



Office of the Inspector General
United States Department of Justice

Statement of Glenn A. Fine
Inspector General, U.S. Department of Justice

before the

House Committee on the Judiciary

concerning

The Investigation into the Removal of
Nine U.S. Attorneys in 2006

October 3, 2008

**Statement of Glenn A. Fine
Inspector General, U.S. Department of Justice
before the
House Committee on the Judiciary
concerning
The Investigation into the Removal of Nine U.S. Attorneys in 2006**

October 3, 2008

Mr. Chairman, Congressman Smith, and Members of the Committee on the Judiciary:

I appreciate the opportunity to testify at this hearing about the investigation conducted by the Department of Justice Office of the Inspector General (OIG) and Office of Professional Responsibility (OPR) into the removal of nine U.S. Attorneys in 2006.

The 358-page report issued earlier this week described how each of the U.S. Attorneys was selected for removal and the process used to remove them. Our joint investigation also focused on the reasons for the removal of each of the U.S. Attorneys, and whether they were removed for partisan political considerations, to influence an investigation or prosecution, or to retaliate for their actions in any specific investigation or prosecution. In addition, we investigated whether Department officials made false or misleading statements to Congress, to the public, or to us concerning the removals.

I. OVERVIEW

U.S. Attorneys are appointed by the President and confirmed by the Senate. Like other presidential appointees, they can be removed by the President for any reason or for no reason, as long as it is not an illegal or improper reason. Historically, however, U.S. Attorneys generally have not been removed except in cases of misconduct or when there was a change in Administrations. Prior to the events described in this report, the Department had never removed a group of U.S. Attorneys at one time because of alleged performance issues. However, on December 7, 2006, seven U.S. Attorneys were told to resign from their positions: David Iglesias, Daniel Bogden, Paul Charlton, John McKay, Carol Lam, Margaret Chiara, and Kevin Ryan. In addition, two other U.S. Attorneys, Todd Graves and Bud Cummins, had been told to resign earlier in 2006.

Our investigation concluded that the process that Department officials used to identify the U.S. Attorneys for removal was fundamentally flawed. In particular, we found that former Attorney General Alberto Gonzales and former

Deputy Attorney General Paul McNulty failed to adequately supervise or oversee the removal process. Instead, Kyle Sampson, Gonzales's Chief of Staff, designed and implemented the process with virtually no oversight.

We found that neither Gonzales, McNulty, Sampson, nor anyone else in the Department carefully evaluated the basis for each U.S. Attorney's removal or attempted to ensure that there were no improper political reasons for the removals. Moreover, after the removals became public the statements provided by Gonzales, McNulty, Sampson, and other Department officials about the reasons for the removals were inconsistent, misleading, or inaccurate in many respects.

We believe our investigation was able to uncover most of the facts relating to the reasons for the removal of most of the U.S. Attorneys. However, as described more fully in our report, there are gaps in our investigation because of the refusal of key witnesses to be interviewed by us, including former White House officials Karl Rove, Harriet Miers, and William Kelley; former Department of Justice White House Liaison Monica Gooding; Senator Pete Domenici; and Steve Bell, his Chief of Staff. In addition, the White House declined to provide us internal documents related to the removals of the U.S. Attorneys.

Our report recommended that a counsel specially appointed by the Attorney General assess the facts we have uncovered, work with us to conduct further investigation, and ultimately determine whether the evidence demonstrates that any criminal offense was committed with regard to the removal of any U.S. Attorney or with regard to the testimony of any witness related to the removals. After issuance of our report, Attorney General Mukasey appointed Nora Dannehy, a career federal prosecutor who currently serves as Acting U.S. Attorney in Connecticut, to further pursue this investigation.

A. Related Reports

Our report on the removal of the nine U.S. Attorneys, issued on September 29, 2008, was the third of four reports of joint investigations conducted by the OIG and OPR into the U.S. Attorney removals and allegations of politicized hiring at the Department. Our first report in June 2008 examined hiring practices in the Department's Honors Program and Summer Law Intern Program and found that committees used by the Department to screen applications for the programs inappropriately used political or ideological affiliations to "deselect" candidates in 2006 and in 2002.

