

**U.S. House of Representatives**  
**Committee on the Judiciary**

Washington, DC 20515-6216  
One Hundred Tenth Congress  
April 2, 2007

The Honorable Richard A. Herdling, Esq.  
Acting Assistant Attorney General  
Department of Justice  
Washington, D.C. 20530

Dear Mr. Herdling:

I have reviewed the redacted, incomplete set of documents that the Department of Justice has supplied to the Committee in response to my original requests relating to the recent termination of several United States Attorneys. My review, plus troubling developments since my original request, compel me not only to reiterate my requests for the full, unredacted version of all of the documents originally requested, but also to enhance my request to ensure that I have all of the relevant electronically stored information in the manner that it is required to be preserved and produced under the revised Federal Rules of Civil Procedure. Presumably, the Department is well aware of these requirements, with which it deals routinely in federal civil litigation.

As you know, originally the Department provided no explanation to the eight United States Attorneys who were advised of their termination on December 7, 2006. Thereafter, both the Attorney General and the Deputy Attorney General suggested that there were "performance-based reasons" for each of the terminations. Your office also advised that White House Counselor, Karl Rove, had nothing to do with the terminations. Subsequent explanations have contradicted these earlier statements. On March 6, 2007, Mr. Moschella, the Principal Associate Deputy Attorney General, testified before the Commercial and Administrative Law Subcommittee of the House Judiciary Committee and provided yet other explanations for several of the firings. However, several of his explanations are not borne out by the documents that I have reviewed and some are not consistent with the statements made under oath before the Senate Judiciary Committee by Mr. Kyle Sampson, the former Chief of Staff to the Attorney General. Most recently, I have been informed that a key participant in this process, Ms. Monica Goodling, the liaison between the Justice Department and the White House, intends to invoke her Fifth Amendment privilege rather than answer questions of the House and Senate Committees investigating these matters. This latest development raises the additional question of what the Department's position is with respect to this apparent decision by Ms. Goodling and her attorneys.

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Based on these and other developments, the Committee believes that it needs prompt access to all of the electronic information, including embedded data and metadata, relevant to our inquiry concerning the terminations of the United States Attorneys and the Department's development of responses to our inquiries about this topic. I need to see exactly when the lists for termination were developed and modified, who had input into those determinations and the reasons they ascribed to their recommendations, and when and who suggested the changing explanations for these decisions to the public and to our Committee. I also need to see which individuals received blind carbon copies of e-mails, information which is not available on the e-mail printouts that you have provided. At the very least, I need to have assurances in writing that the Department has taken every reasonable precaution to preserve and secure any and all documents or data in its possession, custody or control that may be relevant to the issues currently under consideration by the Committee. The Committee also believes that the Department should offer similar assurances that all potential record custodians have been informed of their obligation to preserve relevant material and that they have been put on notice not to delete, overwrite or otherwise alter or destroy any documents or data in their possession.

In an effort to identify adequately the type of material that needs to be preserved and produced with regard to this investigation, the Committee fully expects that the Department's document production will include, but not be limited to, all documents, data and/or other electronically stored information that has been created using, or is otherwise maintained on, the following digital repository and/or electronic media: personal computers, office workstations, laptops, hard drives, handheld devices (such as Palm, Treo or Blackberry), phones (office, mobile and/or home), removable electronic storage devices (such as CDs, DVDs and USB or thumb drives), shared network drives and servers (including email and/or file servers) and back-up tapes (or other disaster recovery/archiving data). All of these required data should include the computers and other records of the individuals who worked on this matter but have since left the Department or who are on administrative leave, including but not limited to Mr. Sampson, Mr. Battle and Ms. Goodling.

Further, in light of recent disclosures revealing that key record custodians involved in the controversy utilized non-governmental email accounts to conduct official governmental business, the Committee urges the Department to image forensically the

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work stations, laptops and/or other personal computers of key custodians at the White House likely to have material regarding the controversy surrounding the dismissals. The Committee also encourages immediate action on behalf of the Department to secure potential evidence and proposes that the forensic images be maintained by a neutral and unbiased third-party intermediary at a mutually agreed upon location until it is determined whether or not the Committee will need to access the images for deleted or other potentially purged material relevant to the controversy.

In order to provide all pertinent information relevant to the Committee's investigation, facilitate my review and minimize document processing and other expenditures, the Committee requests that the Department make all document and data file productions, whether from word processing, spreadsheet, email and/or instant messaging applications or other electronic data repositories, in native file format so that the metadata accompanies each electronic document and/or data file. In the alternative, should the Department object to native file production for all of the documents relevant to the Committee's investigation, the Committee is prepared to negotiate similar document production formats that would maintain the integrity of the document and deliver the metadata that is likely to be deemed essential to this investigation.

As I have told you previously, I appreciate the Department's concerns about the sensitivity of some of the information, including its potential to embarrass individuals involved, and your desire that it be handled with appropriate care to protect it from unnecessary disclosure. I continue to be willing to work with you to develop and implement procedures that protect the sensitivity of the information while still providing the Committee and its staff access to the needed information for our continuing investigation.

Once I obtain these materials and are able to give them meaningful review, I will be in a better position to determine the next steps to proceed expeditiously as appropriate to ascertain the facts. I look forward to your timely compliance with the Committee's request.

Sincerely,  
  
JOHN CONYERS, JR.  
Chairman

cc: Honorable Lamar S. Smith

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