

RPTS SCOTT

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

INTERVIEW OF: JOHN ANTHONY NOWACKI

Monday, May 21, 2007

Washington, D.C.

The interview in the above matter was held at room
2138, Rayburn House Office Building, commencing at 12:40

p.m.

Appearances:

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

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Mr. Reed. On the record.

Good morning or good afternoon, everyone. My name is Robert Reed for the House Majority Staff. Again, we are here based on a joint investigation pursuant to both the House and the Senate Judiciary Committees.

Before I begin and before I forget, let me just put into the record these three letters, one of which is a letter dated March 29th, 2007, from Acting Assistant Attorney General Richard Hertling to Chairman Conyers and to Chairman Leahy. The other is a March 29th, 2007 letter from Chairman Conyers to Mr. Hertling. The final one is an April 10th, 2007 letter from Senator Schumer to Richard Hertling, which basically details the confidentiality concerns and the scope concerns that we have all agreed to.

So those can be 1 through 3.

[Nowacki Exhibits No. 1 though 3
were marked for identification.]

Mr. Reed. Again, as you all probably know by now, a limited number of individuals will be asking questions today. I will be asking questions for the House majority, and I guess we can go around the room and have a representative from each of the other, I guess, House minority, Senate majority and Senate minority identify themselves or a representative thereof.

Mr. Flores. Daniel Flores for the House minority.

Mr. Paris. Jeremy Paris for the Senate Judiciary Committee majority.

Mr. Miner. Matt Miner for the Senate Judiciary Committee minority.

Mr. Reed. Great. All right.

Again, we have got Mr. John -- is it Nowacki?

Mr. Nowacki. "Nah-vaut-skee" even though it does not look like it.

Mr. Reed. Okay. Fair enough. I just wanted to make sure I had the pronunciation correct.

Again, Mr. Nowacki, as you know, we are here for an authorized investigation. I just want to make sure you understand that any knowing and willful misstatement that you provide in your testimony, including any omission of material information or any statement misleading, would be a violation of Section 1001 of Title 18 of the U.S. Code, which is a felony and can be prosecuted in Federal Court.

Do you understand that?

Mr. Nowacki. I do.

Mr. Reed. Okay. Great. Again, before we get started, if we could, let us make sure not to speak over each other and give verbal answers instead of "uh-huh," "huh-uh." If you need to take a break at any time, let us know, and we will try to accommodate you at the best possible and most

appropriate time.

EXAMINATION

BY MR. REED:

Q All right. If you could, please state your full name for the record.

A John Anthony Nowacki.

Q How do you spell your last name?

A N-O-W-A-C-K-I.

Q Great. Where are you currently employed?

A At the Department of Justice, Executive Office for U.S. Attorneys.

Q What is your current title?

A Principal Deputy Director and Acting Counsel to the Director.

Q Okay. What is the address of your office?

A 950 Pennsylvania Avenue, Northwest, Washington, D.C., 20530.

Q Okay. I want to start by just getting background information from you -- where you went to college and law school -- if you could tell us.

A Evangel College in Springfield, Missouri for undergraduate, Regent University in Virginia Beach for law school.

Q Okay. What did you major in at Evangel?

A Government and Public Administration.

Q Okay. When did you graduate with your undergraduate?

A 1994.

Q Okay. Regent University Law School, when did you graduate?

A 1998.

Q Okay. Great. Just out of curiosity, I know -- or we have heard through media reports that a lot of Regent University grads work in the Department of Justice.

Do you know how many off the top of your head?

A No, I do not.

Q Do you have a general estimate?

A No, I do not.

Q Okay. All right. What about any professional organizations that you belong to -- the Federalist Society or anything of that sort?

A None.

Q Okay. As for jobs held, what did you do immediately following graduation from Regent University Law School?

A I came looking for a job on the Hill. I ended up working briefly at the House Republican Conference. It was more of a volunteer type thing. I think I ended up at the Free Congress Foundation for about 5 years -- that is a think tank here in D.C. -- and then came over to the Department.

Q Okay. How did you get the initial job on the Hill?
How did that come about exactly?

A I just -- the usual thing. You connect. You meet people, and you end up over there and that sort of thing.

Q Okay.

A It was more like an internship than an actual job. That was volunteering and that sort of thing.

Q How did you make it over to the free Congress think tank?

A I knew somebody who worked there, and I interviewed and so on and so forth.

Q What led you to want to work there?

A I was interested in what they were doing at the time related to judicial nominations.

Q What exactly were they doing at the time with regard to judicial nominations?

A Well, the organization was a little bit more involved, I think, than they are today on just the general judicial nominations issue with respect to activists, restrained judicial nominees, that sort of thing.

Q Was it a conservative think tank?

A Yes.

Q Okay. While you were there -- I know you mentioned judicial nominations -- did you have any role in offering input on U.S. Attorney nominees or any of the like --

A None.

Q -- or just judges?

A None.

Q Okay. After the Free Congress, where did you go next specifically?

A To the Department of Justice.

Q Okay. To which particular section of the Department of Justice?

A The Office of Public Affairs.

Q And how did you get there?

A I knew someone who worked there who said that they had an opening, and I applied for it and came over.

Q Do you remember the name of that person?

A Yes. It was Monica Goodling.

Q Okay. How well did you know Monica at that particular time? Ms. Goodling. Excuse me.

A We were acquaintances. We had run into each other several times.

Q Did you all go to Regent University Law School together?

A I think we were there at the same time. I do not recall knowing her while I was there.

Q Okay. Would you describe your friendship as a strong friendship or just as mere acquaintances?

A At the time or now?

Q At that time.

A I would say acquaintances, business acquaintances, that sort of thing.

Q Okay. Did she inform you of this position at the Department of Justice? Can you describe in detail who contacted whom?

A I think I might have mentioned -- it is some years ago. I do not recall exactly. I might have mentioned I was looking for another job, and she might have mentioned that they had an opening there for another position and encouraged me to apply for it.

Q Was she also, meaning Ms. Goodling, one of the individuals who interviewed you for the job as well?

A She was one of several, yes.

Q Do you recall who else interviewed you for that particular position?

A I do. The then Director of Public Affairs, Mark Corallo; the Deputy Chief of Staff, David Israelite; the White House Liaison, Susan Richmond; someone from Personnel. I think it was Jan Williams; and one other person whose name I do not recall.

Q Okay. When you were in that particular office, how long were you in the actual Public Affairs Office of the DOJ?

A November 2003 to March 2006.

Q Okay. Who did you mainly report to when you were there?

A The Director of Public Affairs.

Q Okay. To anyone else besides that?

A No. I would have reported -- I mean -- let's see. Monica Goodling was the Principal Deputy Director at the time. There was also another Deputy Director there, Gene Talamona. So I would have reported at times to them as well.

Q Okay. What did your specific duties entail in that particular position?

A I handled press responses for a number of components, including the Office of Legislative Affairs, the Office of Legal Policy, the Office of Legal Counsel, the Office of the Solicitor General, a lot of the smaller, miscellaneous components, basically a lot of the policy issues that came before the office.

Q Okay. Legal considerations as well?

A Yes.

Q Okay. All right. Just, actually, to fall backwards for a second, with regard to free Congress, what specifically were your duties there? I know you have mentioned vetting, but what did that entail specifically?

A It was not vetting. I guess you would say grassroots advocacy. They did a lot of that. There was

some involvement with media, you know, interviews, op eds, things of that nature.

Q Okay. From the Office of Public Affairs at the Department of Justice, where did you go next?

A I went to the U.S. Attorney's Office in the Eastern District of Virginia as a Special AUSA.

Q And did someone recommend that you do that or did you think of that on your own?

A Well, I knew a number of people who had gone through the program, and they had recommended it pretty highly.

Q Was Ms. Goodling one of them?

A She was one of them, yes.

Q Okay. She had done that herself prior to you; is that correct?

A Yes.

Q Okay. What did you do while you were a Special AUSA in Virginia?

A Well, the program there is geared toward giving people from various agencies, not just the Department, an opportunity to get involved on the prosecution side of things, and so you end up handling some misdemeanor cases, and then you end up moving to felony cases.

Q Do you recall how many misdemeanor cases?

A No, I have no idea. It ends up, if you can get a trial, great. If you can get an appeal, great, that sort of

thing.

Q Do you recall how many felony cases you handled while you were there?

A I do not recall exactly. It was not a huge amount, but I had a couple.

Q Would you say less than ten?

A Probably less than ten.

Q Okay. All right. Did someone actually have to recommend you for that kind of detailee position from the Department of Justice where you were at the time?

A You know, I am not sure. I think I might have gotten one, a recommendation. I just said I was interested in it, and I ended up -- I think there were -- the way the program works there is they have regular groups that come in every 2 months, and sometimes they need more people, and sometimes they do not. So I am not sure exactly what goes on with how they work it.

Q Okay. While you were at the Alexandria office -- was it Alexandria, Virginia?

A Right.

Q Okay. While you were there, were you also still in contact with Main Justice kind of in your, I guess at that point, peripheral role in the Public Affairs Office?

A Basically, on a personal level. I mean, I was detailed out there, but I was not doing any work for anyone

at Main Justice.

Q Okay. Where did you go after the Special AUSA assignment?

A Then I moved over to the Executive Office for U.S. Attorneys, which is where I am at now.

Q Okay. If you could, describe the process of how you got there. Who, if anyone, recommended you for that slot?

A I had understood, actually, in early 2006 that there was an opening for the position that I hold now, and I applied for it, interviewed with Mike Battle, who was then the director, and I got the position.

Q Did Ms. Goodling recommend you for that position?

A Well, I am sure she had some involvement. I think she was the White House liaison at the time, so she would have been involved in the process.

Q Do you know if anyone else besides Ms. Goodling was involved in recommending that you apply for that position?

A I believe my boss at the time was the Director of Public Affairs, who probably said a good word about me, so -- I am not exactly sure.

Q Anyone else who you can think of?

A I am not sure. I did not solicit recommendations. I am not sure how they go about the process there.

Q Okay. That particular job was for the position you currently hold; is that correct?

A That is correct, yes.

Q Okay. When did you start in that position, the one you currently hold?

A August 2006. August of last year.

Q Okay. If you could, just briefly describe the duties that you have in your current position for us.

A Well, generally speaking, I am the number 2 person in the office. I have a supervisory role in my portfolio over the data analysis staff; the counsel to the director's staff, which acts as sort of a liaison between the U.S. Attorney's Offices and the Office of Legislative Affairs, Public Affairs, and some of the other components; the Office of Legal Programs and Policy, which deals more with government entities outside of the Department, but it is again a liaison role, and it is very policy-focused; the Victim Witness Ombudsman, which deals with complaints regarding victim-witness issues; and the Nominations and Appointments unit, which facilitates the interview process for U.S. Attorney candidates and then provides whatever support is needed as they go through the nomination process.

Q You mentioned U.S. Attorney candidates. Does it also encompass at all, in any form or fashion, Assistant U.S. Attorney applicants?

A The only role that I would have regarding those would be -- there is a longstanding policy where, when there

is an interim or an acting U.S. Attorney, there is basically a hiring freeze in the office because the presidentially appointed U.S. Attorney should be the one who is able to do the hiring. The office can apply for a waiver of the hiring freeze, and so that request would go through several levels in EOUSA, looking at resources that are available, looking at the vacancies, how many vacancies there are, and also how many vacancies would be left for the incoming presidentially appointed, Senate-confirmed U.S. Attorney to fill, and it would end up going through me, and so that would be my role in it.