In July 2008, we issued a second joint report that examined the actions of Monica Goodling, the Department's former White House Liaison, and other

staff in the Attorney General's office regarding allegations that they inappropriately used political or ideological affiliations in the hiring process for career Department positions. Our investigation found that Goodling, Sampson, and other staff in the Office of the Attorney General improperly considered political or ideological affiliations in screening candidates for certain career positions at the Department, in violation of federal law and Department policy.

The OIG and OPR also jointly investigated allegations that former Civil Rights Division Acting Assistant Attorney General Bradley Schlozman and others used political or ideological affiliations in hiring and personnel decisions in the Department's Civil Rights Division. Because this investigation is ongoing, I should not comment on it at this time. However, I want to assure the Committee that this important investigation is being aggressively pursued, and we plan to report on this matter as soon as possible.

B. Organization of the U.S. Attorney Removal Report

The report we issued on September 29 is a detailed description of our investigation into the removal of nine U.S. Attorneys in 2006. The 358-page report contains 13 chapters. Chapter One provides an introduction and the scope and methodology of our investigation. Chapter Two provides background on the selection and evaluation of U.S. Attorneys, and background on the senior Department officials whose conduct was at issue in this investigation.

Chapter Three contains a lengthy chronology of the removal process and the aftermath of the removals. It discusses the genesis of the plan to remove the U.S. Attorneys, how the U.S. Attorneys were selected for removal, the evolution of Sampson's lists recommending which U.S. Attorneys should be removed, the approval and implementation of the final removal plan, and the aftermath of the removals, including statements by Department officials to Congress and the public about the reasons for the removals.

Chapters Four through Twelve provide detailed descriptions of the removal of each of the nine U.S. Attorneys in 2006, the reasons the Department offered for their removals, and our analysis and conclusions regarding why each U.S. Attorney was removed.

Chapter Thirteen provides our overall conclusions, as well as our assessment of the conduct of the senior Department officials involved with the removals.

In my testimony today, I will summarize the major findings from the report. The remainder of my statement is organized into three parts. The first part describes our findings on the removal process and the reasons for the removal of each of the U.S. Attorneys. The second part of my testimony

analyzes the conduct of Department leaders. The final part discusses the basis for our recommendation – adopted by the Attorney General – that a prosecutor be appointed to assess the evidence and conduct additional investigation.

II. THE U.S. ATTORNEY REMOVAL PROCESS

Our investigation concluded that the process the Department used to select the U.S. Attorneys for removal was fundamentally flawed, and that Attorney General Gonzales delegated the entire project to Sampson with little direction or supervision. We found that Gonzales eventually approved the removal of a group of U.S. Attorneys without inquiring about the process Sampson used to select them for removal, or why each name was on the removal list. Instead, Gonzales told us he “assumed” that Sampson engaged in an evaluation process, that the resulting recommendations were based on performance, and that the recommendations reflected the consensus of senior managers in the Department. Each of those assumptions was faulty.

Gonzales also said he had little recollection of being briefed about Sampson’s review process as it progressed. He claimed to us and to Congress an extraordinary lack of recollection about the entire removal process. In his most remarkable claim, he testified that he did not remember the meeting in his conference room on November 27, 2006, when the plan was finalized and he approved the removals of the U.S. Attorneys, even though this important meeting occurred only a few months prior to his congressional testimony on the removals.

This was not a minor personnel matter that should have been hard to remember. Rather, it related to an unprecedented removal of a group of high-level Presidential appointees, which Sampson and others recognized would result in significant controversy. Nonetheless, Gonzales conceded that he exercised virtually no oversight of the project, and his claim to have very little recollection of his role in the process is extraordinary and difficult to accept.

We found that Deputy Attorney General McNulty had little involvement in or oversight of the removal process, despite his role as the immediate supervisor of U.S. Attorneys. McNulty was not even made aware of the removal plan until the fall of 2006. When McNulty learned about the plan, he thought it was a bad idea. However, he deferred to Sampson and did not raise his concerns with regard to the plan itself or, except in a couple of cases, the evaluation of specific U.S. Attorneys to be removed. Rather, he distanced himself from the project, both while it was ongoing and after it was implemented.

Moreover, we found that there was virtually no communication between Attorney General Gonzales and Deputy Attorney General McNulty about this

important matter. Even when McNulty learned about the plan in the fall of 2006 (more than a year after Gonzales and Sampson initiated the removal process), he did not discuss any of his concerns with Sampson or Gonzales.

