



U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 16, 2007

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Dianne Feinstein  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Chairman Leahy and Senator Feinstein:

This is in response to your letter, dated January 9, 2007, regarding the Administration's appointment of United States Attorneys.

United States Attorneys are at the forefront of the Department of Justice's efforts. They are leading the charge to protect America from acts of terrorism; reduce violent crime, including gun crime and gang crime; enforce immigration laws; fight illegal drugs, especially methamphetamine; combat crimes that endanger children and families like child pornography, obscenity, and human trafficking; and ensure the integrity of the marketplace and of government by prosecuting corporate fraud and public corruption. The Attorney General and the Deputy Attorney General are responsible for evaluating the performance of the United States Attorneys and ensuring that United States Attorneys are leading their offices effectively.

United States Attorneys serve at the pleasure of the President. Thus, like other high-ranking Executive Branch officials, they may be removed for any reason or no reason. That on occasion in an organization as large as the Justice Department some United States Attorneys are removed, or are asked or encouraged to resign, should come as no surprise. Discussions with United States Attorneys regarding their continued service generally are non-public, out of respect for those United States Attorneys; indeed, a public debate about the United States Attorneys that may have been asked or encouraged to resign only disservices their interests. In any event, please be assured that United States Attorneys never are removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or inappropriately influence a particular investigation, criminal prosecution or civil case. United States Attorneys are law

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enforcement officials and officers of the court who must carry out their responsibilities with strict impartiality.

The Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. When a vacancy in the office of United States Attorney occurs (because of removal, resignation or for any other reason), the Administration first must determine who will serve temporarily as United States Attorney until a new Senate-confirmed United States Attorney is appointed. Because of the importance of continuity in the office, the Administration often looks to the First Assistant United States Attorney or another senior manager in the office to serve as acting or interim United States Attorney. Where neither the First Assistant United States Attorney nor another senior manager in the office is able or willing to serve as acting or interim United States Attorney, or where their service would not be appropriate in the circumstances, the Administration may look to other Department employees to serve as interim United States Attorney. At no time, however, has the Administration sought to avoid the Senate confirmation process by (1) appointing an interim United States Attorney and then (2) refusing to move forward, in consultation with home-State Senators, on the selection, nomination and (hopefully) confirmation of a new United States Attorney. The appointment of United States Attorneys by and with the advice and consent of the Senate unquestionably is the appointment method preferred by the Senate and the one that the Administration follows.

Last year's amendment to the Attorney General's appointment authority was necessary and appropriate. Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in numerous, recurring problems. For example, some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments. In contrast, other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances. Because the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

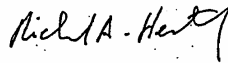
Enclosed per your request is information regarding the exercise of the Attorney General's authority to appoint interim United States Attorneys. As you will see, the enclosed information establishes conclusively that the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. Indeed,

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every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or the Administration is working, in consultation with home-State Senators, to select candidates for nomination. Such nominations are, of course, subject to Senate confirmation.

Sincerely,



Richard A. Hertling  
Acting Assistant Attorney General

Enclosure

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