



## Opening Statement of Senator Feinstein At Hearing on Fired U.S. Attorneys

March 6, 2007

*Washington, DC – The Senate Judiciary Committee today held a hearing to examine the recent firings of U.S. Attorneys across the country.*

*At the hearing, Senator Dianne Feinstein (D-Calif.) called for passage of legislation she sponsored that would require Senate confirmation of all U.S. Attorneys. This legislation was approved in Senate Judiciary Committee last month by a vote of 13-6.*

*Under a provision inserted without notice into the USA Patriot Act reauthorization last year, the law was changed so that if a vacancy arises, the Attorney General may appoint a replacement for an indefinite period of time – thus completely avoiding the Senate confirmation process.*

*The legislation approved by the Judiciary Committee would restore the process in place before 2006. It would allow the Attorney General to appoint interim U.S. Attorney for 120 days. If after that time the President has not sent up a nominee to the Senate and had that nominee confirmed, then the authority to appoint an interim U.S. Attorney would fall to the district court. This was the law from 1986 to 2006.*

*The following is a transcript of Senator Feinstein's opening statement.*

**“I learned on January 6 that several U.S. Attorneys had been told to resign by a date certain in mid-January and without cause. I was told that this was highly unusual and had never happened before, and that I should look into it.**

**While early rumors were circulating, I began to ask questions and express concern.**

**However, as I did this, the Administration pushed back hard. Almost immediately I received an angry call from the Attorney General, who expressed his strong displeasure with what I was saying and told me that I clearly had my facts wrong.**

**On January 18, the Attorney General came before this Committee and vigorously denied that the firings were politically motivated. He stated, “I would never, ever make a change in the United States attorney position for political reasons.”**

**Yet, almost immediately, the Department had to start backtracking. Soon it became evident that Mr. Cummins, from Arkansas, here today, was asked to resign for no other reason than to put in place a politically connected young lawyer, Tim Griffin.**

**However, at that point, the Justice Department maintained that Bud Cummins was the only victim of politics.**

**On February 6, Deputy Attorney General Paul McNulty stressed this was an isolated case by saying, before the Judiciary Committee, “When I hear you talk about the politicizing of the Department of Justice, it’s like a knife in my heart.” He went on to say the others were asked to resign for “performance reasons.”**

**However, here we are a month later. And again the Department is changing its tune. Now, DOJ has begun to argue that these United States Attorneys did not follow Department priorities, and therefore main Justice had concerns about their policy decisions.**

**This Saturday in the *Washington Post* the Department of Justice stated that the “ousters were based primarily on the administration’s unhappiness with the prosecutors’ policy decisions.”**

**However, every witness sitting before this Committee today was judged by a team of independent evaluators to have a strategic plan and appropriate priorities to meet the needs of the Department and their districts.**

**Once again, the Department of Justice’s answers don’t hold up.**

**The Department has used the fact that I wrote a letter on June 15 to the Attorney General concerning the San Diego region, and in that I asked some questions: What are the guidelines for the U.S. Attorney Southern District of California? How do these guidelines differ from other border sections nationwide? I asked about immigration cases.**

**Here is the response that I got under cover of August 23, in a letter signed by Will Moschella. And I ask that both these letters be added to the record.**

**“That office [referring to Mrs. Lam’s office], is presently committing fully half of its Assistant U.S. Attorneys to prosecute criminal immigration cases. Prosecutions for alien smuggling in the Southern District under USC sections 1234 are rising sharply in Fiscal Year 2006. As of March 2006, the halfway point in the fiscal year, there were 342 alien smuggling cases filed in that jurisdiction. This compares favorable with the 484 alien smuggling prosecutions brought there during the entirety of Fiscal Year 2005.”**

**The letter goes on to essentially say that Mrs. Lam is cooperating; that they have reviewed it and the Department is satisfied.**

**Surprisingly, the Administration also claimed on Saturday that “a few days before the firings, administration officials began the traditional process of calling lawmakers in the affected states to inform them about the decisions and to gather early input on possible successors.”**

**Two of those U.S. Attorneys were in my state. This too is not accurate. I don’t know who the Administration called, but it wasn’t me. And I checked, and it wasn’t any of the other home-state Democratic Senators.**

