process of doing that, and it makes it difficult to know whether the people have done or not done that.

Q You said at the beginning of your testimony today that when you were first presented with a list, there was one name that you thought should not be on the list and you got removed from the list; is that right?

A That's correct.

Q What was the basis of your removing that person from the list?

Mr. Hunt. If you could answer that without identifying the individual?

Mr. McNulty. It's going to give away a little bit. I know there's an e-mail out there. It had to do with the fact that I had had -- or visited that U.S. attorney's office very close to this -- right in the middle of this time frame, and made my own personal observations about what was going on in that district and believed that the relationship between being there and this -- it just wouldn't be appropriate to turn around and ask for that individual's resignation. So I voiced an objection about that.

Q So I understand, is that because you thought the person was doing a good job, so should not have been asked to resign?

A Yes. I thought that from what I was able to observe, the office was running well.

Q So are you saying that, with respect to that U.S. attorney, you had more personal knowledge of that U.S. attorney's office and performance than the other people on the list?

A Well, I don't think that would necessarily follow. I think instead, what I would say is that I was put in a

position to voice an objection and my objections were supposed to be -- or I understood my responsibility in being consulted on this as to whether or not I had enough sense of various issues and concerns related to individuals. And since I had just a real clear understanding of this particular person in the office, I couldn't identify any issue or concern, and therefore I objected -- and none was provided to me, which would be the difference between, say, Dan Bogden and this individual.

Q In the November 27 meeting of 2006, do you recall whether or not this was a document or memo that people were looking at or reviewing in connection with that meeting?

A You know, I don't -- I don't have a real clear recollection. If I had to say, I would probably tip on the side of thinking the document was made available; but I don't recall a document being taken away, and it would be a little unusual to gather back the documents, like you would some kind of classified information. So it could very well be there wasn't a document presented. But often when you have a meeting like that, you use some kind of paper to guide the discussion.

Q If I can refer you back to McNulty Exhibit No. 8, I believe that's pages of documents that look like your own -- that's your own handwriting, right? Your notes.

A That's right.

Q Could you turn to page DAG 232?

A Yes.

Q See the top of the page you have the word Arkansas?

A Yes.

Q And then you have various items beneath that?

A Yes.

Q I want to focus your attention on two items, item No. 5 and item No. 7.

First, item number seven. Is this your handwriting stating, "Always intended to nominate after consultation with home State Senators Pryor and Lincoln. Objection will be given substantial weight." You see that?

A Yes.

Q And you see that you write in your notes, "always intended to nominate after consultation." What was the basis of your making this notation to yourself for your preparation?

A The information that I had received from those who prepared me for the hearing and my understanding of what the Department's view was on this matter. I had understood at this time, in preparing for the hearing, that we were working on -- we were consulting with the two State Senators and we were seeking to nominate someone for it. I think I was told that -- and this may have come up at the hearing as well -- that the Department was waiting for Senator Pryor to

get back to him. Senator Pryor testified before I did, and I think that may have come up in the course of his testimony.

Q When you said you were told, who told you?

A I don't know for sure who told me, but it could have been Kyle -- shouldn't speculate. But Kyle Sampson was involved in the briefing, and Monica Goodling was involved in the briefing but was involved in providing the information about the Arkansas situation. But I don't have a specific memory of who actually told me that. This just reflects my understanding as of the date.

Q Sure. But is there anyone, other than Monica Goodling or Kyle Sampson, that you can think of who would have provided you the basis for item No. seven here, the intent to nominate after consultation?

A There would be nobody else in the Department who would have that responsibility that I could think of.

Q Thank you. Could you, side by side with that, look at Exhibit 17.

A Yes.

Q Could you take a look at that document? Do you remember what that document is about? It's an e-mail?

A Yes, I do.

Q It's an e-mail chain that describes, among other things, what Kyle Sampson said about a potential plan to run

out the clock with respect to Tim Griffin's time as interim U.S. attorney in Arkansas; is that a fair statement?

A Yeah. I think that that's pretty close to what it means to gun this to death.

Q Sitting here today, knowing all that you know about this, including your reading of Exhibit 17, is the statement that you've written in Exhibit 8 true or false?

A Well, it may very well be true as of February 4 or 5, or whenever I was preparing and wrote that down. This e-mail is dated December 19 and appears to reflect the thinking of Kyle Sampson on that date. But this thinking may have been pushed aside by the time that I was preparing.