Q So it was more kind of a resources allocation type of procedure as opposed to actual interview of the applicant?

A Right. There would be no -- I, certainly, did not interview any applicants. I do not know of anyone interviewing any of the applicants for a waiver.

When I would look at them, one of my biggest considerations would simply be where the nominee, if any, would be along in the pipeline, basically looking to see, well, can this stay vacant for the permanent U.S. attorney to fill or is this something that needs to be filled now, and are we far enough off where the interim or the acting should be able to do it.

Q Okay. Just to kind of get a better sense of your

roles and duties at the executive office, I am going to hand you this document. This is actually off of the Web site of the EOUSA. I guess we could mark this as 4.

[Nowacki Exhibit No. 4
was marked for identification.]

BY MR. REED:

Q If you will, just take a moment to look at this document, the major functions, and if you want to star any particular functions that were more relevant to you than others, that would be great.

A [Reviews document.] Well, a number of these cover things that the various staffs in my portfolio supervise, some of which I have a little bit of direct involvement with and some of them none.

Q Okay.

A "Policy development," that would be handled, I think as I mentioned, by the counsel of the director's staff and the legal programs and policy staff.

The same thing with "coordination with other components of the Department and other Federal agencies." I think I described some of that earlier. I think that also falls in the "facilitate coordination" bullet point. It also falls in the Nominations and Appointments unit I described earlier. It provides support regarding the appointment of U.S. Attorneys.

"U.S. Attorney conferences," depending on the conference, I would have some -- I might have some role in supervising how that is put together. Those are, maybe, handled by people on my staffs.

"General direction and supervision of the management and policy activities," that bullet point, which is a little bit long, falls under the Legal Programs and Policy Staff for the most part.

The next bullet point, which is, again, more of a policy-type bullet point, that is Legal Programs and Policy.

Q Okay.

A On the second page, "statistical report" about halfway down, that is data analysis staff, which is in my portfolio.

A little further down, the "Victim-Witness liaison," I think I mentioned that earlier as well.

Q Okay.

A The data analysis would have some role in the bullet point -- just a second -- the third one from the bottom, "track, provide and analyzing data."

Then as to the first and the last bullet point on the third page, the first one, respond to congressional letters to U.S. Attorney's Offices. Those are usually handled by the Counsel to the Director's staff.

As to the last point, information and guidance

regarding legislation, that is also handled primarily by Counsel to the Director's staff through Legal Programs and Policy.

Q Okay. Thank you. I appreciate that.

This is just one other document here. You can just kind of tell me where you fit on this chart, if that is easy to do. I figured I would ask you about that, but I do not know if --

A Well, in the box, it says "Counsel to the Director." That would be me.

As far as the Deputy Director of slots --

Q So you are basically above all of the Deputy Directors?

A Well, I am also one of the Deputy Directors, and these boxes -- I think we have things divvied up a little bit differently than the way this is represented. So it is kind of -- basically, the units that I described earlier would be the ones that would fall under me.

Q Okay. Great. While you were there and while Mr. Mike Battle was still director, how much interaction would you have with them as a daily interaction and weekly?

A Pretty fair. Daily, I would say. His office was right across from mine.

Q When did you learn that he would be resigning?

A I think I knew when -- I think it was sometime last

summer. It was definitely when I came in in August. Everyone pretty much knew that he was looking around, that he was either in negotiations with a firm or was in the process of getting ready to leave.

Q Okay. I also want to just kind of touch on your working relationship with Ms. Goodling in your current role when she was still at Main Justice and you were in your current position.

How would you describe the interaction you had with her when she was either senior counsel or White House liaison and you were in your current position?

A What do you mean specifically?

Q In terms of whether you shared the same portfolio of issues and the like.

A Well, I know that her portfolio as senior counsel included EOUSA, so she had the oversight responsibility for the Attorney General's Office for my component at the department, so I would deal with her fairly often on things that would just impact her office upstairs that she would need to know about.

Q Was she, effectively, in a supervisory role over you in that regard given that EOUSA was one of her components?

A Well, "yes" and "no," I mean in the sense that someone who -- in the sense that there is oversight there and in the sense that, when someone in the Attorney

General's Office or the Deputy Attorney General's Office asks you for something, you usually do it.

Q Fair enough. Did you all, meaning "you all" as you and Ms. Goodling, ever have conversations about the direction you wanted the Department to go in, anything along those lines, goals for the Department?

A Not really, no. I mean I understood what the priorities of the Department are, and those had been set out by the Attorney General.

Q What did you understand those goals to be?

A Well, there are things he has mentioned on numerous occasions, and I think he may have outlined them in the speech early on in his tenure about the top priority being preventing terrorist attacks, the prosecution of drug crimes, white collar crimes, immigration enforcement, the prosecution of cyber crimes, including intellectual property theft, and the things that are covered by initiatives like Project Safe Childhood, the prosecution of violent crime, including things like, under the President's initiative, Project Safe Neighborhoods, and that's probably -- well, I think obscenity prosecutions fall under the computer crimes or I am not sure, but anyway, I have probably missed one or two of them.

Q What was your role with regard to any specific complaints about certain U.S. attorneys throughout the

country? Did you ever play any role in addressing them directly yourself or were they fed through you?

A I do not recall receiving any complaints about a specific U.S. attorney during my time at EOUSA.

Q Would that have been in your kind of general "reign" for lack of a better word?

A Depending on where it would have come from, I suppose.

Q Okay. If you could, elaborate on that.

A Well, I guess I should add to that.

Not having had one come to me, to the best of my recollection, I really could not say. I do not know. I assume that I might have heard about it if there were one that someone would have thought would have been important to direct to my attention, but as I said, I do not recall ever having one.

Q Do you know who within the office would have had, maybe, more direct control over that issue?

A Well, I suppose that, if something had been directed toward EOUSA, that Mike Battle or whoever the director would be would have been made aware of it, again, if it had been directed at our component.

Q Okay. I want to move to a different subject now with regard to your knowledge of, for lack of a better word, a plan to terminate specific U.S. attorneys.

I know you came in August 2006; is that correct?

A That is right.

Q When, if at any time, did you learn of a specific plan or an idea of terminating specific U.S. Attorneys?

A I learned that several U.S. attorneys would be asked to resign maybe as much as a week before the December 7th calls were made -- it may have been a few days before -- but somewhere around that time was when I found out. I was not aware of a plan to ask them to resign before then.

Q Okay. How did you find out about this plan? You said it was about a week before the December 7th phone calls.

A I do not remember whether Mike Battle or someone else would have mentioned it to me, but it would probably either have come from him or from, possibly, Monica Goodling.

Q Okay. Is that possibly or are you sure?

A It would have been one of the two. I do not recall which. Before it happened, I know I would have -- I probably would have heard it from both of them.

Q Okay. Anyone else like Kyle Sampson or any other official whom you can recall?

A No. I did not have a lot of interaction with Kyle Sampson in my current job.

Q And what specifically did either Mike Battle or

Ms. Goodling tell you about the plan from what you can recall?

A I do not recall any specifics other than just that there were a number of U.S. attorneys who were going to be asked to resign a couple days hence or a week hence or whatever it was. That is pretty much all I recall.

Q No one told you any reasons --

A No.

Q -- for their resignations --

A No.

Q -- or for their forced resignations?

A Right.

Q Okay. Aside from any discussion with either Mr. Battle or Ms. Goodling, were you aware of any White House involvement in this particular plan?

A No.

Q Okay. Not at all?

A No.

Q Okay. Do you know of anyone else either in the executive office or at Main Justice received any input from outside agencies, whether it be the White House or other organizations, regarding the plan to get rid of --

A I do not recall being aware of any.

Q Okay. I would like to just kind of focus on a few specific U.S. attorneys and get your knowledge and

understanding, if you have any, regarding circumstances surrounding their departures. I would like to start with Mr. Todd Graves.

Do you have any knowledge about the circumstances surrounding his particular dismissal?

A Not really, no. I recall -- after he resigned, I may have heard that -- I am not entirely clear on this. I may have heard that he had been asked to resign, but I am not really sure.

Q Okay. Did you have any idea about the reasons --

A No.

Q -- involving his dismissal?

A No.

Q Okay.

A No.

Q Had you heard anything about his performance prior to the December 7th calls that you referred to?

A Again, this is all prior to my time in EOUSA, but I seem to recall that there was just the sentiment that maybe he was not -- that people were not the most enthusiastic about him, but I do not recall anything specific. Again, this is just sort of a general recollection from my time at Public Affairs where I really would not have been involved in that sort of thing.

Q Okay. Related to Mr. Graves, we have Mr. Bradley

Schlozman. Are you familiar with Mr. Schlozman?

A Yes, I am.

Q Okay. Do you know him well?

A A business acquaintance. A business friend.

Q When did you first meet him?

Mr. Hunt. Can we go off the record?

Mr. Reed. Yes. Sure.

[Discussion held off the record.]

Mr. Reed. Back on the record.

BY MR. REED:

Q I am sorry. I think I asked you when you initially met him.

A I do not recall the exact date. I would have been sometime when he was in the Civil Rights Division.

Q Okay.

A It was probably after he became Acting Assistant Attorney General, but I do not recall.

Q Okay. Do you recall the effort to appoint him as interim -- to replace Mr. Graves?

A No. I was in Public Affairs at the time or close to leaving, I think. I was not involved with it.

Q Okay. So you do not have any understanding of the circumstances surrounding that particular process?

A No, I do not.

Q Okay. Again, I understand he is currently at the

Executive Office for U.S. attorneys; is that correct?

A That is correct.

Q And what is his position there?

A The title is Associate Counsel to the Director.

Q Okay. Was that a title that existed before Mr. Schlozman arrived?

A Yes. Yes.

Q Do you know generally what his duties are?

A He is handling a portfolio, which includes sentencing issues and some general criminal issues and things along those lines. I do not recall the exact list.

Q Do you know if voter fraud would be one of his issues?

A I believe it is not.

Q Okay. Any civil rights issues to your knowledge?

A Definitely not.

Q Okay.

A I definitely know those are not.

Q Just moving down the list, Thomas Heffelfinger, are you familiar with him?

Mr. Hunt. Actually, I think the understanding has been that we are going to talk about performance with respect to those who were asked to resign.

Mr. Reed. Okay.

Mr. Hunt. In addition, we have moved beyond that to

agree to discussion about Steve Biskupic and Todd Graves, but now we are venturing, yet again, beyond those.

Mr. Reed. Fair enough. I was really just going to ask a few questions about replacement issues and what he knows about those. I can move on.

Mr. Hunt. What he knows about who replaced him?

Mr. Reed. What he knows about Rachel Paulose, who replaced Heffelfinger.

Mr. Hunt. Okay. I think that is fine. We are not talking about performance issues with respect to those people.

Mr. Reed. That is exactly correct.

Mr. Hunt. Okay. Go ahead. Thanks.

Mr. Reed. I appreciate that. Thanks, Jody.

BY MR. REED:

Q With respect to Mr. Heffelfinger, just generally, were you aware of circumstances surrounding his resignation?

A No.

Q Okay. With regard to the individual who replaced him, Ms. Rachel Paulose, do you know her?

A I do.

Q And how long have you known her?

A I met her right around the time she was appointed to the interim position.

Q Okay. Are you familiar with her qualifications?

A Somewhat.

Q Okay. Were you aware or were you part of the decision-making process at all to replace Mr. Heffelfinger with Ms. Paulose?