We also found no evidence that Gonzales, McNulty, or anyone else in the Department carefully evaluated the basis for each U.S. Attorney's removal or attempted to ensure that there were no improper political reasons for the removals. Neither Sampson nor anyone else involved in the removal process reviewed the performance evaluations of U.S. Attorneys' Offices conducted by the Executive Office for U.S. Attorneys, except in the case of one U.S. Attorney, Kevin Ryan.

Moreover, as discussed in detail in the chapters on the individual U.S. Attorneys, we found conflicting testimony about the reasons most of the U.S. Attorneys were recommended for removal. In some cases, neither Sampson nor any other Department official acknowledged recommending that the U.S. Attorney be placed on the removal list. In other cases, the Department's senior leaders did not even know why Sampson placed the U.S. Attorney on the list.

The most serious allegations that arose in the aftermath of the removals were that several of the U.S. Attorneys were forced to resign based on improper political considerations. Our investigation found substantial evidence that partisan political considerations did play a part in the removal of several of the U.S. Attorneys. The most troubling example was the removal of David Iglesias, the U.S. Attorney for New Mexico. As we describe in detail in the report, we concluded that complaints from New Mexico Republican politicians and party activists to the White House and the Department about Iglesias's handling of voter fraud and public corruption cases led to his removal.

Specifically, we found that New Mexico Senator Pete Domenici and other New Mexico Republican Party officials and activists complained to Iglesias, the Department, and the White House about Iglesias's alleged failure to initiate voter fraud prosecutions and his alleged failure to aggressively prosecute public corruption cases prior to the November 2006 elections. Yet, the Department never objectively assessed these complaints. Rather, based upon these complaints and the resulting "loss of confidence" in Iglesias, his name was placed on the removal list and in December 2006 he was told to resign along with six other U.S. Attorneys.

With regard to several other removed U.S. Attorneys, we found that Department officials made misleading statements to Congress and the public by asserting that their removals were based on "performance." In fact, Sampson acknowledged that he considered whether particular U.S. Attorneys identified for removal had political support. Sampson stated that a

U.S. Attorney was considered for removal not if the U.S. Attorney was considered “mediocre,” but if the U.S. Attorney was perceived as both mediocre and lacking political support. Conversely, Sampson acknowledged deleting from his removal list the names of several U.S. Attorneys who he considered “mediocre” because he believed they had the political support of their home-state Senators and he did not think the Administration would want to risk a fight with the Senators over their removal.

While U.S. Attorneys are Presidential appointees who may be dismissed for any lawful reason or for no reason, they cannot be dismissed for an illegal or improper reason. U.S. Attorneys should make their prosecutive decisions based on the Department’s priorities and the law and the facts of each case, not on a fear of being removed if they lose political support. If a U.S. Attorney must maintain the confidence of home state political officials to avoid removal, regardless of the merits of the U.S. Attorney’s prosecutorial decisions, respect for the Department of Justice’s independence and integrity will be severely damaged and every U.S. Attorneys’ prosecutorial decisions will be suspect. Moreover, the longstanding tradition of integrity and independent judgments by Department prosecutors will be undermined, and confidence that the Department of Justice decides who to prosecute based solely on the evidence and the law, without regard to political factors, will disappear.

In sum, our report found that senior Department officials – particularly Attorney General Gonzales and the Deputy Attorney McNulty – abdicated their responsibility to safeguard the integrity and independence of the Department by failing to ensure that the removal of U.S. Attorneys was not based on improper political considerations.

III. FINDINGS ON REASONS FOR REMOVAL OF THE U.S. ATTORNEYS

Our report devotes a separate chapter to each of the nine U.S. Attorneys removed in 2006, describing in detail the reasons the Department offered for their removal and our analysis and conclusions regarding why each U.S. Attorney was removed.

The first U.S. Attorney removed in 2006 was Todd Graves from the Western District of Missouri. The evidence indicates that, contrary to the Department’s stated reasons, the primary reason for Graves’s removal was complaints from the staff of Missouri Senator Christopher S. “Kit” Bond. Bond’s staff urged the White House Counsel’s Office to remove Graves because he had declined to intervene in a conflict between Senator Bond’s staff and the staff of Graves’s brother, a Republican congressman from Missouri. However, no Department official involved in the process could explain why Graves was forced to resign, and no Department official accepted responsibility for the

decision to remove Graves. Each senior Department official we interviewed claimed that others must have made the decision.

