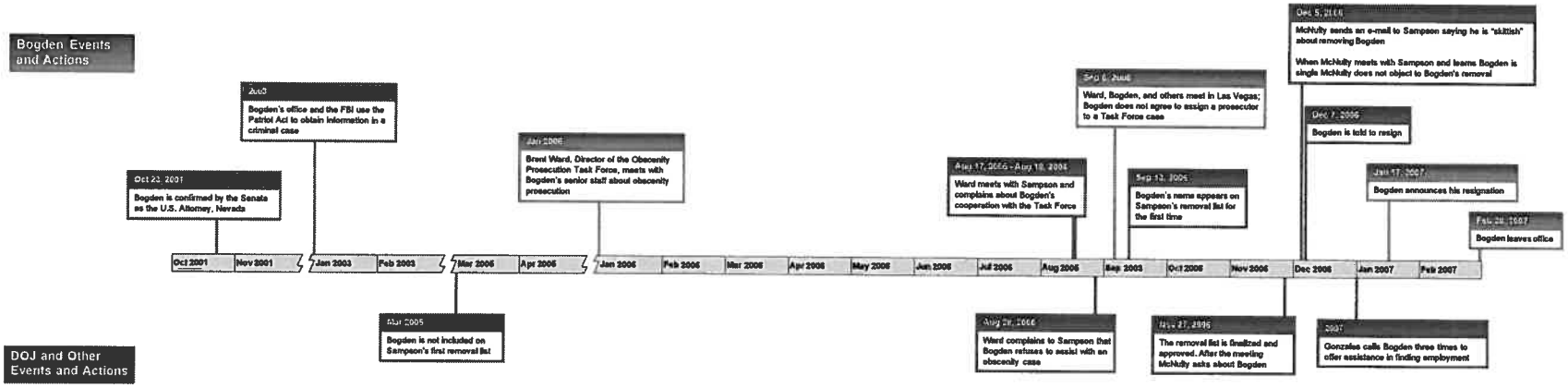
Daniel Bogden Timeline



CHAPTER SEVEN
DANIEL BOGDEN

I. Introduction

This chapter examines the removal of Daniel Bogden, the former United States Attorney for Nevada.

A. Bogden's Background

Bogden received his law degree in 1982 from the University of Toledo College of Law. He served as a member of the United States Air Force Judge Advocate General's Office from 1982 until 1987. From 1987 until 1990, Bogden was a prosecutor in the Washoe County District Attorney's Office in Reno, Nevada. He was hired as an Assistant United States Attorney in the District of Nevada in 1990, and was named Chief of the Reno office in 1998.

In 2001, Bogden was approached by Nevada U.S. Senator John Ensign and asked if he was interested in becoming the U.S. Attorney for the District of Nevada. Bogden said that Ensign also asked him if he had a political party affiliation. Bogden told Ensign that he was unaffiliated and voted for who he believed to be the best candidate.

Bogden was nominated to be the United States Attorney for the District of Nevada on September 4, 2001, and sworn in on November 2, 2001.

B. The EARS Evaluation of Bogden's Office

During his tenure as U.S. Attorney, Bogden's office underwent one EARS evaluation in February 2003. The EARS evaluation stated:

> United States Attorney Bogden and his supervisory [staff] were well respected by the USAO staff, the investigative and client agencies, and the judiciary . . . . The senior management team appropriately managed the Department's criminal and civil priority programs and initiatives . . . . Bogden was highly regarded by the federal judiciary, the law enforcement and civil client agencies, and the staff of the USAO. He was a capable leader of the USAO. He was actively involved in the day-to-day management of the USAO.

C. Bogden's Status on the Removal Lists

On Kyle Sampson's first list of U.S. Attorneys recommended for removal, which he sent to the White House on March 2, 2005, Bogden was identified as

1 of 40 U.S. Attorneys who had not distinguished themselves either positively or negatively. At the beginning of January 2006, Sampson prepared a draft memorandum for White House Counsel Miers identifying 11 U.S. Attorneys for replacement, which he shared with Monica Goodling, then Senior Counsel to the Attorney General. Goodling made handwritten notes about Bogden on a copy of the draft memorandum: "Quiet/not sure about – Bogden." However, Sampson did not include Bogden in the January 9, 2006, list he sent to Miers.[129]

Bogden also was not included in Sampson's April 2006 list of U.S. Attorneys to be removed.