A No.

Q Okay. Do you know about any of the discussions that entered into that replacement process?

A No.

Q Okay. I want to move down to one of the eight now, Mr. Bud Cummins. Again, I am probably going to ask you pretty much the same line of questions with regard to each of the eight. Were you familiar with the circumstances surrounding his resignation/dismissal?

A I am sorry. Did you say was I familiar with?

Q Yes.

A At which time?

Q At the time at which it occurred, I think around June or even before that, June of 2006 or before that.

A I think I learned that he would be resigning -- I do not recall whether it was in August when I came back over to Main, to EOUSA, or maybe sometime a little bit before that. It definitely would have been in the late summer, maybe early fall. Well, it would have definitely been -- excuse me -- by August, that I would have found out, and my understanding was the explanation that has been previously

stated is that he had indicated in various settings that he did not intend to remain as U.S. Attorney through the entirety of the second -- of the President's second term and that he would be leaving, that he had been asked to -- if you are not going to be staying the whole time, maybe this would be a good time to go, something along those kinds of lines.

Q And where did you get that information if you recall? From whom?

A I do not recall from whom. It was sort of a word-of-mouth sort of thing. I might have just heard it when I was coming back into the EOUSA and just being given the general picture of where things stood as I would have been taking over the Nominations and Appointments unit, so --

Q Do you think Ms. Goodling could have told you about it?

A She could have. I do not recall her doing that, though. I do not recall it being her.

Q Had you heard about any performance problems with regard to Mr. Cummins?

A No.

Q Okay. All right. Were you part of the process of determining a replacement for Mr. Cummins?

A No.

Q Were you aware of Mr. Tim Griffin?

A Around the time when I came back to the EOUSA, yes.

Q Okay. Who made you aware of Mr. Tim Griffin?

A I do not remember. I think it would have been whoever had told me that Mr. Cummins would have been resigning, but I do not recall who it was.

Q Again, could it have been Ms. Goodling?

A It could have been. Again, I do not -- I seem to think it might have been someone at the EOUSA who told me, but I do not know.

Q Maybe Mr. Battle?

A It could have been. I do not know.

Q Did you participate in any interviews of Mr. Griffin?

A No.

Q Okay. Did you participate in setting up any interviews of Mr. Griffin?

A No.

Q Okay. Let me actually just ask you --

A Let me double check something.

Did you mean "interview" in terms of interviewing a candidate for the position that we would -- what did you mean by "interview"?

Q To the degree to which EOUSA or anyone else from Main Justice, for that matter, was setting up an interview

of a particular candidate to replace Mr. Cummins, were you involved in that process?

A Okay. The answer is no.

Q Let me just ask you about this document here. I guess this is 5.

Mr. Kemerer. Can we go off the record for a minute?

[Discussion held off the record.]

[Nowacki Exhibits No. 5 and 6

were marked for identification.]

Mr. Reed. Actually, I will just pass this one out, too, which will be 7.

[Nowacki Exhibit No. 7

was marked for identification.]

BY MR. REED:

Q Let us start with 6.

6 is an e-mail from Ms. Monica Goodling to you, dated November 13, 2006. It says, "Please set up video interview with Tim Griffin." Have you had a chance to look that over?

A Yes.

Q Does that refresh your memory as to whether you were involved in the process of setting up interviews with Mr. Griffin?

A Yes. I should have prefaced my other answer with "to the best of my recollection." I did not remember this at all. This would have been -- it probably would have been

an interview with him just for the -- an official interview with him for the interim U.S. attorney position.

Q Okay. Again, just turning to Exhibit Number 7, which is another e-mail, it looks like it is initially from USAEO candidates, November 14th, to Tim Griffin, and you were cc'd, and it lists Ms. Goodling, Mr. Margolis and Mr. Battle as those suggested as conducting the interview.

Do you recall being involved in setting that up?

A I do not really recall it, but that would have been the same interview that is referred to in number 6.

Q In number 6. Okay.

What do you recall, if anything, in terms of setting up that interview?

A Well, normally, Debbie Hardos, who wrote the bulk of this page that is before me, would take over the actual logistics of setting it up, and the interview would be conducted usually by the VTC, or video teleconference, for someone who is going for an interim and/or acting position, and it would have involved the individuals who are referenced on this page.

Q Okay. Do you remember participating in the interview at all?

A No, I do not.

Q Okay.

A I would participate in interviews of candidates if

Mike Battle were not available. I think he probably was in this case. I do not really remember.

Q Okay. Do you know how Mr. Griffin was selected as a possible candidate?

A No, I do not.

Q Okay.

A Do you mean how his name came up as a candidate?

Q His name, right.

A Obviously, I know that he was interviewed in this process that is referenced in that e-mail, and then the individuals who interviewed him would have evaluated him and would have made a recommendation, and ultimately, the Attorney General would have decided whether or not to give him an interim appointment. Beyond that, how his name came forward, I was not involved with that.

Q Were you familiar with his qualifications or with his resume, generally speaking?

A I would have been. At that time, I believe I would have. I think I actually asked him at one point for a narrative bio or for his resume or something along those kinds of lines, so I would have seen it around that time.

Q Is it true that he worked for the National Republican Committee?

A That is my understanding.

Q Do you know if Ms. Goodling worked for the

Republican National Committee?

A That is also my understanding. Yes.

Q Do you know if they knew each other while they were there?

Mr. Hunt. I am sorry. I did not understand.

BY MR. REED:

Q Do you know if Ms. Goodling and Mr. Griffin worked together at the same time, for that matter, at the Republican National Committee?

A I believe they did.

Q Okay. Do you know if that entered into his selection as a possible candidate for that interim position?

A I do not know.

Q With regard to -- I am just going to move down the line -- Ms. Carol Lam, what, if anything, had you heard about the reasons for her dismissal?

A Again, to what time frame are you referring?

Q Really, any time frame, when you came back to EOUSA in particular and prior to the December 7th calls.

A I do not recall hearing -- I mean, if you could repeat the question just so I can make sure.

Q Actually, let me be a little bit more specific.

Were you aware of any performance issues/performance problems with regard to Ms. Lam preceding the time that she was ultimately dismissed, December 7th, or called to be

dismissed for that matter?

A You know, again, I do not recall hearing any specific complaints about her, about her performance.

Q Okay. Do you know if Ms. Goodling was at all involved in the process to dismiss Ms. Lam?

A I do not know.

Q Okay. As to Mr. Paul Charlton, again, at any point for that matter, whether it was when you were at Public Affairs or when you came back to EOUSA, were you aware of the circumstances surrounding Mr. Charlton's dismissal?

A I do not recall hearing any specific complaints about him.

Q Okay. Did you have any complaints about him?

A I did not have any, no.

Q Okay. Do you know if Ms. Goodling was at all involved in his dismissal or in the process to dismiss Mr. Charlton?

A I do not know.

Q Okay. With regard to Mr. Daniel Bogden, the same question. At any point in time, were you familiar with the circumstances surrounding the reasons for his dismissal?

A Again, speaking prior to the calls, I do not recall hearing any specific complaints about him.

Q Right. Okay. Again, do you know if anyone, whether it was Ms. Goodling, or any other official for that matter,

of the Department, was responsible for facilitating his dismissal?

A I do not know.

Q Okay. With regard to John McKay, the same question. Do you have any knowledge of the circumstances surrounding his dismissal?

A I recall, in his case, hearing about the letter that he had sent to the Deputy Attorney General regarding the LInX program, and I recall hearing, again a word of mouth sort of thing, that it had been, perhaps, not well-received.

Q Do you remember specifically what you heard or why you surmise that it was not well-received?

A I think I had just heard that. I think I did see a copy of the letter.

Q Do you know who you heard that from?

A No, I do not. Again, I think it was just word of mouth from somebody, and that, though, is the only thing that I can recollect regarding McKay that might fit with what you are asking about.

Q And did you hear that about Mr. McKay prior to his being fired or was that after he had already been dismissed or had been called?

A Before. I believe I heard about this sometime close to when the letter was received or sent or when it would have been received.

Q Okay. Margaret Chiara. Are you knowledgeable about the circumstances surrounding her resignation/dismissal?

A No.

Q Do you know who, if anyone, was involved in facilitating her dismissal?

A No. I would add that Margaret Chiara was, I think, the only one who I had heard specifically who might be asked to resign prior to the time I mentioned earlier when I actually learned that there were a number of them, a number of U.S. attorneys who were going to be asked to resign. This probably would have been a month, maybe a month and a half before the call, but I do not recall exactly when.

Q And what specifically did you hear?

A Just that there was a possibility that she would be asked to resign. I did not hear any of the reasons why, however.

Q Do you recall who you heard that from?

A I heard that from Monica Goodling.

Q Okay. What about Kevin Ryan?

A Kevin Ryan. In regards to performance, I had heard a lot about his performance, and I guess I should say that, you know, when you had asked the earlier question about specific complaints about U.S. attorneys, I had interpreted that as being directed specifically towards me.

In Kevin Ryan's case, there had been some well-known

issues with his office. We had had an evaluation and review staff team out there. We had sent, I believe, a second team or a special team out there. So there had been a number of things related to the EARS program, looking at the management problems in his office, and so I was familiar with those for some time before he was asked to resign.

Q Okay. I guess, aside from the EARS reports, did you have any other involvement in attempting to address the issues you had heard about his particular office?

A No.

Q Again, did you know of any other DOJ official, whether it was Ms. Goodling or anyone else for that matter, who might have spearheaded the process to facilitate his resignation or his dismissal?

A I do not have any knowledge of anyone specifically doing that. Although -- I mean, I think it is -- I am sure that the results of the EARS evaluation raised enough eyebrows where people would have considered that, but I do not know who specifically.

Q Mr. David Iglesias, prior to his being fired, were you familiar with any performance problems with Mr. Iglesias?

A No.

Q Were you aware of any DOJ officials, for that matter, who were attempting to facilitate his removal from

office?

A No.

Q Okay. Had you heard anything prior to his dismissal about this widely reported now absentee landlord issue with him in particular?

A I do not recall hearing about it.

Q Do you expect that you would have in your position at the EOUSA?

A I might have. If it had been brought to -- if it had been raised with the office at the time I was there, the chances are pretty good that I would have heard about it, but then again, I might not have. I did not.

Q Had you heard anything about any calls from Senator Domenici to the Attorney General or to the Deputy Attorney General regarding Mr. Iglesias?

A No.

Q Actually, just to circle back to Mr. Paul Charlton, had you heard anything with regard to issues involving the Congressman Renzi investigation?

A I do not recall. I do not think so, but I do not recall.

Q Did you, I guess, specifically, know that Mr. Renzi's office had called Mr. Charlton's office to inquire about an investigation of him?

A I do not recall hearing about that. I do not rule

it out just because, if I had heard about it, I would have passed the word on that there had been a congressional contact, but I do not have any recollection of that.

Q Relatedly, do you recall hearing about anyone from Mr. Charlton's office calling the DOJ to report any possible call from Mr. Renzi's office?

A I do not recall that. If there had been such a call while I was at the EOUSA, it should have come to me or to the Counsel to the Director staff. I do not remember a call like that, though.

Q Again, with regard to either one of the eight dismissed U.S. attorneys, did you have any input whatsoever in assessments of their performances or issues related to their dismissals?

A I was never asked to assess their performances, and again, you know, I was not aware of the plan until about a week or a few days before the calls went out. So no.