We believe the manner in which the Department handled Graves's removal was inappropriate. Although U.S. Attorneys serve at the pleasure of the President and can be removed for no reason, the Department should ensure that otherwise effective U.S. Attorneys are not removed because of an improper reason. While U.S. Attorneys are often sponsored by their state Senators, when they take office they must make decisions without regard to partisan political ramifications. To allow members of Congress or their staff to obtain the removal of U.S. Attorneys for political reasons, as apparently occurred with Graves, severely undermines the independence and non-partisan tradition of the Department of Justice.

In June 2006, Arkansas U.S. Attorney Bud Cummins was the second U.S. Attorney instructed to resign. Contrary to Gonzales's initial statement that the U.S. Attorneys were removed for performance reasons, the main reason Cummins was removed was to provide a U.S. Attorney position for Tim Griffin, the former White House Deputy Director of Political Affairs.

The other seven U.S. Attorneys were all told to resign on December 7, 2006, and they were not given the reasons for their removal. The most controversial of these removals was Iglesias, the U.S. Attorney for New Mexico. As discussed previously, we were unable to uncover all the facts pertaining to his removal because of the refusal by key witnesses to be interviewed, including Rove, Miers, Goodling, Domenici, and Domenici's Chief of Staff. However, the evidence we uncovered showed that Iglesias was removed because of complaints to the Department and the White House by Senator Domenici and other New Mexico Republican political officials and party activists about Iglesias's handling of voter fraud and public corruption cases in New Mexico.

We concluded that the other reasons proffered by the Department after Iglesias's removal – that allegedly he was an “absentee landlord,” that allegedly he delegated too much authority to his First Assistant, and that allegedly he was an underperformer – were disingenuous after-the-fact rationalizations that did not actually contribute to his removal.

We also found no evidence that anyone in the Department examined any of the complaints about Iglesias's prosecutive decisions through any careful or objective analysis. Moreover, no one in the Department even asked Iglesias about these complaints, or why he had handled the cases the way he did. Rather, because of complaints by political officials who had a political interest in the outcome of voter fraud and public corruption cases, the Department removed Iglesias, an individual who had previously been viewed as a strong U.S. attorney. We believe that the actions by senior Department officials with

regard to the removal of Iglesias – particularly Gonzales, McNulty, and Sampson – were a troubling dereliction of their responsibility to protect the integrity and independence of prosecutorial decisions by the Department.

With regard to Nevada U.S. Attorney Daniel Bogden, we found that he first appeared on Sampson’s removal list in September 2006, shortly after Sampson received complaints from the head of the Department’s Obscenity Prosecution Task Force that Bogden would not assign a prosecutor to a Task Force obscenity case. However, neither Sampson nor any other senior Department official asked Bogden for his response to this complaint. Moreover, none of the senior Department officials we interviewed said they recommended that Bogden be removed, and Gonzales stated that he did not know why Bogden was removed.

We found no evidence, as some speculated, that Arizona U.S. Attorney Paul Charlton was removed because of his office’s investigation of Arizona Congressman Rick Renzi. Rather, we found that the Department was unhappy with Charlton’s unilateral implementation of a policy in his district that required that interrogations be tape recorded. However, the most significant factor in Charlton’s removal was his actions in a death penalty case in his district. Charlton advocated against the Department’s decision to seek the death penalty in a homicide case, and Department leaders were irritated when Charlton sought a meeting with the Attorney General to urge him to reconsider his decision. We believe an issue of this magnitude warrants full and vigorous examination and debate within the Department, and that Charlton’s request to speak directly to the Attorney General about this matter was neither insubordinate nor inappropriate.

We had difficulty determining the real reason for the removal of John McKay, the U.S. Attorney for the Western District of Washington. While there is some evidence that McKay was placed on Sampson’s initial removal list because of complaints from Washington State Republicans about his handling of voter fraud investigations, based on the available evidence we believe the main reason McKay’s name was placed on the removal list was his clash with Deputy Attorney General McNulty over an information-sharing program that McKay advocated. However, the Department’s varying explanations for why McKay was removed severely undermined its credibility when it tried to explain its actions.