Bogden's name first appeared on the fourth removal list Sampson sent to Miers on September 13, 2006, and he remained on the list through December 7, 2006, when he was told to resign. He announced his resignation on January 17, 2007, and left office on February 28, 2007.

D. Reasons Proffered for Bogden's Removal

As described in Chapter Three, in February 2007 when the Department began to prepare witnesses for their congressional testimony regarding the U.S. Attorney removals, Goodling and others created a chart of the reasons justifying the removals. In her handwritten notes describing the reasons for Bogden's removal, Goodling wrote: "very important – terror, violent crime, drugs in important district, resistant to AG priorities (obscenity task force), Margolis, in over his head."

Based on Goodling's notes, the Department created several versions of a typewritten chart containing justifications for the U.S. Attorney removals. The reasons for Bogden's removal were stated in one of these charts as follows:

> Similarly, Nevada is what we consider to be a very important district that was underserved.
>
> Given the large tourist population that visits each year, it's well-known that Las Vegas could present a target for terrorism. It has also struggled with violent crime, drugs, and organized crime. This is an office where we have the right to expect excellence and aggressive prosecution in a number of priority areas.
>
> Despite the national focus the Attorney General requested for offices to place on the federal crime of obscenity, which coarsens

[129] Shortly after his January 2006 discussion with Goodling, Sampson created a draft of a 3-tier list in which he identified Bogden as a "Tier 2" candidate who was not recommended for immediate termination, but who was a possible future candidate for replacement.

> society, the USA failed to support the Department's prosecution of a case that was developed within his district.
>
> This is another district where, now that Mr. Bogden has finished his four-year term (and then some), we thought we could make a change to bring more dynamic leadership to the office.

On February 14, 2007, Deputy Attorney General Paul McNulty briefed the Senate Judiciary Committee on the U.S. Attorney removals. The notes of this meeting prepared by Nancy Scott-Finan, an official in the Department's Office of Legislative Affairs who attended, and the talking points that McNulty used to prepare for the meeting reflect that McNulty gave as reasons for Bogden's removal that Bogden "lacked energy and leadership" and he was "good on guns, but not good on obscenity cases."

During Principal Associate Deputy Attorney General William Moschella's March 6, 2007, testimony, he told the House Judiciary Subcommittee that while there "was no particular deficiency" concerning Bogden, the Department removed him to obtain "renewed energy" and "renewed vigor" in his office.

During our investigation, we could not determine who was responsible for Bogden's name being placed on the U.S. Attorney removal list. Sampson, who described himself as the "aggregator" of information and the keeper of the list, acknowledged that he must have physically placed Bogden's name on the list. But he denied that he made the decision to add Bogden to the list, and said that he did not remember who made the recommendation. Sampson said he did not remember how Bogden got on the list "except that there was a general view that he was mediocre, and he stayed on the list." Other than Goodling, no one we interviewed said they recommended that Bogden be placed on the removal list. Attorney General Alberto Gonzales told us that he did not have an independent basis for understanding why Bogden was to be removed. Gonzales also expressed regret to us that no one talked to Bogden before he was removed. Gonzales stated that he wished that "someone had talked to all of these folks beforehand, just to make sure we understood their side of the story, but particularly with respect to Bogden."

As we describe in more detail in Section II. D. below, Deputy Attorney General McNulty said that because he did not know why Bogden's name was on the list of U.S. Attorneys to be removed, he looked more closely at Bogden's removal than he did at others on the list. McNulty asked Sampson if Bogden "had done something wrong," and commented that he was "skittish" about removing him. When McNulty was told that Bogden was single and did not have a family, McNulty agreed to his removal.

Associate Deputy Attorney General David Margolis told congressional investigators that prior to the December 7 removals, he had no understanding of how or why Bogden was removed. We asked Margolis about Goodling's

handwritten notes summarizing the reasons why Bogden was removed, which included the notations "Margolis" and "in over his head." Margolis told us that he never said to anyone that Bogden was "in over his head" because he did not think that was an accurate description of Bogden's performance, which Margolis described to us as "average." Margolis told us that he did not know why Goodling would have written his name in her notes concerning Bogden's removal.