Q When you actually became aware of the plan, was your advice at all solicited with regard to any one of the eight who were ultimately dismissed or, by that time, I guess, seven?

A No.

Q Okay. Just from your general assessment as well, do you feel as though once you became aware of the plan that you were more or less involved than Mr. Mike Battle?

A Involved in what way?

Q Involved in facilitating the process, organizing input, if you will, regarding the U.S. attorneys who were being dismissed.

A This is, again, in terms of making the calls or the decision about who to call or --

Q The decision about who to call, exactly.

A I think it would be less. I did not have any involvement.

Q Okay. Now I want to turn to kind of the post termination aspect, if you will, for lack of better terminology. Did you participate in any meetings with regard to possible the political fallout that might result from the calls, themselves?

A I do not recall being in any meetings where a political fallout from the calls themselves was discussed.

Q Do you remember discussing the political fallout at all with anyone?

A Well, I was involved in some of the prep sessions for two of the witnesses for each of the committees, so the political aspect would have been discussed somewhat there, but it would not have been in terms of the fallout from the calls.

Q Well, we will get to the prep stuff a little later. Specifically -- and I know we have not kind of resolved

all of the redacted stuff, but we have got certain privilege logs that suggest that you had certain e-mail traffic that say late December of 2006, December 18th, 2006. Just let me know if this at all refreshes your memory. I am not going to ask you about the substance regarding Senators' concerns regarding Mr. Charlton.

Do you recall any e-mail traffic that you might have had with regard to possible political fallout of that dismissal?

A I do not recall any.

Q Okay. Similarly, around kind of mid-January of 2007, do you recall any e-mail traffic regarding Ms. Lam's and Mr. Ryan's dismissals, specifically how to address any fallout from their dismissals?

A I do not recall specifically, but I would not be surprised if there were.

Q Okay. What about -- I think this was around February 26, 2007 -- e-mail traffic between you and Ms. Goodling regarding a letter from Senator Domenici about David Iglesias. Do you recall what that might have been about?

A If it were a letter, it probably would have been something to do with drafting a response or who would draft a response or something like that. I am not sure, though.

Q All right. Since you have already mentioned that

your main role was with regard to the fallout or the prep of issues that resulted following the terminations, let us move into that category now. I want to start first with the Attorney General's testimony before the Senate Judiciary Committee in January of this year.

Do you recall what, if any, role you played in the prepping of the Attorney General for that hearing in particular?

A I may have been at a prep session for that hearing, however, not on the U.S. attorneys' issue, and that is why I am not entirely sure whether it was that hearing or a different one that would have been on a completely different issue.

Q Okay. All right. Do you recall playing any role in that hearing as it related to U.S. attorney issues?

A No. No.

Q Okay. No drafting of testimony?

A I do not recall playing any role related to the A.G.'s hearing --

Q Okay.

A -- in relation to the U.S. attorneys' issue.

Q Okay. Fair enough.

What about moving to about a month after that hearing to the Deputy Attorney General's testimony -- I think it was February 7th -- before the Senate Judiciary Committee.

What do you recall your role being in prepping for that hearing?

A Well, I was asked to take the first pass at his written testimony, and I was provided an outline by Kyle Sampson of some of the points that he wanted to have covered, and I went ahead and prepared the first draft, sent it off to be circulated, made some corrections that were indicated, and that is pretty much it as related to the written testimony. I attended a prep session. I do not know whether it was the only one or not, but I attended a prep session for him before the hearing. I do not believe I said anything during the prep session.

Q Okay. If I could just back up and take each thing you said in turn.

With regard to taking a stab at his testimony, did you think it was odd that you were selected to do that given the fact that, as you have already described, you did not have much role or input into at least the dismissals of the U.S. attorneys, themselves?

A No, not particularly. The responsibility for drafting it was just assigned to EOUSA. In this case, it would have been me, so --

Q Okay. What, if anything, had you heard from Department of Justice officials about what should be included? Were there any discussions prior to your taking a

stab at it or prior, for that matter, to receiving Mr. Sampson's outline about the goals of the testimony, itself?

A No. I received his outline. I may have been given some other sheets of paper by other people about -- I think I might have received something from -- I think it was from Bill Mercer, but I am not sure. There would have been some quotes, maybe, from a law review article or from a journal article or something like that. Beyond that, though, I do not recall anything else.

Q Do you recall what the issue was that those law review articles addressed?

A No. It was -- I should remember who wrote it, too, but I do not. I think it was the same article where, I think, a quote from it appeared in the A.G.'s testimony in one of the last two hearings, but I forget. I do not remember.

Q With regard to the prep sessions that you attended, I know you mentioned that you do not recall saying anything in them. Do you recall who was there?

A In the Deputy Attorney General's prep session, I recall that Monica Goodling was there briefly.

Q Do you recall if she said anything while she was in attendance?

A I think she did. I recall that she left pretty

early and did not come back until towards the end.

Q Do you recall what she did say?

A I am sorry?

Q Did you say you think she did say something during that prep session?

A I think she may have, but I do not recall.

Q Okay.

A Kyle Sampson was there. Someone from Public Affairs, I believe, was there. I do not remember who, though. I think Mike Elston was there. I think Will Moschella was there. I do not recall whether Bill Mercer was there or not.

Q Do you recall --

A That is it.

Q -- the general concerns that were discussed at the prep session?

A I have kind of a vague recollection of it overall. I recall that the Deputy Attorney General went through his oral testimony and just did a read-through and took some comments. I know that he took Q&A from various people who were there, primarily from Kyle Sampson. That is pretty much my recollection of it.

Q Was it your sense that Kyle Sampson was mainly running the prep sessions, themselves?

A Well, he asked the most questions during that prep

session, so --

Q Okay. Do you recall how many prep sessions you actually attended regarding the Deputy Attorney General's testimony?

A I only recall the one.

Q Okay. Do you recall if the Deputy Attorney General, himself, had specific concerns that he wanted addressed in the testimony?

A In the written testimony?

Q Right.

A I do not recall receiving anything from him or from anyone in his office about it.

Q What about actually in the prep sessions? Vocally, was he in attendance?

A The prep session for the --

Q For the hearing, itself.

A Well, he was there. He went through his oral testimony.

Q Right.

A I do not recall the written testimony being read. I think, by that time -- I am not entirely sure, but I think, by that time, it had probably already gone through clearance, so I think it was already a done deal.

Q Did he have any concerns, meaning the Deputy Attorney General, generally, about questions that he might

be asked or that the senators might focus on?

A Well, I think he did, and that was the purpose of the Q&A, the back and forth.

Q Okay. Do you recall what those issues were in particular?

A I do not recall specifically, no.

Q Okay. One second. Just give me one second, a minute and a half. I appreciate it.

[Momentary pause in proceedings.]

BY MR. REED:

Q There is one thing if I could, for a minute, just circle back to a follow-up from the Attorney General's Senate Judiciary Committee hearing and any role that you played in any follow-up from that hearing.

Do you recall if you played a role in follow-up stemming from the Attorney General's hearing in January?

A I do not recall specifically. Anything that would have required EOUSA resources or EOUSA to do something, I would have been involved with, though.

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

BY MR. REED:

Q Okay. Let me just pass this one around.
Take a look at that e-mail.

Mr. Hunt. Do you have an extra copy, Rob?

Mr. Reed. I am sorry.

BY MR. REED:

Q I just want to focus briefly on this.

This looks like e-mail traffic from Nancy Scott-Finan to, among others, you on February 5th, 2007.

It says, "Attached are the written QFRs," which I assume are questions for the record, "with regard to the hiring/firing of U.S. attorneys following the Department 1/18/07 oversight hearing at which the Attorney General testified." "EOUSA," it says, has the pen on the QFRs in the e-mail." I just wanted to ask you about that.

Does that mean that you all took a stab at writing answers to those questions for the record?

A Right. That is right.

Q Okay.

A As to anything that would have required EOUSA involvement, I think I would have -- well, as to nearly everything anyway, I think I would have been involved in it to some degree, so we would have taken -- I believe we would have taken a pass at these. Although, to be honest with you, it is hard to keep track of what is what, but I think we dealt with these.

Q Do you recall what your involvement was, if any, in the drafting?

A I would have done the first draft.

Q Okay. Where do you usually send them after you do the first draft?

A I usually send them back to the Office of Legislative Affairs. I think, in this case, I might have asked -- for these, I might have asked someone else to take a look at them before I sent them on. Yes. If this is the same group that came in from Senator Kennedy, I think I would have.

Q Do you remember which issues you had to address specifically in regard to those questions for the record?

A Well, some of the questions that are here on this page -- how many of the U.S. attorneys had been nominated, how many had prosecutorial experience prior to their nominations, et cetera, et cetera, those would have involved -- I think those would have involved the EOUSA's going through the resumes of every one of them to try to find out what experience they had.

Q Okay. All right. I want to jump ahead briefly. I might come back to the Deputy Attorney General's testimony a little bit later.

With regard to Mr. William Moschella's testimony for his briefings up at Congress, which are just going to be separate and apart from any testimony that he gave at the hearings, do you recall any involvement that you had in prepping him for congressional briefings on the U.S.

attorneys' issue?

A No, I do not. I only recall being involved with the prep for his hearing.

Q What, if anything, do you recall having to address in prep sessions or testimony for the hearing, itself?

A For his hearing, I would have taken a first pass at his written testimony, which I think was -- yes, I did that, and then just attended the prep session.

Q Okay.

A I think that there was some request for reports or for statistical reports. There may have been some requests after that prep session for different things for EOUSA's Data Analysis staff to produce, and so we would have gone ahead and done that.

Q Do you recall what issues those statistical reports related to?

A I do not recall any specific reports, but they would have been something along the lines of, you know, in a specific area or in specific areas, the number of cases brought, the number of defendants brought, that sort of thing, prosecution numbers basically.

Q Do you know why it is that you were selected to take the first cut at the draft testimony for Mr. Moschella as opposed to someone else?

A I think that, again, it was just decided that the

EOUSA is the Department's liaison with the U.S. Attorney's Offices, and someone must have decided that it was appropriate for EOUSA to take a first pass at it.

Q That raises an interesting question.

How familiar are you with Mr. Battle's involvement in the process to formulate a list of U.S. attorneys to be dismissed prior to his making the December 7th calls?

A I do not have any knowledge of his involvement.

Q Either way or do you know that he was not involved or do you just not know at all?

A I do not have any knowledge of his involvement.

Q Okay. All right. Given the fact, again, that -- it sounds like you are saying, theoretically, EOUSA had the pen on drafting the testimony because they were the liaison with the U.S. attorney's offices; is that correct?

A Well, I mean you asked me to guess at why, and that is my guess, but I do not know. I did not discuss it with anyone and say, "Why are you telling me to do this?" So I do not know.

Q I understand. I understand.

Again, given your lack of involvement in the process leading up to the dismissals, did you think it was odd at all that you had to draft the testimony that related directly to that issue?

A Well, you know, I mentioned earlier that, when

people upstairs ask you to do something, you just do it. So that was it for me.

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

BY MR. REED:

Q All right. Fair enough.

Again, I have just given you what I think might be 9. It is e-mail traffic that, basically, kind of memorializes the fact that, again, you have taken the lead on the testimony of Mr. Moschella.

Did you mention that you had also attended certain prep sessions for his hearing before the House Judiciary Committee?

A Yes, I did.

Q Do you recall who attended those prep sessions?