McKay’s inclusion on the removal lists also underscores the fundamental problem with the entire removal process: the Department’s failure to use consistent or transparent standards to measure U.S. Attorney performance and to determine whether a U.S. Attorney should be recommended for replacement. Instead, Sampson talked to a few people about who they thought were strong or weak U.S. Attorneys, and he used their impressions and comments about

various U.S. Attorneys, without any attempt to corroborate the comments, seek alternative views, systematically evaluate the U.S. Attorneys' performance, or even allow the U.S. Attorneys to respond to any concerns about their actions. The *ad hoc* nature of Sampson's lists of attorneys to be removed demonstrated the fundamentally flawed and subjective process he used to create these lists.

We found no evidence to support speculation that Carol Lam, the U.S. Attorney for the Southern District of California, was removed in retaliation for her prosecution of certain public corruption cases. Rather, we found that she was placed on the removal list because of the Department's concerns about the low number of gun and immigration prosecutions undertaken by her office. However, we also found that the Department removed her without implementing a plan outlined by Sampson, at the direction of the Attorney General, to address with Lam the Department's concerns about her prosecutorial priorities.

We recognize it is the President's and the Department's prerogative to remove a U.S. Attorney who they believe is not adhering to their priorities or not adequately prosecuting the types of cases that the President and the Department decide to emphasize. This is true for any U.S. Attorney, even one like Lam who was described as "outstanding," "tough," and "honest," and whose office evaluation stated that she was "an effective manager . . . respected by the judiciary, law enforcement agencies, and the USAO staff." However, what we found troubling about Lam's case was that the Department removed her without ever seriously examining her explanations or even discussing with her, as the proposed plan had suggested, that she needed to improve her office's statistics in gun and immigration cases or face removal.

Finally, we concluded that the Department had reasonable concerns about the performance of U.S. Attorneys Margaret Chiara from the Western District of Michigan and Kevin Ryan from the Northern District of California and the management of their offices, and that they were removed for those reasons.

IV. FINDINGS ON THE CONDUCT OF DEPARTMENT LEADERS

The final chapter in our report analyzes the conduct of senior Department officials in the removal of the U.S. Attorneys and its aftermath.

A. Attorney General Gonzales

We concluded that Gonzales bears primary responsibility for the flawed U.S. Attorney removal process and the resulting turmoil that it created. This was not a simple personnel matter that should have been delegated to subordinate officials. Rather, it was an unprecedented removal of a group of

high-level Department officials that was certain to raise concerns if not handled properly. Such an undertaking warranted close supervision by the Attorney General, as well as the Deputy Attorney General. We found that Gonzales was remarkably unengaged in the process, did not provide adequate supervision, and did not ensure that Deputy Attorney General McNulty also provided necessary oversight. Moreover, Gonzales failed to take action even in the case of Iglesias when he had notice that partisan politics might be involved in the demand for Iglesias's removal. We believe that Attorney General Gonzales abdicated his responsibility to safeguard the integrity and independence of the Department by failing to ensure that the removal of the U.S. Attorneys was not based on improper political considerations.

Gonzales also made a series of statements after the removals that we concluded were inaccurate and misleading, including his remarks at a March 13, 2007, press conference at which he said that he "was not involved in seeing any memos, was not involved in any discussions about what was going on" and "I never saw documents. We never had a discussion about where things stood." In addition, Gonzales repeatedly claimed to us and to Congress an extraordinary lack of recollection about the entire removal process.

B. Deputy Attorney General McNulty

We found that McNulty had little involvement in the removal process and was not even informed about the removal plan until the fall of 2006. Although McNulty told us that he was surprised by the plan when he learned of it, he did not object to the plan and did not question the methodology used to identify U.S. Attorneys for removal. Instead, he deferred to the Attorney General's office. We believe that the Deputy Attorney General, the second in command of the Department of Justice and the immediate supervisor of the U.S. Attorneys, should have raised his objections forcefully about the removal plan and should not have been so deferential about such a significant personnel action involving U.S. Attorneys under his supervision. Instead, McNulty distanced himself from the removals, both before and after they occurred, and treated it as a "personnel matter" outside of his "bailiwick." As with Attorney General Gonzales, we believe that Deputy Attorney General McNulty abdicated his responsibility to safeguard the integrity and independence of the Department by failing to ensure that the removal of the U.S. Attorneys was not based on improper political considerations.