Chief of Staff to the Deputy Attorney General Michael Elston told congressional investigators that he did not suggest that Bogden be removed. According to Elston, he did not object to Bogden's removal because he thought that although Bogden "didn't really do anything wrong," he was not "doing anything great."

Goodling was the only witness who said she affirmatively recommended that Bogden be removed. In her May 2007 immunized testimony to the House Judiciary Committee, Goodling stated that Sampson consulted with her in January 2006 about the list of candidates for removal he planned to send to Miers. She said that at that time she recommended that Bogden be added to Sampson's list. Goodling also submitted a written statement to the House Judiciary Committee in which she said that she made the recommendation to remove Bogden because she did not know of any specific accomplishments in his district and because she recalled some criticism of Bogden involving the Patriot Act.

However, Goodling's testimony that she recommended Bogden's removal in January 2006 is inconsistent with her contemporaneous notes from that time. Goodling's handwritten notes on a copy of a draft of Sampson's January list state, "Quiet/not sure about – Bogden." Sampson said he did not remember Goodling mentioning any Patriot Act issue with respect to Bogden, and we were unable to interview Goodling because she declined to cooperate with our investigation.

Even Goodling, however, disclaimed that her recommendation was the reason Bogden was removed. In her testimony before the House Judiciary Committee, Goodling noted that after her January 2006 recommendation, Sampson did not include Bogden on the removal lists he sent to the White House in January and April 2006. She said she therefore assumed that Bogden's name appeared on the September 2006 U.S. Attorney removal list "for reasons unrelated to my assessment nine months earlier."

II. Chronology of Events Related to Bogden's Removal

In this section, we describe our findings concerning the stated reasons for Bogden's removal, including Bogden's response to a request from the Department's Obscenity Prosecution Task Force to prosecute an obscenity case

in Nevada, alleged concerns about his energy and leadership, and his use of a Patriot Act provision in prosecuting a criminal case.

A. Obscenity Prosecution

In 2006, the Department's Obscenity Prosecution Task Force (Task Force) asked Bogden to assign an Assistant U.S. Attorney from his office to prosecute an adult obscenity case. As described below, Bogden's response to the request became one of the reasons proffered for his removal.

1. Obscenity Prosecution Task Force

In 2005, the Department created the Obscenity Prosecution Task Force in the Criminal Division in Main Justice. The Task Force has a small staff of approximately two to four attorneys. The current Director of the Task Force, Brent Ward, was a former U.S. Attorney in Utah in the 1980s. Because of its small size, the Task Force relies upon assistance from U.S. Attorneys' Offices across the country to prosecute the cases it identifies.

According to Ward, the Task Force seeks to prosecute adult obscenity matters in which there is no allegation that minors or children are involved, and no allegation that the persons involved were coerced or otherwise forced to perform the acts alleged to be obscene. Ward told us that it was common for the Task Force to encounter strong resistance from U.S. Attorneys' Offices when asked to prosecute such cases. A Task Force trial attorney also said that the Task Force does not "get a real warm reception" from U.S. Attorneys' Offices when it requests assistance. He said that he could think of only 1 or 2 people he had worked with over the last 15 months who "really wanted" to assist in such prosecutions.

According to the Department's stated reasons for Bogden's removal, obscenity prosecutions were a leadership "priority" for the Department. We found that Ward often sought to invoke the Attorney General's priorities when trying to persuade U.S. Attorneys' Offices to assist the Task Force with obscenity prosecutions. However, documents and e-mails also reflect that Ward himself vociferously complained that obscenity prosecutions were not, in fact, a Department priority. For example, Ward prepared an August 17, 2006, outline of matters to discuss with Sampson in which he noted that the Department's 2003-2008 strategic plan omitted obscenity as a prosecution priority. In addition, in December 2006 Ward sent an e-mail to several Criminal Division front office staff, including Assistant Attorney General Alice Fisher, complaining that a draft set of Criminal Division enforcement priorities omitted obscenity prosecutions. Ward stated that the omission would encourage U.S. Attorneys already hesitant to take on such cases to refuse them. Ward also sent a copy of this e-mail to Sampson on December 12, 2006.