A I believe Mike Elston was there for part of it, the one I recall anyway. I do not remember whether it was split up on the same day or how it exactly worked, but what I recall is that I think Mike Elston was there. Brian Roehrkasse from the Office of Public Affairs was there. Monica Goodling was there. Nancy Scott-Finan from the Office of Legislative Affairs was there. I think that is it. At least that is the way -- those are the people whom I recall.

Q Do you recall if Mr. Battle was there?

A He was not there.

Q Did you think that was odd?

A No.

Q Why not?

A He was not really involved in the process of the responses, and you know, I kept him informed of what he wanted to know about it, and he had not, to my knowledge, expressed any desire to be there.

Q Did you get the sense that he was carved out of the process or that he did not want to be involved in it or did you have a sense either way?

A I think that, if he had wanted to be involved, he would have said something to me.

Q Okay. With regard to Mr. Moschella's testimony in particular, what sources of input -- I know we have talked about that with regard to the Deputy Attorney General's testimony. With regard to Mr. Moschella's testimony, what sources of input did you receive in your preparation for that testimony?

A In terms of the written testimony?

Q In terms of the written testimony, exactly.

A Well, the only guidance I received, really, was that it should be substantially the same as the Deputy Attorney General's testimony with some changes allowing for the difference between the House bill and the Senate bill that

were being considered at the time.

Q And who told you that?

A I believe it was Nancy Scott-Finan in the Office of Legislative Affairs.

Q Did Ms. Goodling tell you anything about what should be in the testimony?

A I do not recall her giving me any guidance on that.

Q What about Mr. Kyle Sampson with regard to Mr. Moschella's testimony?

A I do not recall hearing from him on it either.

Q Okay. Did any officials for that particular testimony offer you reasons for the firings of the eight U.S. attorneys?

A No. You are talking about in terms of preparation for the written testimony?

Q Exactly.

A No.

Q Okay. When did any officials -- if at any point, when did they offer reasons to you specifically about the firings of the eight U.S. attorneys? Was that when you mentioned about a week before the calls or was that at another point?

A The first time I heard the explanations for each of them was at the prep session for Will Moschella's hearing.

Q And who gave you those reasons?

A I think that he read what he had intended -- when he was preparing or going through his oral testimony, as I recall, he read through, and I believe it was at that time that he went through the explanations that he would be giving.

Q Do you recall who gave him his information?

A No, I do not know.

Q Do you recall what he said about each specific U.S. attorney when he was reading through it at the prep session?

A I do not recall specifics, but nothing in the hearing struck me as being substantially different or pretty much different at all from what he said in the prep session.

Q Actually, if we could just briefly go over what you recall with regard to each eight, what you recall hearing at the prep sessions if you can.

A Well --

Q Let us just go down through each one if we can.
Mr. Paul Charlton.

A You know, I do not recall specifically what was said about each one. Again, you know, I do not remember thinking at the hearing where I was attending that anything stood out as being different. With respect to Charlton, I think the standouts were the issue of the death penalty case and how he handled the ultimate decision and the process to approve seeking the death penalty, and I think that that was

mentioned at the hearing as well. I am not sure, but I think so. That is the only thing that stands out in my mind right now with regard to Charlton.

Q Iglesias.

A I do not recall specifically what was said there.

Q McKay.

A I do not recall specifically what was said, but I believe it related to the LInX issue and his letter to the Deputy Attorney General, but there may have been other issues as well. I do not remember.

Q Okay. Lam.

A With regard to her, I believe it related to the discussion related to her immigration prosecution numbers and her firearms prosecution numbers.

Q Okay. Cummins.

A With Cummins, if there were any discussion about him, it would have been -- yes, I do not remember him specifically being discussed there. If he had been, I think it probably would have been related to what I mentioned earlier about his having expressed his intention to leave before the second term ended, things along those lines.

Q Bogden.

A What I recall is that there was some discussion of obscenity prosecutions.

Q Chiara.

A Chiara was not discussed there to the best of my recollection. Her resignation was not public at the time.

Q Ryan. I am not sure if he was discussed or not, but what do you recall?

A I do not recall him being discussed either, but his issues seem pretty self-evident.

Q Again, you only heard these reasons from Mr. Moschella either in the prep session or at the hearing in which he testified?

A The first time I recall hearing the list of reasons was during the prep session. I think it was from -- I think that it was from Mr. Moschella.

Q Do you ever recall any discussions with Ms. Goodling about the specific reasons for the firings of the eight?

A At what time?

Q Well, let us take it before December 7th.

A No.

Q What about after?

A I think I may have discussed some of them with her after Moschella's hearing but not before.

Q What do you recall of the substance of those discussions?

A I am only saying that because I do not want to rule it out and say, "No, I did not have any discussions," but I do not recall any specific ones.

Q Okay. What about Mr. Kyle Sampson either before the actual firings or after?

A I do not think I had any direct conversations with him about this issue at all apart from whatever exchanges we might have had regarding the preparation for the DAG's testimony.

Q There was a point in time -- I think the actual date was March 8th, 2007 -- where there had been reports about this where Mr. Sampson showed Mr. Moschella, I think, maybe some e-mails or a memo regarding the White House involvement in the process itself, dealing with the resignations and/or the dismissals of the U.S. attorneys. I think there have been articles as well about Ms. Goodling's having seen some and Mr. Margolis' having seen some e-mails that Mr. Sampson either read to them or showed to them.

Do you recall hearing about that day or those revelations about Mr. Sampson's and the White House's involvement in the process itself?

A No, I do not.

Q Okay. Do you remember talking to Ms. Goodling about those revelations, specifically the White House involvement in the process to terminate?

A I do not recall. No. I am sorry. I do not recall.

Q Okay. What about Mr. Sampson? Do you recall any discussions with him about that day?

A No, I do not.

Mr. Hunt. Will you be at a point soon where we can take a short break?

Mr. Reed. We can take one now. Actually, this would be a good time. That would be great. Off the record.

[Recess.]

RPTS McKENZIE

DCMN MAGMER

[2:09 p.m.]

Mr. Reed. Back on the record.

All right, Mr. Nowacki, just a few things, kind of chart-related matters that I'd just like to ask you about. We might as well just go through them one document at a time.

Here's the first. If you could just take a moment to kind of look through this, and I think this is Exhibit 10. I know it's a long document. I apologize for that.

[Nowacki Exhibit No. 10
was marked for identification.]

Mr. Nowacki. It's all right.

BY MR. REED:

Q Does reviewing it refresh your memory of both the e-mail and the attachments?

A Yes.

Q All right. And I noticed in the body of the e-mail, it says, "Folks -- please find attached various materials for use in the prep session and in the upcoming hearings" -- parenthetical -- "with thanks to John and Angela for their late-night assistance."

The questions are, generally, who told you to prepare these documents, if you recall?

A Well, actually, my involvement was more in helping with some of the research for these, I think primarily the one on page 74 or that begins on page 74.

Q Okay. The statistics, United States attorneys' statistics?

A Right, going through documents, tallying up the information that was used to compile this. And, actually, the document we used to compile this was a spreadsheet, I think, that was released that had prosecutorial experience and other experience of U.S. attorneys. So that was put together on the night before this e-mail went out.

Q And, again, what was the purpose of this particular document?

A They were talking points to -- involving the U.S. attorney issue.

Q And was it in prep for a particular hearing or just generally hearings to come in the future? What do you recall?

A From the date on this, it looks like it was before the Deputy Attorney General's hearing. So it probably would have been for use in that, if need be, or any other type of response that the Department would have wanted to have.

Q Okay. And, again, did you receive any input from any other sources when you were preparing at least your portion of this -- the documents attached to this e-mail?

A Well, from what I was -- and what I was doing, I was working with Monica Goodling while I was compiling the information.

Q And was she giving you specific tasks or assignments with regard to the compilation of the documents?

A More with regard to I think just -- I think she actually put together the documents. It was more just in terms of the research that was involved in putting it together, getting -- being able to compile, for example, how many U.S. attorneys would have had prior experience as prosecutors, at what level, that sort of thing.

Q Okay. Was it her idea for these talking points and every other document that follows?

A As far as I know, most of these were her idea, maybe all of them.

Mr. Reed. All right. We'll just keep the charts moving while we're on charts. This will be 10 -- or 11? This is 11.

Mr. Hunt. Thanks.

Mr. Reed. Uh-huh.

[Nowacki Exhibit No. 11

was marked for identification.]

Mr. Reed. If you could just take a moment to review 11 for me.

Mr. Nowacki. Okay.

BY MR. REED:

Q After having a had a chance to review exhibit 11, which looks like it was an e-mail you sent to Monica Goodling February 12, 2007, do you recall the circumstances behind the preparation of this particular chart?

A Yes. She had asked me to put together a chart that had some of the basic information that's here, the -- some of the experience of the outgoing U.S. Attorneys, the experience of the person who was temporarily filling the position and some of the experience of the candidate or leading candidate, if we had one, to permanently fill the vacancy.

Q And did she tell you why she wanted this particular document?

A She had said that the Attorney General had asked for information about the experience of people who were going into the offices.

Q Okay. And was this in preparation for a particular hearing?

A I don't believe so.

Q Okay. This was just from what you understood mainly for the Attorney General's own purposes?

A As far as I knew from her, that's correct.

Q And, again, what sources of input did you have for the preparation of this document? Do you recall?

A Sorry.

Q Go ahead?

A Well, this went through several versions I think. She ended up wanting more and more detail on it, and so it just -- I think I would fill it in, and I think occasionally she would ask for a little bit more here or a little bit more there, and then I would go ahead and work on it and get it back to her. So I think there were several versions of this that were sent.

Q Did you get the sense that Ms. Goodling was the facilitator -- at least these past two exhibits, 10 and 11 -- in terms of why they should be prepared and give you the assignment to prepare them?

A Well, I think she -- I'm sorry. What do you mean by facilitator?

Q Was she the only one you spoke with with regard to preparing these documents, 10 and 11?

A Definitely with 11. With 10, someone else, Angela Williamson was also involved in just assisting with some of the data compilations.

Q And what was Ms. Williamson's role or what is her job title?

A The Deputy White House Liaison. She actually just volunteered to come in and help out with pulling together some of the information.

Q And did she work immediately under Ms. Goodling?

A Yes.

Mr. Reed. Okay. This is not a chart. It will break the chain for a second. This will be 12. Let me know when you've had a chance to review 12.

[Nowacki Exhibit No. 12
was marked for identification.]

Mr. Nowacki. Okay.

BY MR. REED:

Q Do you recall the circumstances surrounding this e-mail traffic? I know it says on the second page, "EOUSA" -- 42 -- "Can you check with John" and asks you to see if this condensed reason is okay.

A Yes.

Q What was the condensed reason or the circumstances surrounding that?

A This was for Mr. Bogden's personnel file. And I don't remember the exact technical detail of this, but there is, I think, a box there on the personnel file on some form, I guess the SF 50, within which you would put down a reason for resignation. And, as I recall, Mr. Bogden had written a very, very lengthy answer for this and -- which simply just would not fit in the box. So there was just some discussion going on about how to best condense that down into -- so that it would fit on the standardized form.

Q And would that typically be more of your job duties?

A Well, I think this just came to me as the person to make the decision on how to -- on whether this was an acceptable way to condense it down.

Q What is the style with regard -- kind of the middle of the document where it says, "Jean reminded me, we can't change the employee's reason for resignation," was there any change in the reason when you condensed it?

Mr. Hunt. When who condensed it?

Mr. Reed. For Mr. Bogden's resignation?

