

**United States Senate
Committee on the Judiciary**

**Prepared Statement of
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Mr. Chairman and members of the Committee, good morning. As you know, I have come here voluntarily to answer your questions. I have been a public servant for the past eight years. During the past several years, I have served Attorney General Gonzales in a staff position, culminating in my service to him as his Chief of Staff. In that role, I was responsible for organizing and managing the process by which the U.S. Attorneys were asked to resign. From that vantage point, I believe I was well positioned to observe and understand what happened in this matter. I can't pretend to know or remember every fact that may be of relevance, but I am pleased to share with the Committee today those that I do know and remember. I will be glad to stay here as long as necessary to ensure that you have the answers you need.

After the 2004 election, the White House inquired about the prospect of replacing all 93 U.S. Attorneys with new appointees. I believed, as did others, that less sweeping changes were more appropriate. The Department of Justice then began to look at replacing a limited number of U.S. Attorneys in districts where, for a variety of reasons, the Department thought change would be beneficial. Reasonable and honest people can differ, and in fact did at various stages of the process, on whether particular individuals should have been asked to resign. But the decision to ask them to do so was the result of an internal process that aggregated the considered, collective judgment of a number of senior Justice Department officials.

I would be the first to concede that this process was not scientific, nor was it extensively documented. That is the nature of presidential personnel decisions. But neither was the process random or arbitrary. Instead, it was a consensus-based process based on input from senior Justice Department officials who were in the best position to develop informed opinions about U.S. Attorney performance.

When I speak about U.S. Attorney performance, it is critical to understand that performance for a Senate-confirmed presidential appointee is a very different thing than performance for a civil servant or a private sector employee. Presidential appointees are judged not only on their professional skills but also their management abilities, their relationships with law enforcement and other governmental leaders, and their support for the priorities of the President and the Attorney General. A United States Attorney may be a wonderful lawyer and wonderful person – as I believe are all of the individuals whose resignations were eventually sought – but if he or she is unable to maintain the morale and motivation of line assistants, is resistant to the President's or the Attorney General's constitutional authority, loses the trust and confidence of important local

constituencies in law enforcement or government, or fails to contribute to the important non-prosecutorial activities that come with positions of leadership in the Justice Department, then that U.S. Attorney is not performing at a high level.

Thus, the distinction between “political” and “performance-related” reasons for removing a United States Attorney is, in my view, largely artificial. A U.S. Attorney who is unsuccessful from a political perspective, either because he or she has alienated the leadership of the Department in Washington or cannot work constructively with law enforcement or other governmental constituencies in the district important to effective leadership of the office, is unsuccessful.

With these standards for evaluation of U.S. Attorney performance in mind, I coordinated the process of identifying U.S. Attorneys that might be considered for replacement after their four-year terms had expired. I received input from a number of senior officials at the Department of Justice who were in a position to form considered judgments about our U.S. Attorneys. These included not only senior political appointees such as the Deputy Attorney General but also senior career lawyers at the Department of Justice such as David Margolis, a man who has served Justice for more than forty years under Presidents of both parties and who probably knows more about United States Attorneys than any person alive.

I developed and maintained a list that reflected the aggregation of views of these and other Department officials over a period of almost two years. I provided that information to the White House when requested, and reviewed it with and circulated it to others at the Department of Justice for comment. The list changed over time as new information was received and incorporated. By and large, the process operated by consensus: when any official whom I consulted felt that an individual name should be removed from the list, it generally was.

Although consideration of possible changes had begun in early 2005, the process of actually finalizing a list of U.S. Attorneys who might be asked to resign, and acting on that list, did not begin until last fall. The process of finalizing the list of recommendations and receiving the approval of the required principals is reflected in many of the more than 3,000 documents that have been produced. In the end, eight total U.S. Attorneys were selected for replacement: one, Bud Cummins, in mid-2006, and the other seven in a group in early December, 2006.

With the exception of Bud Cummins, none of the U.S. Attorneys was asked to resign in favor of a particular individual who had already been identified to take the vacant spot. Nor, to my knowledge, was any U.S. Attorney asked to resign for an improper reason. As presidential appointees, U.S. Attorneys serve at the “pleasure of the President” and may be asked to resign for almost any reason with no public or private explanation. The limited category of improper reasons includes an effort to interfere with or influence the investigation or prosecution of a particular case for political or partisan advantage. To my knowledge, nothing of the sort occurred here. Instead, based on everything I have seen and heard, I believe that each replaced U.S. Attorney was selected

for legitimate reasons falling well within the President's broad discretion and relating to his or her performance in office, at least as performance is properly understood in the context of Senate-confirmed political appointees.

Nonetheless, when Members of Congress began to raise questions about these removals, I believe the Department's response was badly mishandled. It was mishandled through an unfortunate combination of poor judgments, poor word choices, and poor communication and preparation for the Department's testimony before Congress.

For my part in allowing what should have been a routine process of assuring the Congress that nothing untoward occurred to become an ugly, undignified spectacle, I want to apologize to my former DOJ colleagues, especially the U.S. Attorneys who were asked to resign. What started as a good faith attempt to carry out the Department's management responsibilities and exercise the President's appointment authority has unfortunately resulted in confusion, misunderstanding, and embarrassment. This should not have happened. The U.S. Attorneys who were replaced are good people; each served our country honorably; and I was privileged to serve at the Justice Department with them.

As the Attorney General's Chief of Staff, I could have and should have helped to prevent this. In failing to do so, I let the Attorney General and the Department down. For that reason, I offered the Attorney General my resignation. I was not asked to resign. I simply felt honor-bound to accept my share of blame for this problem and to hold myself accountable.

Contrary to some suggestions I have seen in the press, I was not motivated to resign by any belief on my part that I withheld information from Department witnesses or intentionally misled either those witnesses or the Congress. The mistakes I made here were made honestly and in good faith. I failed to organize a more effective response to questions about the replacement process, but I never sought to conceal or withhold any material fact about this matter from anyone. I always carried out my responsibilities with respect to U.S. Attorneys in an open and collaborative manner. Others in the Department knew what I knew about the origins and timing of this enterprise. None of us spoke up on those subjects during the process of preparing Mr. McNulty and Mr. Moschella to testify, not because there was some effort to hide this history, but because the focus of our preparation sessions was on other subjects – principally *why* each of the U.S. Attorneys had been replaced, whether there had been improper case-related motivations for those replacements, and whether the Administration planned to use the Attorney General's interim appointment authority to evade the Senate confirmation process.

Thus, the truth of this affair as I see it is this: the decisions to seek the resignations of a handful of U.S. Attorneys were properly made but poorly explained. This is a benign rather than sinister story, and I know that some may be indisposed to accept it. But it is the truth as I observed and experienced it.

Thank you once again for the opportunity to testify before you today. I would be pleased to answer your questions.