2. Task Force Request to Bogden and Complaints About His Response

In January 2006, Ward met with Bogden's First Assistant U.S. Attorney and his Criminal Chief to discuss, in general terms, potential obscenity prosecutions in Nevada. According to Ward, they told him that they were not interested in pursuing adult obscenity cases in Nevada.

In August 2006, Task Force officials began to plan a visit to the Nevada U.S. Attorney's Office to request that Bogden assist in a proposed criminal obscenity prosecution concerning allegations that Internet videos depicted obscene acts.

On August 16, 2006, Ward sent an e-mail to the Task Force trial attorney and the FBI agents assigned to the Task Force stating that he had scheduled a September 6 meeting with Bogden and his staff in Las Vegas to request that a grand jury be opened and that Bogden assign an AUSA to assist in the prosecution. Ward and the trial attorney told us that the Task Force preferred that a local prosecutor take the first chair at trial because of the perceived importance of persuading the jury that the case was an important local issue and not one being pushed solely by attorneys from Washington, D.C.

On August 17 or 18, 2006, a day or two after Ward had arranged the meeting with Bogden, Ward met with Sampson to discuss problems that the Task Force was encountering throughout the country. Both Ward and Sampson were from Utah, and Ward said that he was a friend of Sampson's brother, who lived in Salt Lake City. Ward said he had used that connection to communicate with Sampson before he came to Washington to lead the Task Force. We also found that Ward frequently complained directly to Sampson about the problems encountered by the Task Force.

In Ward's prepared outline for the meeting with Sampson, Ward identified several reasons why he believed the Task Force's mission was not succeeding, including insufficient resources and lack of support from the FBI, the Criminal Division front office, and the Office of the Attorney General. Ward's outline also contained the following notation: "Big districts thumb nose – word gets around CDCA, AZ, NV." Ward told us that he and Sampson discussed during that meeting problems Ward had encountered in the Los Angeles U.S. Attorney's Office (U.S. Attorney Debra Yang), the Phoenix U.S. Attorney's Office (U.S. Attorney Paul Charlton), and the Las Vegas U.S. Attorney's Office (Bogden).

On August 28, Ward sent an e-mail to Bogden to confirm their September 6 meeting and to inform Bogden that he would be accompanied by the Task Force trial attorney and three FBI agents. Bogden replied the same day acknowledging the scheduled meeting, but stated that he would likely not

agree to Ward's request for assistance due to "severe manning and personnel shortages" in the district.

Ward was angered by Bogden's response and forwarded it to several senior Department officials, including Sampson. In his e-mail to Sampson, Ward remarked, "This is now typical and has brought our efforts virtually to a standstill." Ward asked Sampson in the e-mail whether Attorney General Gonzales would consider calling the districts, including Bogden's, to encourage them to cooperate with the Task Force. We did not find any response from Sampson to this e-mail. Sampson told us that he "may have" discussed Ward's complaints with Gonzales, but Sampson said he did not recall whether or not he did so.

On August 29, Ward also forwarded Bogden's response to Matthew Lewis, a Senior Counsel in the Criminal Division front office. Ward repeated some of the comments he had made to Sampson about Bogden's response, and also said that it would be bad for the FBI agents to go with him to the scheduled meeting "and listen to the lame excuses of a defiant U.S. Attorney." Lewis responded that he would forward the e-mail to three other officials in the Criminal Division front office, including Chief of Staff Matthew Friedrich. A few hours later, Ward forwarded Bogden's response to Friedrich, along with other complaints about the reasons why the Task Force was unable to accomplish its mission.

On August 30, Friedrich forwarded Ward's e-mail to Elston, saying they needed to discuss the matter. Elston responded, "Don't throw in the towel yet." Elston told us that his phrase "don't throw in the towel" meant that he hoped that he could get the Office of the Deputy Attorney General to take some kind of action to move the Task Force cases forward.

The day before his September 6 trip to Las Vegas, Ward sent an e-mail to Bogden to request a private meeting with him. In his response, Bogden repeated his previous comment that his office lacked the resources to provide Ward with much assistance. Ward responded by stating that the Attorney General had made obscenity prosecutions a priority, and that he wanted Bogden to assign an AUSA to the matter. Bogden replied that "the AG has set a number of priorities" and that because of staff shortages, "we find ourselves unable to cut one AG priority [in] order to deal with other priorities."