Mr. Hunt. Right. But you said when you condensed it.

Mr. Reed. It was my understanding that Mr. Nowacki was saying that it was their role in trying to condense it for that particular form. You can correct me if I mischaracterized it. Is that what you said earlier?

Mr. Nowacki. I think it came to me for a final decision to see just whether whatever they came up with was acceptable.

Mr. Reed. This is 12. This next chart will be 13. Take a moment to review that chart. That would be great.

[Nowacki Exhibit No. 13

was marked for identification.]

Mr. Nowacki. Okay. Okay.

BY MR. REED:

Q What was the impetus behind the preparation of this

chart?

A This is the chart that was used to prepare the talking points that are on Exhibit No. 10, page 74, the detailed prosecutorial experience.

Q Okay.

A In this case, this tallied up the experience of the presidentially appointed, Senate-confirmed U.S. attorneys under the current administration and was prepared -- I guess it would have been Sunday, February 4.

Q And did Monica Goodling give you the assignment to prepare this in conjunction with the talking points that you just earlier referenced?

A Yes.

Q Okay. I want to focus in on the last column of the chart, where it says the FedSoc. Is it safe to assume that that's the Federalist Society?

A Yes.

Q And what was the reason for the inclusion of that column in the chart?

A Well, the purpose of this was to be able to -- as I said, to be able to prepare talking points that were in response to criticisms about U.S. attorney appointments. And, as you may be aware, occasionally people are criticized for being involved in the Federalist Society. With that in mind, it made sense that if we were going to go through the

resumes of every single one of these people to mark that down if they had it on their resume, instead of having to go through it at a later date if it needed to be done.

Q So this wasn't like a tracking system for your own purposes within the Department of Justice for whoever had membership in the Federalist Society, for employment purposes --

A Right.

Q -- or personnel decisions?

A Right. It was simply to see who had put it down there so that if the criticism came up we would know what the actual number was of people who put it on the resume when they first became candidates for U.S. attorney.

Q Do you know if any other charts like this had been prepared with reference to Federalist Societies or organizations that would have been similar to Federalist Societies?

A I'm not aware of any.

Q Okay. I want to touch briefly on Ms. Goodling's resignation. Did you and Ms. Goodling talk about her resignation either prior to during or after?

A No.

Q So you had no idea the reasons that she offered for -- you know, personal. You had had no personal discussion with her about her reason for wanting to resign?

A That's correct.

Q No personal discussions with her about her reasons for her wanting to take her fifth amendment right?

A No.

Q What about Mr. Kyle Sampson's resignation? Did you have any discussions with him about his resignation?

A No.

Q I want to jump to a number of subjects, and I probably don't have too much more to go.

The idea in particular of -- and you've probably heard of media reports as well about Ms. Goodling as it relates to assistant U.S. attorney hiring and the like. Are you aware of those media reports?

A I have seen some of them, yes.

Q And were you aware of Ms. Goodling's participation in interviewing line assistant -- career line assistant positions?

A Well, which -- for what exactly? As I understand it, there had been media reports touching on the issue of waivers which I described earlier, and there have been media reports touching on the issue of detail. I think those are two separate issues. So --

Q Well, with regard to -- I'm not even necessarily talking about details. I'm talking about just for career assistant U.S. attorney positions.

A If you are describing the waiver process where -- someone being hired as a career assistant U.S. attorney in an office headed by an interim or acting --

Q Right. Right.

A -- I'm not aware of any occasion where she interviewed anyone for any of those positions. The process for those is what I described to you earlier.

Q Right.

A She would approve the recommended -- or examine the recommendation of EOUSA regarding the decision of whether to grant a waiver. And, to my knowledge, that was really the extent of her involvement. I think perhaps once or twice she might have received -- on some occasions, anyway, she may have received a request that didn't come through EOUSA. I don't know whether anyone contacted her directly or not.

But the questions she would ask me when I would forward the information to her were invariably, what is the resource -- the RMP -- the financial people in EOUSA, what do they say about funds? How many vacancies are there? Will there be any vacancies left for the Presidential to fill?

And there would be times where there would be, say, a request for three; and she might typically say, well, tell them they can have two, tell them to pick which ones they want.

I don't recall any specific person being declined by her unless it was an issue where it clearly -- where they didn't have the resources or the vacancies or they needed to have a vacancy left. I do recall one where I didn't think an individual should be hired because we had just granted three or four hires to the district, and they were wanting to come back for more, and I thought that was enough, and I recall her agreeing with me on that one. So I don't recall any specific person being declined as a specific person.

Q You don't recall her being involved in any interviews where she may have asked about religious beliefs, political affiliations of certain career candidates?

A In those -- under the circumstances -- from the situation I described regarding waivers, no.

Q Okay. What about under any circumstances?

A Well, I don't -- you know -- and I'm separating these two because I understand that the media reports referring to interviews were referring to a separate issue. And, in that case, I know that if somebody was applying for a political job, in light of someone who might have been a career employee who was applying for a noncareer appointment, for example, that she would have been involved in an interview there.

Q Were you aware of -- I think there was an article detailing a situation which Jeff Taylor, interim U.S.

attorney of D.C., might have received some interference from Ms. Goodling regarding potential -- just career line assistant hires. Did you hear of that or read that particular article or media report?

A I am aware of the media report, yes.

Q And do you have any knowledge about whether that occurred, i.e., whether this candidate was too Democratic or too liberal based on his resume?

A I don't even recall a specific request for a waiver in that case.

Q Okay. Do you recall anyone, for that matter, either Ms. Goodling or any other DOJ official as it relates to interviewing of career Department officials, in which religious beliefs or political affiliation loyalty questions might be asked in interviews?

A I don't recall any of those questions being asked of a career employee applying for a career position, and I don't recall sitting in on any interviews with her of career employees applying for political positions other than that of U.S. attorney.

Q And I know I have also focused mainly on career positions, but with regard to the political positions that you referred to, what about in those circumstances?

A The questions were religious beliefs?

Q Religious beliefs or political afil -- and by

political affiliation or loyalty, I mean questions like, but not limited to, what have you done to support the current President? What did you do? Either campaign, help? Did you vote for the current President? Questions like that.

Mr. Hunt. Just so I understand, you are talking about for noncareer?

Mr. Reed. For noncareer now, making transitions out of political decisions.

A I don't recall her asking the political questions of anybody in any particular circumstance. I do recall interviewees for -- or candidates for a U.S. attorney position -- presidentially appointed U.S. attorney position being asked what they've done for the President. I don't know whether she was the one who asked that question or someone else.

Q Do you recall who that someone else might have been?

A It might have been David Margolis. But, again, this would have been for the Presidential nomination.

Q And do you recall what other types of questions along those lines might have been asked in addition to what have you done for the President?

A In terms of the individual's politics?

Q Right.

A All the questions along those kind of lines, along the lines of what have you done for the President, what have

you done to support the President. And, again, just to clarify, these were for candidates for the Presidential nomination to be U.S. attorney.

Q And are you differentiating between those and interim U.S. attorney candidates?

A I don't recall -- yes, I am.

Q Good.

A I don't recall that question being asked of anyone who was going for an interim position.

Q Okay.

A Or to be chosen as the -- tapped as the acting.

Q Who was typically involved, to your recollection, in these interviews? And it might have varied from category of interviewee. For example, interim U.S. attorney interviews. Do you recall -- was there just a certain subset of officials who participate in those interviews?

A For the interviews for interim or someone who would be considered to be the acting U.S. attorney, it would have been the individuals on that e-mail you showed me earlier, David Margolis, Monica Goodling and Mike Battle, or, if he wasn't there, myself.

Q Do you ever recall yourself asking political questions of the interim U.S. attorney?

A Of an interim U.S. attorney? No.

Q All right. Did you ever participate in the actual

nominees that you were referring to, interviews of those?

A Interviews for the President -- of candidates for the Presidential --

Q Exactly.

A Yes, yes.

Q And do you recall asking any political affiliation questions?

A I don't believe that I ever did, no.

Q But you do remember Mr. Margolis --

A Asking about Presidential -- yes.

Q Okay. I want to touch just briefly on just a few other remaining matters. With regard to this March, 2006, confidential memorandum that the AG signed giving certain hiring/firing powers to Ms. Goodling and Mr. Sampson, were you aware of the circumstances surrounding preparation and/or signoff of that memo?

A No.

Q Okay. Did you ever discuss the powers delegated to either Ms. Goodling and Mr. Sampson with either one of them?

A No.

Q Okay. Do you have any idea of what specific issue or problem the memo was attempting to address?

A No.

Q All right. The honors program, I think recently there have been articles about stripping kind of the hiring

for the honors program from the political appointee or the career -- actually political appointees. Do you know anything about the rationale for that decision?

A You know, to the best of my knowledge, I don't have any involvement and haven't had any involvement with the honors program.

Mr. Reed. Okay. Okay. One thing I do want to ask you about which refers -- or relates, rather, to document production issues. I don't know if you have seen this letter. I think this will be 14.

[Nowacki Exhibit No. 14
was marked for identification.]

Mr. Reed. Actually, directing you to page two, footnote one in the paragraph there.

Mr. Nowacki. Okay. I have looked at that paragraph and the footnote.

BY MR. REED:

Q Okay. This, of course, specifically relates to the Department of Justice's production of documents to the various committees involved in this investigation, and it kind of, I think -- I am summarizing -- outlines the process for data compilation in response to the requests. Footnote one, of course, says, "EOUSA's standard practice is to perform its own document searches in response to FOIA or similar requests."

What, if anything, do you know specifically about that process? Do you oversee or supervise it in any way?

A I don't oversee or supervise it. But when I do get FOIA requests, we're told -- we're given the -- we're given the letter from the requester, we're given some supporting material, and we're given a deadline. We know who to call if we have questions, and we tally up the amount of time that's spent in this and if it's an exorbitant amount of time.

Q Okay. And you usually have some document specialist who typically does most of the grunt work, for lack of a better word?

A We do have someone at least in the front office. That's the process I am familiar with. We have someone in the front office who's the liaison with the FOIA staff.

Mr. Reed. Okay. Give me one second. I might be pretty much done.

Just one last question. There you go, sir. I think this will be 15.

[Nowacki Exhibit No. 15

was marked for identification.]

Mr. Reed. This is a New York Times article dated May 12, 2007. And I'm sorry, it does kind of go backwards in time to our earlier questioning, but I just wanted to get your sense of -- it's actually really the last page of the

article.

A All right.

Q And it would be the third paragraph from the bottom, beginning with "at the same time" --

A Yes.

Q -- "Ms. Goodling, Mr. Sampson, Mr. Nowacki, according to e-mail released to congressional investigators, were helping prepare the final list of U.S. attorneys to be dismissed." What do you think that's referring to?

A Well, he says that it's according to e-mail released to congressional investigators. I haven't seen anything to indicate it. As far as I am concerned, the reporter made it up.

Q As far as you were concerned, you were not involved in compiling or finalizing --

A As far as I am concerned, it is a total, complete lie.

Mr. Reed. That's all I am going to ask about. I think I am done. Thank you for your time.

Mr. Flores. I have no questions.

Mr. Hunt. Good.

Ms. Burton. Thank you.

Mr. Paris. Mr. Nowacki, how are you doing?

Mr. Nowacki. All right.

Mr. Paris. I would have been questioner three of four,

but I am now questioner two of three, so you got off easy today.

Mr. Nowacki. Progress is great.

EXAMINATION

BY MR. PARIS:

Q All right, I just want to go over a few follow-up questions with you.