**Every week since I first raised the issue, more information has continued to come out. And amazingly each revelation is more shocking than the one before.**

**I think this hearing is extremely important.**

**I think we need to get to the bottom of what precipitated the calls in December.**

**And I think we need to ensure that this kind of politicization of the U.S. Attorney’s offices does not happen ever again.**

**For over 150 years, the process of appointing interim U.S. Attorneys has worked well with virtually no problems. Now – just one year after receiving unchecked authority in a little known section added to the PATRIOT Act last spring – the Administration has significantly abused its discretion.**

**If there ever was any question why our system of government relies on checks and balances, I think that question has been answered.**

**The Judiciary Committee has reported out a bill, with bipartisan support, that would allow the Attorney General to appoint interim U.S. Attorneys; however, it would limit that time to 120 days. That’s to create an incentive to go to the Senate for confirmation. Then, if that appointment hadn’t been made, the appointing power would resort to a district court judge, who would have the power to put in place an interim U.S. Attorney.**

**This is exactly the way the law was before it was changed in the PATRIOT Act.**

**I would like to point out that there are currently 13 vacancies pending. There are only three nominees. Why is the Administration leaving these positions in that manner?**

**By returning the law to what it was prior to the reauthorization of the PATRIOT Act, the balance of power is returned and an important incentive is created to ensure the Administration will work with the Senate to get the best candidate confirmed.**

**That bill is on the floor right now. That bill can be passed by the United States Senate tomorrow or the next day. That bill was heard in this Committee. That bill was**

**reported out by a majority of this Committee. I really urge that we pass this bill and take that first step to assuring that this can never happen again.**

**I thank you.”**

### **Background**

Senator Feinstein first brought attention to this issue early January when she learned that the Department of Justice had asked several U.S. Attorneys from around the country – including Carol Lam in San Diego – to resign their positions prior to the end of their terms and without cause.

Under a provision inserted without notice into the USA Patriot Act reauthorization last year, the law was changed so that if a vacancy arises, the Attorney General may appoint a replacement for an indefinite period of time – thus completely avoiding the Senate confirmation process.

On January 11, 2007, Senators Feinstein introduced legislation to require Senate confirmation of all U.S. Attorneys.

Senator Feinstein’s bill would restore the process that was in place before 2006. It would allow the Attorney General to appoint interim U.S. Attorney for 120 days. If after that time the President has not sent up a nominee to the Senate and had that nominee confirmed, then the authority to appoint an interim U.S. Attorney would fall to the district court. This was the law from 1986 to 2006

On February 7, 2007, this legislation was approved in the Senate Judiciary Committee by a bipartisan vote of 13-6.

Senator Feinstein has gone to the Senate floor several times to speak on this issue, including:

- **January 16, 2007:** “Recently, it came to my attention that the Department of Justice has asked several U.S. Attorneys from around the country to resign their positions -- some by the end of this month -- prior to the end of their terms not based on any allegation of misconduct. In other words, they are forced resignations.”
- **February 15, 2007, on U.S. Attorney Lam’s last day in office:** “No one expected the rash of firings from the Department of Justice. I first learned about the Department’s actions early in January. At that time I learned that main Justice in Washington had placed calls to at least seven, possibly more, U.S. attorneys and asked them to resign by a date specific in January. I was also told that the intention was to bring in outside lawyers from main Justice or from elsewhere to take over these posts and to serve without confirmation for the remainder of the Bush presidency. . . Ms. Lam has had a distinguished career and she served the Southern District of San Diego well, and everyone in that district knows that. I regret that main Justice

does not. I am quite disappointed that main Justice chose to remove her, especially given the ongoing work in which the office is involved.”

- **February 28, 2007, on the firing of U.S. Attorney David Iglesias:** “I truly believe there was an effort to use this section of the PATRIOT Act reauthorization to bring political operatives into these offices, and I think it is a matter of urgency for us to pass the legislation that was marked up by the Judiciary Committee. . . I think when a U.S. attorney who has served, and served well, is summarily dismissed for no real reason, it is a problem.”

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