Ward and several FBI agents met with Bogden and several of his senior staff on September 6 in Las Vegas. Bogden said that he also asked the local FBI Special Agent in Charge to attend the meeting with Ward and his team. Bogden said that before the meeting he met alone with Ward and again told him that he lacked the resources to take on the adult obscenity matter.

In his interview with us, Bogden said that in addition to the resource issue, he did not view the case Ward presented to him as particularly significant. He said it was a "small potatoes" prosecution that would not have made "a huge impact." Bogden also said that the participants in the allegedly obscene acts depicted were the target of the investigation and his wife. Bogden also said that the target lacked significant assets and that there were no money laundering or criminal tax aspects to the case.

Bogden also told us that he was not persuaded by the Task Force that venue for the prosecution was in Nevada because it was not clear where the website was located for venue purposes. In addition, Bogden said that the case "needed a whole lot of work," and the sole basis for the prosecution was the fact that an agent had viewed the material on the website and thought it obscene. Bogden said he did not consider the videos to be particularly egregious. Bogden said more work was needed regarding the subject, his finances, and the venue issue.

Ward disagreed with Bogden's assessment of the case, although he acknowledged that the target had few assets. Ward and the trial attorney said that the target and his wife were participants in the videos, but asserted that other females appeared in the videos as well. Ward and the trial attorney also told us that the material depicted women being abused and engaging in egregious behavior. Ward said he thought the case was a significant matter.

The meeting between Bogden, Ward, and their staffs ended without a resolution as to whether Bogden's office would accept the case.

On September 13, 1 week after Ward's meeting with Bogden and 2 weeks after Ward complained to Sampson and Criminal Division personnel about Bogden's refusal to assist in the obscenity case, Bogden's name appeared on Sampson's removal list for the first time.[130]

On September 20, 2006, Ward sent an e-mail to Sampson with another complaint about Bogden and Charlton:

> We have two U.S. Attorneys who are unwilling to take good cases we have presented to them. They are Paul Charlton in Phoenix (this is urgent) and Dan Bogden in Las Vegas. In light of the AG's comments at the NAC to "kick butt and take names", what do you suggest I do?[131] Do you think at this point that these names

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[130] Charlton's name also appeared on the September 13 removal list for the first time.

[131] A few weeks earlier, Gonzales had spoken at a conference on obscenity prosecutions at the Department's National Advocacy Center. Ward acknowledged to us that Gonzales had not actually said he would "kick butt and take names," and that his recitation of Gonzales's comments was not verbatim.

should go through channels to reach the AG, or is it enough for me to give the names to you?

Sampson responded that Ward should go through regular channels. Ward therefore sent an e-mail that same day to several Criminal Division front office staff stating in part, "the Attorney General expressed his desire to 'take the names' of U.S. Attorneys who will not assign an AUSA on obscenity cases. . . . There are two U.S. Attorneys who fit squarely in that category right now, Paul Charlton . . . and Dan Bogden . . . I would like to position them for calls from the Attorney General."

Sampson told us that he never examined the facts underlying Ward's complaints about Bogden because he did not have "any reason to doubt Mr. Ward." Sampson said he did not recall whether the obscenity prosecution issue caused him to place Bogden on the list. Sampson also said he did not recall raising this issue with Gonzales.

McNulty told us that in the fall of 2006 he may have had some knowledge about the issues regarding Bogden and the obscenity prosecution, but that he had no clear recollection of the matter.

According to Bogden, Ward called him in October 2006 to again ask that he assign an AUSA to the Task Force matter. Bogden said he offered to give Ward office space, grand jury time, secretarial assistance, and prosecution advice, but not an AUSA. Bogden said that Ward rejected this offer, insisting that a local prosecutor was necessary to try the case.

Bogden said that he also recommended to Ward that if the case were to be prosecuted, it should be brought in Reno where jurors might be more receptive than Las Vegas jurors to an obscenity prosecution. According to Bogden, Ward rejected this suggestion as well.[132] Bogden also said that he told Ward to check back with him about assigning a prosecutor to the obscenity case in early 2007 when Bogden was slated to fill several open AUSA slots.