You testified that one of your roles at EOUSA was to look at requests for waivers from interim or acting U.S. attorneys to make career hires in their offices, is that correct?

A Yes.

Q Can you tell me, that process typically came to you via requests from EOUSA that you would then look at? It would come from the office at EOUSA to you?

A It would come -- actually, it would take varying routes. Sometimes it would come from someone on the administrative side at the district to the administrative people at EOUSA. It could work its way up the chain that way. Sometimes the interim or the acting might contact me directly with a request. Once in a while, they might contact Mike Battle. Once in a while, they might contact one of the other deputy directors that handles the administrative side. It varies. But, in the end, the response from EOUSA was generally the same, which was to

look at those criteria I mentioned earlier.

Q Can you tell me whether you received any requests from Brad Schlozman when he was interim U.S. attorney in the Western District of Missouri for a career hire?

A Yes, I do believe I did.

Q Did those come directly from Mr. Schlozman?

A They came directly from him, and I don't recall -- I think sometimes -- he had several. Some were support positions. I think he did have one that were AUSAs. I am not sure whether -- he might have sent some of them directly to Mike Battle, sent some directly to me. But I think they would have come to either Mike or myself -- Mike Battle or myself.

Q Do you recall whether those requests were approved?

A I believe that they were. I don't think we declined on any of them.

On the support hires, I am pretty sure they were approved.

Again, to the best of my recollection with regard to the AUSA, I don't recall how many he'd asked for. I think I recall that we'd approved at least one. I just don't remember whether there were any more than that. There were some supervisory changes that he had, which is also pretty typical of interims and actings.

Q When you would typically analyze your request from

an interim or acting office, you said earlier you would look at -- making sure you are not essentially using up the funds available for career hires that might go to the next presidentially appointed?

A Well, no. Actually, the funds issue is simply whether the district can afford to make the hires. As you may know, the budgets for U.S. attorneys offices have been fairly tight over the last couple of years. And the questions have been simply are they going to run into a deficit? Can the office actually afford to pay this person?

Q Sure.

A So that's what the funds issue would have been.

Q So it's a separate issue then in terms of not essentially using up all the career hire spots that might go to the next presidentially appointed nominee?

A Something like that, right. There's a concern just to make sure that the next presidentially appointed, Senate-confirmed U.S. attorney has the opportunity to make some hires -- to at least make a hire that would allow him to bring in someone as a first assistant if he wanted to make a change there and on the support side at least hire a secretary, bring in his or her own secretary if he or she wanted to. But that's the basic bottom line, just so there's some room for the person who's in there on a permanent basis to make some decisions as far as the

staffing goes.

Q And you indicated earlier that one of the qualifications or one of the factors you would look at is whether there was a presidentially appointed person in the pipeline. In a sense, how long -- what was the question -- how long you expected that vacancy to be open before there was a presidentially appointed person in?

A Right. Factoring -- that we would look at where the person was, if there was a person in the pipeline, at the time that it looked like for them to get through if they were in the confirmation process already.

Q Sure.

A And also the need of the office. Is it something that would need to be filled right now or not?

Q And so you took those factors into account when you looked at the request from Mr. Schlozman to fill career hires?

A Right. In that district.

Q Is it fair to say that if there was no permanent person in the pipeline and no prospect of filling that spot soon that that would weigh in favor of approving a career hire for a spot held by -- you know, in addition filled by an interim or acting U.S. attorney?

A If -- well, we look at everyone on a case-by-case basis, but if there's no one in the pipeline, and by that

you mean there wasn't even a name from the senators as a recommendation --

Q Mm-hmm.

A -- then, yeah, we would be obviously much more inclined to approve it when we weigh that particular factor.

Q But if there were a nominee going through the process, you know, already nominated, being considered by the Senate, would that weigh against filling that spot?

A It would -- no, it wouldn't weigh against it.

You know, again, just in terms of that one aspect of the criteria, we would also be looking at whether it looked like the Senate would be moving on the nomination at any time soon and had the nomination been pending a while, that sort of thing. Just, again, case-by-case basis.

Q Are you aware of Ms. Goodling's role in approving the career hires for Mr. Schlozman's district?

A I would have provided her with a recommendation on any one of the hires for an AUSA position or anyone who we have a request, really. So -- you know, I don't recall.

Q Was that while she was at EOUSA?

A No, I was never at EOUSA while she was at --

Q This was when --

A Senior counsel to the AG.

Q Okay. So would you first look at a hire and then pass on a recommendation to Ms. Goodling? Or was she a step

that came before you got the name?

A I would look on -- I would provide a recommendation and --

Q Okay.

A -- she would approve or disapprove the recommendation.

Q Going back to one of the questions Mr. Reed asked you before about career hires, and you testified that you never interviewed a person being considered for a career position in the U.S. attorney's office?

A For basically a waiver request, yeah.

Q Yeah.

A I don't recall interviewing anyone for -- right, who was up for a waiver request. If there was --

Make sure there's a distinction here. If you are talking about like a supervisory change, for example, if an interim or an acting wanted to change the criminal chief, for example, and requested EOUSA's permission to do that, then typically Mike Battle and I would interview that person.

Q Would Monica Goodling be involved in that process?

A She would look at it in terms of the waiver issue, again, but she wouldn't be involved in interviewing, no.

Q But you were involved in interviewing people being considered by interim and acting U.S. attorneys for sort of

changes to a supervisory role in that office or changes that impacted a supervisory role?

A Yeah. If it was a request for a waiver of where they would be allowed to make a supervisory change, then I would have been involved. Typically, we did an interview of the person who the U.S. attorney wanted to have go into the office for that position.

Q And in any of those interviews did you ask questions about political affiliation?

A No.

Q Did you ask questions about religious affiliation?

A No.

Q Did you ask any of the questions described before by Mr. Reed about who somebody voted for or what they had done for the President and those kind of questions?

A No.

Q Are there circumstances other than the two you have described, the waiver requests for making career hires -- or I guess it's still a waiver request for supervisory changes, the difference being the waiver request for interim hires did not involve an interview, the waiver request for supervisory changes do typically involve an interview by EOUSA for interim and acting spots.

A Right.

Q Were there any other circumstances under which you

would be involved in interviewing career hires at U.S. attorneys offices?

A None come to mind, no.

Q And are you aware of any circumstances in which Ms. Goodling would have been involved?

A In those kind of interviews?

Q In those kind of interviews.

A No, none come to mind.

Q Did you have any role in terms of deciding what questions would be asked for career hires in the districts that are interim for acting U.S. attorneys?

A No.

Q So you had no role in forming questionnaires or --

A No. The way it would work, actually, is the office would have its own process for selecting a candidate, whether they'd have a committee of attorneys there or AUSAs or supervisors or whomever. Once they had gone through the process, they would then forward that waiver request with the name of a candidate, because they've actually -- they have gone through that selection process, and that would just -- that was the way the district would request it with us.

Q Did you take part in any conversations or have any communications regarding any use of the authority to appoint interim U.S. attorneys to consolidate the vetting for career

hires at Main Justice?

A I'm sorry. Could you --

Q I apologize. I will try phrase it more artfully. Did you take part in any communications or conversations involving a discussion of the use of the interim appointment authority --

A Mm-hmm.

Q -- to consolidate the vetting for career hires at EOUSA or at Main Justice?

A I will have to ask you to explain it further. What do you mean by "consolidating"? Just so I'm perfectly clear.

Q You testified about the sort of role that is unique for EOUSA for career hires in terms of interim and acting U.S. attorneys, as opposed to presidentially appointed U.S. attorneys.

A Right.

Q In other words, EOUSA has a role in dealing with career hires in those offices which it doesn't for presidentially appointed, is that correct?

A Mm-hmm.

Q Was there any discussion about using the authority to appoint interim U.S. attorneys as a way to funnel more of the career hiring through EOUSA?

A No.

Q You are not aware of any discussions like that?

A I am not aware of any discussions like that.

Q And I will have to ask you whether Ms. Goodling was involved in any discussions.

A I'm not aware of any discussions like that.

Q Okay. Okay. Again, I apologize for the patchwork nature of this. I am just trying to fill in holes, as opposed to walking through different documents. I will ask you about a few documents, but not many.

Earlier, you testified that you learned of the reasons for the firings of at least the initial eight that we learned of during Will Moschella's prep session before his testimony before the House.

A That's the first time I had heard all of them or most of them, anyway, however many were covered there, described.

Obviously, in the case of Kevin Ryan, for example, I was able to -- it was pretty clear why he was being asked to resign. And Bud Cummins, I think I described earlier my knowledge of his situation as well.

Q Did you ask any questions at that prep session about those reasons?

A No.

Q Did you ask any questions at any other time after that prep session about those reasons?

A I don't recall asking any questions like that.

Q That prep session occurred after you had taken your cut at the first draft of Mr. Moschella's written testimony?

A Right. And, you know, I don't recall how the testimony ended up being edited, but at the time I was involved with it, it wasn't really all that different from the Deputy Attorney General's testimony. There really wasn't any discussion of the specifics in it at that point, and certainly when I dealt with it there wasn't any discussion of the specifics.

Q So the discussion of the specifics was after you had taken your --

A Well, I don't remember -- I don't recall what the final form was --

Q Sure.

A -- just off the top of my head. But if there was any discussion with specifics to the final form -- because I know there were some specific changes to Will Moschella's testimony written testimony after I did the first draft of it -- those would have been added after I dealt with it.

Q Were you concerned when you learned of the reasons for the firings? That you had been asked to draft the testimony without knowing those reasons?

A Well, no, not really. Because the testimony wasn't covering the reasons, and therefore it didn't need to

address them. At least the testimony at the time that I prepared it was not going to be covering that. So it wasn't really relevant to what the Department was looking to say or what I understood the Department to be looking to say in the testimony.

Q What did you understand the Department to be looking to say in the testimony?

A Well, essentially what was in the first draft that I did -- and I don't remember all the points that were covered, but it would have been pretty close to the outline that I received from Kyle Sampson for the Deputy Attorney General's testimony -- with the additional change of maybe addressing some different points related to the House bill, as opposed to the Senate bill.

Q And you weren't concerned as the number two person at EOUSA at that time that you had not been aware of the reasons for firing before they'd occurred?

A The decision had been made ultimately by the Attorney General, and I don't really think I had questions about whether he or anyone else had decided to tell me about it.

Q And the fact that you learned of these reasons -- I guess it was in early March of '07, several months after they had been fired and not before -- did not cause to you have a concern about that those reasons were the real

reasons they were fired?

A No.

Q In your role at EOUSA did you typically hear of performance problems in offices?

A Of U.S. attorneys?

Q Of U.S. attorneys.

A No. I think I mentioned earlier that I don't recall hearing any specific complaints about any specific U.S. attorney and performance problems or whatever with them.

Q Aside and apart from the number that were fired, do you -- and I believe you said that Mr. Ryan and a handful of other --

A With those exceptions.

Q With those exceptions. Did you hear about -- and please don't name names if you don't want to, but did you hear about other performance problems at U.S. attorneys offices?

I'm not asking for names at this time. I'm just asking for whether in your role at EOUSA if you had heard about performance problems at other U.S. attorneys offices.

A No.

Q I'm going to ask you again about the exhibit that I believe has been marked as Exhibit No. 11. Do you have that in front of you? It's a February 12, 2007, e-mail with a spreadsheet and table attached.

A Yes.