C. Kyle Sampson

We found that Sampson, Gonzales's Chief of Staff, was the person most responsible for developing the removal plan, selecting the U.S. Attorneys to be removed, and implementing the plan. Yet, after the controversy over the removals erupted, Sampson attempted to downplay his role, describing himself

as the “aggregator” of names for the removal list and denying responsibility for placing several of the U.S. Attorneys on the removal list.

We believe that Sampson mishandled the removal process from start to finish. In addition, we found that he had inappropriately advocated bypassing the Senate confirmation process for replacing U.S. Attorneys by using the Attorney General’s authority to appoint Interim U.S. Attorneys and “run out the clock” while appearing to act in good faith to submit names through the regular Senate confirmation process.

We also found that Sampson made various misleading statements about the U.S. Attorneys’ removals. We concluded that Sampson engaged in misconduct by making misleading statements and failing to disclose important information to the White House, members of Congress, congressional staff, and Department officials concerning the reasons for the removals of the U.S. Attorneys and the extent of White House involvement in the removal process.

D. Monica Goodling

Goodling’s refusal to be interviewed by us also created gaps in our investigation of the reasons for the removal of certain U.S. Attorneys. As the Department’s White House Liaison, Goodling had significant contact with White House officials about Department personnel matters, and the evidence shows that Goodling was involved to some extent in the selection of the U.S. Attorneys for removal.

Based on our investigation, we found that Goodling, like Sampson, failed to fully disclose to Department officials what she knew about the White House’s involvement in the removals and that her failure to do so contributed to Department officials making inaccurate statements to Congress. We concluded that Goodling engaged in misconduct by failing to correct Department officials who were providing what she knew to be misleading information to Congress and the public concerning the extent and timing of White House involvement in the U.S. Attorney removal process.

V. RECOMMENDATION AND CONCLUSION

Our report recommended that the Attorney General appoint a counsel to assess the facts we have uncovered, work with us to conduct further investigation, and ultimately determine whether the evidence demonstrates that any criminal offense was committed with regard to the removal of Iglesias or any other U.S. Attorney, or the testimony of any witness related to the U.S. Attorney removals.

We made this recommendation for several related reasons. First, we believe it is important to ascertain the full facts relating to why the U.S. Attorneys were removed. As we describe in the report, we were unable to fully develop all of the facts regarding the removal of Iglesias and several other U.S. Attorneys because of the refusal by certain key witnesses to be interviewed by us (including Rove, Miers, Goodling, Domenici, and Domenici's Chief of Staff), as well as by the White House's decision not to provide us with internal White House documents related to the removals.

Second, we believe such a counsel should consider whether Department officials made false statements to Congress or to us about the reasons for the removal of Iglesias or other U.S. Attorneys.

Third, we believe a full investigation is necessary to determine whether other federal criminal statutes were violated with regard to the removal of Iglesias or any other U.S. Attorney, including the obstruction of justice or wire fraud statutes.

It is important to note that our report did not conclude that the evidence we have uncovered thus far establishes that a violation of any criminal statute has occurred. However, we believe that the evidence collected in this investigation is not complete and that serious allegations have not been fully investigated or resolved. We believe that this matter should be fully investigated, the facts and conclusions fully developed, and final decisions made based on all the evidence.

As noted above, in response to our recommendation Attorney General Mukasey appointed a career prosecutor, the Acting U.S. Attorney for Connecticut, to pursue this investigation. We expect the Acting U.S. Attorney to move aggressively and expeditiously to obtain additional evidence and to make a determination as to whether any criminal offense was committed with regard to the removals or their aftermath.

The Department's removal of the U.S. Attorneys and the controversy it created severely damaged the credibility of the Department and raised doubts about the integrity of Department prosecutive decisions. We believe that our investigation, and final resolution of the issues raised in this report, can help restore confidence in the Department by fully investigating and describing the serious failures in the process used to remove the U.S. Attorneys and by providing lessons for the Department in how to avoid such failures in the future.

This concludes my statement, and I would be pleased to answer any questions.