Q Let me ask you to reconsider that answer. In light of the fact that your statement, your note, reflected your understanding of what you've been told doesn't say, "now the intention was to nominate, it says, so, given what you see here in this exhibit from December 19 -- I ask you again, in light of everything you know and in light of this exhibit, the December 19 e-mail, is that statement of the intention -- the intention to -- always intended to nominate; is that true or false?

A Well, my delay in answering the question is only because I'm trying to make sure that I'm not missing something in this language that allows for or provides for the possibility that there was going to be a nomination.

And so I know there is language in these paragraphs that refers to what happens if a nomination doesn't get up in terms of the back-and-forth. But I just want to make sure before I answer your question and say something as significant as that, that I'm not missing what might be a consistency between this and the information of their intention to nominate.

This e-mail presents a perspective that looks to be in no rush to get a nomination up to the Hill. That seems to be reflected in the language. And this notation that I have in my notes when I prepared, expresses an intent to do a nomination after consultation with the Senators.

Q Were you made aware, prior to your testimony, of either this e-mail or the sentiments expressed in this e-mail between and among Mr. Sampson Mr. Oberson, and Ms. Goodling?

A No, I was not aware of the contents of this e-mail with the time line.

Q Had you been aware of the contents of this e-mail that affected the language you talked about, the Department's intentions to work with the home State Senators --

A I think I would -- my views about what we would be doing would have been affected significantly by this language.

I also want to say -- make sure it's clear in the record that this language always intended -- or it's my -- it's my wording and it may or may not have come from any one person, and it may reflect also the fact that as I looked at this total effort, it was my understanding that we were going to seek to put people in place through ordinary process and we were going to get nominations. So I may have connected that intention to Arkansas as well as the other districts.

Mr. Miner. In light of the fact that it is now 8 minutes to 6, and in light of the Deputy Attorney General had other commitments, I would ask to take over questioning. May I?

Mr. Bharara. I will pass the witness over for questions.

Mr. Miner. Do you have adequate time for me to ask a series of questions?

Mr. McNulty. I will stay until the last possible moment.

EXAMINATION

BY MR. MINER:

Q I appreciate that. Matt Miner for the Senate Judiciary Committee minority.

The Attorney General testified on April 19 that he, quote, soberly questioned his prior decisions and asked you

if he should stand by his decision to seek the removal of U.S. attorneys.

Do you recall him approaching you to ask if the Department could stand by the decision?

A I recall discussing that subject with him. And the fact that we talked about -- talked about whether or not it was appropriate or not, and talked about the fact the President has the authority to remove U.S. attorneys and that, notwithstanding all of the difficulty in the weaknesses of the process and the difficulty it has created, that nevertheless we should stand by the decisions because of the President's rights to be able to make changes.

Q Was that what you conveyed to the Attorney General when he asked you?

A That's the nature of our conversations. I generally remember it, and I think it represents, as best I can remember right now, what my thinking would have been.

Q Was that face to face or was that via phone?

A That would have been a conversation we had.

Q And did you go through the bases of the removals of the seven U.S. attorneys, or were you only looking at the President's power to remove?

A Well, we didn't have a thorough discussion about each case, because we were well aware of all those circumstances, and we were just having a discussion about

the overall process and what occurred.

Q Okay. With respect to one of the cases -- I am going to ask different questions about Dan Bogden. You testified at various points when you saw the list or heard the list November 27, and then earlier iterations, the reasons for removal or problems were apparent to you -- I am paraphrasing you.

Is that accurate; in terms of when you heard the list or sought the reasons for removal for the group, it was fairly apparent to you?

A Yes. Basically what I did, I looked at the names and had some recognition of issues or concerns associated with the name, with the exception of Dan Bogden where I didn't have -- and the other one that was struck from the list -- that I just didn't have something that came to mind associated with that individual.

Q So with respect to Dan Bogden, the reason was not apparent?

A It was not apparent to my mind at that time, no.

Q And that included up to the December 5 e-mail that you sent indicating that you were skittish about the Dan Bogden decision, correct?

A That's correct.

Q Between the 5th of December and the 7th of December did you have any conversation or gather any information as

to Dan Bogden to make you less skittish about the decision, other than the earlier testimony about the conversation where he was a bachelor?

A What were the -- this is very bad -- bad precedent for bachelors, I am afraid. What was the -- what was the time frame?