Q Okay. I believe you testified about before that you put together this chart in order to help develop the talking points that were distributed not long after this or that had been -- that this -- or did this come before?

A Which of these two documents are you referring to? The chart or the spreadsheets?

Q Oh --

A Am I on the right one?

Mr. Hunt. Yeah, this one.

Mr. Nowacki. That's -- yes, the Talking Points: U.S. attorney Resignations and Interim Acting/Interim Appointments.

No, this was the -- the one I mentioned that was used to prepare talking points was actually the other document attached to this e-mail, the spreadsheet.

Mr. Paris. Oh, okay.

Mr. Nowacki. Right.

BY MR. PARIS:

Q What was the purpose of this document?

A This one was -- Monica Goodling had requested information or a quick summary of the backgrounds of the outgoing U.S. attorney -- U.S. attorneys, whomever we had filling the position temporarily and the candidate or the nominee, if we had someone at that particular stage.

This is the one where I mentioned that -- as I understood it from her, that the Attorney General had asked her for a quick rundown on the experience, and she wanted to prepare this chart and asked me for assistance in doing that.

Q At the time that you prepared this chart, did you have any understanding about whether the interim U.S. attorneys were going to serve indefinitely until the end of the President's term?

A My understanding was that the administration would look to have a presidentially nominated, Senate-confirmed individual in each of these positions.

Q And in your role at EOUSA I believe you testified that you would have been one of the people involved in looking at the candidates for nomination?

A To one degree or another, yes.

Q At the time you prepared this chart, were you looking at candidates for nomination in each of these districts for a presidentially appointed --

A At the time -- well, the chart mentions, for example, that in several cases we were waiting on names from home State senators and others that we were looking at as potential candidates. So most if not all of these we may -- it appears from looking at the chart here that we had -- we were at least at some stage in the process.

Q Did you have an awareness at that time that there had been any discussion of a plan to appoint interim U.S. attorneys indefinitely in any district?

A No, I did not.

Q So you did not have knowledge of -- scratch that.

Mr. Paris. I'm going to ask the court reporter to mark this as Exhibit 16.

[Nowacki Exhibit No. 16

was marked for identification.]

Mr. Nowacki. Okay.

BY MR. PARIS:

Q You familiarized yourself with this document?

A Yes.

Q It's a December 15, 2006, e-mail from Monica Goodling to you and Nancy Scott-Finan, is that correct?

A Yes.

Q Do you recall the events described in this?

A I don't recall the specific e-mail, but I recall generally some of the things that were going on in this time frame.

Q Do you recall that Senators Pryor and Lincoln from Arkansas were not pleased, as it describes in this e-mail, with the AG appointment of Tim Griffin of the Eastern District of Arkansas?

A I recall hearing that, yes.

Q Did you have any involvement in setting up a meeting between Tim Griffin and Senator Pryor's office?

A I didn't have any involvement in setting up a meeting. I attended a meeting prior to Tim Griffin's meeting with Senator Pryor in which I think there was a possibility that I would attend with him, and I ultimately did not.

Q Were you aware that the Attorney General talked to Senator Pryor about this appointment I believe on that day, December 15?

A At that time, I don't recall whether I was or was not. I don't think so.

Q And at that time you were not aware of any discussion of the use of the interim appointment authority to appoint him, Griffin, indefinitely to that position?

A I'm sorry. Say it one more time.

Q At the time that you were on this e-mail, December 15, 2006, you were not aware of any discussion of the use of the Attorney General's interim appointment authority to appoint Tim Griffin to that spot indefinitely?

A No, I don't recall any discussions about having him in there permanently via an interim appointment.

Q Just via a possible Presidential appointment?

A Right.

Q And were you made aware at any time after that of

those discussions?

A Well, I've read some of the media reports; and I have heard some things related to those.

Mr. Paris. I'm going to ask the court reporter to mark this document Exhibit 17.

[Nowacki Exhibit No. 17
was marked for identification.]

BY MR. PARIS:

Q Have you had a chance to familiarize yourself with this document?

A Yes.

Q This appears to be a calendar entry for Regina Barrett for a meeting on Tuesday October 10, 2006. Is that correct?

A Yes.

Q Who is Regina Barrett?

A She is the Director's secretary at EOUSA.

Q Were you involved in this meeting?

A No.

Q Do you know what it was about?

A No.

Q Do you know who attended?

A No.

Q So I guess you don't know the outcome?

A I don't even know who Warren Hamilton is.

Mr. Paris. That was going to be my next question. Can we go off the record for just about one minute while I take a look at my notes?

Ms. Burton. Sure.

[Discussion held off the record.]

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

Mr. Nowacki. If I could clarify something real quick, you asked me earlier about knowing if the AG had asked -- spoken to Senator Pryor, and the e-mail indicates that I did know. I don't recall knowing, but --

BY MR. PARIS:

Q And you don't recall anything about the substance of that?

A No. I think I recall hearing that the AG may have spoken with Senator Pryor on several occasions. I don't remember what would have happened in that specific one, though.

Q And you were aware that Senator Pryor was unhappy with the appointment of Tim Griffin?

A Yes.

Q Did you take any other steps to -- did you take any steps to address the reasons for his unhappiness at that appointment?

A Clarify that a little bit.

Q Did you ever talk to anybody from Senator Pryor's office?

A No.

Q Were you aware of conversations with Senator Pryor's office?

A I was aware generally that the AG had spoken to him or that the Attorney General had spoken to him on several occasions. I'm sure that I might have heard it -- the meeting I mentioned earlier before Mr. Griffin went over to meet with Senator Pryor, I probably heard at the time about conversations that the Office of Legislative Affairs may have to set things up. But, other than that, I don't recall anything else.

Q Do you recall when the decision was made not to put Mr. Griffin's name forward for a Presidential appointment?

A I recall hearing about it, that the decision had -- well, that the -- that it looked like, at least on the Department of Justice side, that there might not be a recommendation to nominate him. But beyond that --

Q Mr. Griffin is still in place there?

A Yes.

Q Okay. Going back to something you said earlier when we were talking about your role in looking at waivers, waiver requests for hiring career U.S. attorneys or other staff positions and offices filled by interim or acting U.S. attorneys, you testified that you never interviewed any of the people?

A Yeah. I don't recall interviewing anyone for a waiver other than, of course, the supervisory waiver -- the waivers for a supervisory change.

Q Did you do any kind of background check on the people?

A Well, we typically would ask for the resume of the individual; and that was basically just sort of a general once-over look and see if they generally were qualified. And, obviously, they've gone through a rigorous process already at the office. And also, just generally, you would want to make sure that their last name isn't the same last name as someone who may be improperly influencing the hiring and all that.

But, other than that, we wouldn't have done anything else. All of that would have happened at the level of the office.

Q But you would have that resume in front of you as you did your evaluation?

A Typically, yes.

Q And looking at that resume, did you take into account any indications of political affiliation on the resume?

A No.

Q Was there a different process regarding your role in looking at detailees?

A Detailees to EOUSA?

Q I believe earlier you testified when Mr. Reed was asking a question about waiver requests and you mentioned

detailees -- so what was your role there? Just explain that.

A Well, if we were talking about -- I think in that conversation or that question we were talking about Monica Goodling's role in interviewing people, and I think I said that I differentiated the waiver request from someone who might be a career prosecutor who was interested in taking a political position, a noncareer position or a detailee to a policy position like that.

My role in regard to detailees would have simply been for people who were being detailed to EOUSA, to the Counsel to the Director's Staff or Legal Programs, for example. So, in those cases, I might have -- I would have interviewed someone applying for, say, the -- one of the -- a position that would support one of the subcommittees of the Attorney General's Advisory Council. And I have done that on a few occasions.

Q Would that be considered a political position or career?

A That's a career position. These are career employees who are coming in for career detail. So --

Q And Ms. Goodling did have a role in evaluating those requests?

A I think she did look at that under her senior counsel hat. Again, with the oversight of EOUSA.

Q Would that include interviews?

A No, she wasn't involved in the interviews.

Q Was she involved, to your knowledge, in deciding what questions would be requested of the people being interviewed for these positions?

A No, I never received any direction from her on what kind of questions to ask; and when I had somebody else sitting with me on an interview, to my knowledge none of them did either.

Q And you have awareness of Ms. Goodling's role in interviewing people for career spots elsewhere at Justice, not at EOUSA or in U.S. attorneys offices?

A I know that she'd interviewed someone for a detailed position from EOUSA to another component. That's the only other specific one I am aware of. I don't know any details about it. I don't believe I spoke with the individual about the interview.

Q So you don't know what questions he was asking?

A No.

Q Mr. Reed asked you about the March, 2006, hiring and firing authority of Monica Goodling and Kyle Sampson.

A Right.

Q At the time it was issued, were you aware of that order?

A No.

Q When did you become aware of that?

A I became aware of it when I read about it in the media reports.

Q I want to go back to an exhibit -- Exhibit No. 12. This is the February 16, 2007, e-mail involving condensed reason for resignation of Daniel Bogden.

A Okay.

Q And I guess it's the middle e-mail from Katherine Mann to Debbie Hardos and others.

It says, "Jean reminded me, we can't change the employee's reason for resignation. We can only condense it." Is that -- that is your -- is that a rule at the Department? Is that a -- do you know what the source of that --

A I don't. I don't. I think Jean is on the personnel staff and would be someone who's familiar with the rules for administering that particular form, but I don't know. I don't actually know.

Q And when you -- Debbie -- I guess that's Debbie Hardos wrote to -- I'm sorry. I guess Kit wrote to Debbie in the last e-mail, "Can you check with John Nowacki to see if this condensed reason is okay?" Did they check with you?

A Yeah. It's the first one actually. No, it is last.

Q It says, quote, received request from EOUSA Director to step down as U.S. attorney. End quote.

A Yes.

Q Do you recall whether they checked with you?

A Yes, I believe they did, yes.

Q Do you recall what they were asking you was okay about that reason?

A I'm sorry. One more time.

Q They were asking you whether that condensed reason was okay. Do you recall what criteria they were asking you to take a look at?

A Well, to the best of my recollection, it was simply whether that was a fair summary of what Mr. Bogden had written in his lengthy answer to that particular question on the form.

Q And your assessment was that it was?

A You know, I don't remember -- I don't remember. I don't remember whether that was -- I think -- from what I can recall, I think what I just ended up saying is it's fine, it's fair, whatever, go ahead with it.

Q And you don't recall what Mr. Bogden had written as far as --

A As far as I recall, Mr. Bogden had written a long explanation of I think it -- I think it was how he received the call from Mike Battle and some of the other circumstances and his thoughts on the whole situation as far as receiving a call, something along those kind of lines.

Again, I don't remember precisely. I just remember it was quite a bit longer than what would fit in the form.

Q Did you check with Mr. Bogden about this condensed reason?

A No, I did not.

Q But in your estimation it was correct?

A I think we -- whatever we -- whatever ended up being there was we were looking to see whether it was simply a fair summary of what he had said.

The statement here at the bottom at that last e-mail you were talking about, "Received request from EOUSA Director to step down as U.S. attorney." As far as I can recollect, that seems to be a fair one-sentence answer or summation of what he'd said. So that may have been what ended up going in there, because, again, as I recall, his explanation or his answer went into some detail about receiving the call.

Q Thank you, Mr. Nowacki. No further questions from me.

Mr. Miner. Matt Miner for the Senate Judiciary minority. I have no questions. Thank you.

[Whereupon, at 3:27 p.m., the interview was concluded.]