



**Testimony of Asa Hutchinson  
before House Committee on the Judiciary, Subcommittee on  
Commercial and Administrative Law  
March 6, 2007**

Good afternoon. My name is Asa Hutchinson, and it was my privilege to serve on the House Committee on the Judiciary from 1997-2001 before being confirmed to serve as Administrator of the United States Drug Enforcement Administration. It is good to be back, and I am privileged to be testifying on a subject of great interest to me and to anyone who appreciates the importance of United States Attorneys to the administration of justice at the federal level in this nation. I was honored to have served as United States Attorney for the Western District of Arkansas from 1982 until 1985 during the administration of former President Ronald Reagan.

It is from a number of perspectives that I have learned the critical role that a United States Attorney serves our nation and the priorities of the Administration. I have interacted with United States Attorneys as a defense lawyer; as a member of Congress; as head of the DEA; and as our nation's first Under Secretary for Border and Transportation Security of the Department of Homeland Security. In the latter role, I worked with our federal law enforcement officials on customs, immigration and drug enforcement issues. The dedication, commitment and discretion of U.S. Attorneys is essential if the President's administration is to be successful with its priorities in enforcing federal criminal law. That is why I fully support the President's discretion in naming U.S. Attorneys who support the President's priorities and who are committed to carrying out the president's initiatives and enforcement goals. Let me elaborate on this main point:

1. Except for the U.S. Attorney, the federal prosecutors are career attorneys who are not necessarily committed to the priorities of the Administration. Without the full support of the U.S. Attorney, the President, through the Attorney General, would have little practical impact on the strategic priorities of the federal justice system. Any new administration could choose from a laundry list of priorities that range from environmental enforcement to federal gun laws to fighting terrorism. The priorities change with the necessity of the time and with the goals of the Administration. With limited resources the United States Attorney sets the prosecutorial guidelines for a long list of federal agencies, and those priorities invariably change with different presidents, but they could not change without the commitment of the presidentially appointed United States Attorney.

2. It is essential that the United States Attorneys serve at the pleasure of the President. It logically follows that the President may ask for the resignation of his or her appointee, with or without cause. A caution is necessary at this point. If a President exercises the power to fire a United States Attorney, then that action is entitled to receive close scrutiny by those with oversight responsibility. I say this because we all recall the Saturday night massacre when the Nixon White House fired a number of federal appointees with investigative and prosecutorial power in the Watergate investigation. The actions of the President on that occasion received broad criticism and ultimately backfired with the appointment of Leon Jaworski who pursued the investigation with vigor and success. While that action was an extreme abuse of presidential power, the lessons of history illustrate that the presidential appointment power over U.S. Attorneys has been largely used to positively influence federal enforcement priorities. For example, it would be unacceptable for the U.S. Attorney to refuse to enforce federal immigration laws, drug laws, or seek the death penalty merely because of a disagreement with the Administration's views. If you agree with that statement, then it would appear to me that the presidential prerogative should be preserved and protected.

3. With regard to the appointment of interim United States Attorneys, it is my view that the Attorney General should have the authority to name interim U.S. Attorneys until the presidentially appointed successor is named, confirmed and takes office. While this is not perfect, it is consistent with the objective of a President having the ability to influence federal enforcement priorities through the Attorney General and the U.S. Attorneys.

The role of U.S. Attorneys has always been critical to effective enforcement of our federal laws, but their role has increased substantially since the terrorist attacks of 9-11. The U.S. Attorney not only sets federal enforcement priorities within the district but also serves as a

unique coordinator of the federal law enforcement effort. In fighting terrorism, it is essential that the U.S. Attorney be in sync with the Attorney General and properly coordinate with the Department of Justice. For this reason the current authority of the Attorney General to name interim appointments makes sense and should be continued.

I would be happy to respond to any questions.