Q Two dates. The 5th when e-mail was sent, and the 7th when the calls were made -- of December 2006.

A No, I didn't gather any more information.

Q Okay. You were busy, you testified at this point, in December 2006, correct?

A Yes I was.

Q You were working on the revision of the Thompson memorandum?

A Trying to stave off Senator Specter, that's correct.

Q And me in part. Did Dan Bogden fall through the cracks?

A Well, you know, there's a different way to look at that. I think that Dan Bogden could have been handled better, and I had an opportunity to object and I didn't do it. And so in that sense, yeah, I think that Dan Bogden could have been.

Q Aside from Presidential power, Executive power to remove Presidential appointees, do you think the Department has, based on your knowledge of facts and circumstances, a

reason to stand behind the removal of Dan Bogden?

A Well, you know the question is a little difficult, because if we all accept the premise that has been repeated by everyone, that the President has the right to remove U.S. attorneys for any reason as long as it's not an improper reason, then I think that the Dan Bogden decision to ask him to resign falls into that category.

It may be strengthened by the fact that from a performance perspective, the sense was that he was not as aggressive and as well-suited for his district as other persons could be. So that I think, at the end of the day, is the final reason why we would stand behind the decision of Dan Bogden.

I'm not sure if I responded fair enough to your question. Did you want to say it again?

Q We're running out of time. I think it's a matter that we could discuss for quite a while.

A If you are suggesting to me that you are not satisfied with what you've seen or heard about the Dan Bogden issue, you are looking for performance and specifics, I'm sympathetic to what you are saying. I mean it's certainly a close call and one that, in that range of dissatisfaction, I believe that Dan is on the end of that range where it was more of a style of leadership and ability. That's certainly different from someone who was

failing in regard to priorities or policies, and I think I've made that pretty clear by now.

Q Let me ask two clarifying questions. Maybe this will help to wrap it up. On the 5th of December in your e-mail, you were seeking clarification for why Dan Bogden was on this list performance-wise, correct?

A Basically I was expressing that concern, and I did expect, I think it's fair to say -- or perhaps "hope" may be a better word -- for more information that might have helped me agree with this and not voice an objection.

Q And that information, by the time the calls were made, was never gotten?

A It was never changed from the information I basically had, which was it had to do more with the way in which his style of leadership and assertiveness and aggressiveness was --how well-suited, he was for that particular district.

Q At the November 27 meeting where the Attorney General was present, and, along with the other group and Kyle Sampson, went through the elements of the plan to remove U.S. attorneys, seek removal, did the Attorney General approve that plan at that meeting?

A That's, I think, a reasonable way to characterize what occurred at the meeting, yes.

Q How did he signal his approval?

A But I don't have recollection of him specifically speaking in some way in which he voiced approval. The purpose of the meeting was to go over the intended plan one last time, and he did not voice any opposition as I recall. And I don't know how he put it last week or so in his hearing, but that was his -- certainly one moment in the process of where he supported what was about to happen.

Q Did he verbally support it?

A I don't recall him saying.

Q After the November 27 meeting, up to the date of the calls, the 12th -- or the 7th of December 2006 -- did you ever have a conversation with the Attorney General wherein he conveyed that he was okay with the plan or was approving the plan?

A Between what days? I'm sorry.

Q The date of the meeting, on the 27th of November, and the day the calls were made, on the 7th of December?

A I don't think I had any other conversation with him.

Q Did Kyle Sampson, before you testified -- I believe your testimony before the Senate Judiciary Committee was on the 6th of February 2007 -- did Kyle Sampson, in a briefing, tell you that you believed that Bud Cummins, the former U.S. attorney for the Eastern District of Arkansas, was put on the list or was removed in part for performance-related reasons?

A No, Kyle did not tell me that.

Q At the November 27 meeting where the Attorney General was present, did anyone dial into that meeting? Was anyone on the phone?

A Not that I recall, no.

Q What about at the March 5, 2007 Executive Office Building meeting before Will Moschella testified?

A No. I don't recall him being there.

Q Senator Ensign -- I will go back to Bogden in a moment. Senator Ensign has asked the Department to take steps to restore Dan Bogden's reputation. Do you know if anything has being done along those lines?

A I know the Attorney General has talked to Dan and the Attorney General is working with Dan in some fashion right now. I'm not personally involved in that.

Q Moving southward to Arizona and Paul Charlton, you testified earlier regarding a concern that went back to the date that Paul Charlton first appeared on that tiering list where there was some concern that he had raised resource issues with Senator Kyl, correct?

A Yes.

Q At Kyle Sampson's hearing before the Senate Judiciary Committee, Senator Kyl stated that he asked Paul Charlton what do you need, what can we do to help you; and he does so every year in December. In light of the fact

that this is a home State Senator's question to the U.S. attorney, is there anything inappropriate about what Paul Charlton did?

A No. I am glad you reminded about that. I had forgot about Senator Kyl saying he asked that, and that may be a very fair explanation. When I was answering Mr. Nathan's question, I was trying to recall if there was any issue that existed in that time frame, other than the two that I dealt with later. And the best I could come up with, on the spot there, was those resource issues.

Now, I will say this: that that explanation's very reasonable and -- but it may not have been what people at the Department of Justice understood at the time that it was occurring. So that information sheds more light on it. But it could be contemporaneous with the events that were occurring in the latter part of 05 or early 06, that you could have understood that more differently at that time, and not understood or appreciated Senator Kyl's initiative that would explain that.

Q Did you ever discuss or did anyone ever discuss with you -- were you ever present and overheard a discussion where a justice official or a White House official advocated for the removal of one of these U.S. attorneys to impede a political prosecution?

A Absolutely not.

Q What about to spur a political prosecution?

A Absolutely not.

Q Your testimony before the Senate Judiciary Committee has come into question based upon a number of facts that you have said you were unaware of; because documents later came out, but you were not aware of them at the time, correct?

A That's correct.

Q At the time you testified before the Senate Judiciary Committee, did you have any intent to mislead the committee?

A None at all. Just the opposite. I had every intention to tell the committee everything I knew, to the best of my ability.

Q Did you --

A I would just, by the way, refer to Senator Sessions' exchange with Kyle Sampson at his hearing as an important explanation by Kyle Sampson as to what I knew when I testified. Thank you.

Q Did you -- or were you present when anyone else did this -- suggest that the reasons for the terminations of these U.S. attorneys, that that should be documented before the decision was made?

A Was I part of any conversation where that was suggested?

Q Yeah. Before we fire these folks or seek their

removal, we should document why we're doing it?

A I don't recall anybody ever saying that.

Q After the fact, do you remember that being raised? In other words, we've done it, we're now being asked about it, we should document why we did it.

A I may be forgetting something right now at the end of the day, but I -- I --

Q If you don't recall, that's fine.

A I'm sorry. All I can recall is the efforts in February to try to bring together the information for purposes of the briefing, but I don't have any other recollections to something right now that would fit into that.

Q And this is going to be my last question so we can send you on to your event. What exhibit are we up to?

[Exhibit No. 23

Was marked for identification.]

Mr. MINER: We will label this, at least tentatively, 23. I showed you this document earlier. You were asked about the U.S. attorney resignation chart that was in one of your materials, and when that was generated; whether it was for your February 6 hearing, in advance of that, or in advance of your February 14 briefing.

BY MR. MINER:

Q Taking a look at this document, which was an e-mail from Monica Goodling to Michael Elston, dated Monday, February 12, 2007, does this refresh your recollection as to when that chart was generated?

A Yeah. You see, that was my recollection, that when I went to testify on the 6th, I already had -- I was clearly of the mind that I wasn't going to get into specific reasons related to the U.S. attorneys in a public setting. And so this information would not have been important to me in preparation for my hearing on the 6th.

What changed, of course, was that between the date of the 6th and the 14th was that I needed to get the specific information together to provide to the Senate. So if this e-mail was forwarded to me, to my office on the 12th, that would be consistent with my memory.

Q And I believe you also weren't confident as to who had drafted this. Taking a look at the subject line and the sender, the subject line states "draft, and still working on the second column," and it is from Monica Goodling. Does this refresh your recollection as to who prepared that chart?

A I appreciate that. I had forgotten about this e-mail, or I don't know if I knew about it. But that certainly does -- I don't know if it refreshes my memory or

not, but it is instructive as to who prepared the chart.

Q Looking at this you would find it's Monica Goodling?

A Well, looking at this based upon the best memory I have and this e-mail, it would seem to be a reasonable conclusion that Monica prepared this chart.

Mr. Miner. That's all I have. Thank you.

[Whereupon, at 6:06 p.m., the interview was concluded.]