B. Bogden's Alleged Lack of Energy and Leadership

In their testimony and interviews with us, Department officials characterized Bogden's performance as U.S. Attorney as mediocre. Sampson said that although he did not remember how Bogden got on the removal list, "there was a general view that he was mediocre, and he stayed on the list." McNulty said Bogden lacked "energy and leadership." Moschella said Bogden was replaced so that his office would have renewed "energy" and "vigor."

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[132] Ward said he did not recall Bogden suggesting Reno as a venue for the prosecution. However, Charlton recalled that Bogden told him that Ward had rejected Reno as a venue for the case and insisted on Las Vegas.

Elston said he did not object to Bogden's removal because he was not "exercising inspired leadership."

Goodling's chart listing the reasons the Department proffered for each U.S. Attorney's removal included the comment under Bogden that Nevada was a "very important" district, in part because it could be a target for "terrorism." However, no one we interviewed raised that contention or offered any evidence that this was considered a reason for removing Bogden. Elston, for instance, told us that "I don't recall anyone talking about Las Vegas being a prime target for terrorism."

As discussed previously, the only EARS evaluation during Bogden's tenure was completed in 2003. The report stated that "Bogden was highly regarded by the federal judiciary, the law enforcement and civil client agencies, and the staff of the USAO. He was a capable leader of the USAO. He was actively involved in the day-to-day management of the USAO." We found no criticisms of Bogden's management of the U.S. Attorney's Office in the EARS report.

Former Deputy Attorney General James Comey told the Senate Judiciary Committee that he thought Bogden "was an excellent U.S. attorney . . . . I thought very highly of him . . . . When I left in August of 2005, I couldn't have thought of a reason why he should be asked to resign."

Margolis told congressional investigators that he had "no reason to support or question" Bogden's performance. Margolis told us that he thought Bogden was a "ham and egger," which Margolis said meant "average." However, Margolis also said that he did not know anything about Bogden that would "cause me to put him on the list."

EOUSA Director Battle told congressional investigators that he did not know why Bogden was removed, and that he was not aware of any issues regarding Bogden when Battle served as EOUSA Director. Battle told us that Bogden was the person who "surprised me the most" when he learned he was to be removed. Former EOUSA Director Mary Beth Buchanan told congressional investigators that she did not have any reason to believe that there was "anything negative" regarding Bogden's performance, and that she did not recall hearing anything good or bad about his office.

We also found no evidence that any Department official involved in the removals spoke with EOUSA or Criminal Division officials about how Bogden was performing. In addition, McNulty stated in an e-mail to Sampson on December 5, 2006 – 2 days before the removal plan was to be executed – that he had not looked at Bogden's district's performance. Gonzales told us that he "wish[ed]" someone had talked to Bogden to get his side of the story before he was removed.

Further, there appeared to be no systematic effort to assess whether there were other allegedly "mediocre" U.S. Attorneys who should be removed at the same time as Bogden. Sampson said he was uncertain whether there were other U.S. Attorneys who were more "mediocre" than Bogden who were not removed.[133]

Sampson also admitted that there may have been U.S. Attorneys who were more mediocre than Bogden who were not fired because they had political backing. When we asked Sampson whether "there could be people who are even worse than Bogden, but they just hadn't been identified," he answered, "Correct. There could be people that were worse than Bogden, but we thought we don't want to pick that political fight [with home state senators]." Sampson agreed that Bogden was removed not just because he was "mediocre," but also because he lacked political support.[134]

C. Patriot Act Criticism

As described above, Goodling also raised in her congressional testimony that she recommended to Sampson that Bogden be removed in part because she recalled that Bogden had been criticized for an incident in his district involving the Patriot Act. Goodling also testified that during the November 27, 2006, meeting in the Attorney General's conference room where the U.S. Attorney removal decisions were finalized and approved, she told the group

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[133] When Sampson was asked, "Wouldn't you be the prime person in a position to know how Mr. Bogden ranked relative to all the other United States Attorneys?" he replied,

> Sitting here today, I don't – look, I don't think – sitting here today, I'd have to look at that list of U.S. Attorneys and think back and say were any of these more mediocre than Mr. Bogden. I don't think there were, or they would have been on the list as well. Perhaps. I'm not sure. I don't know.

[134] Some media reports also suggested that Bogden was removed because of concerns over his handling of voter fraud allegations in Nevada. As discussed in detail in the chapter on U.S. Attorney Iglesias, in the fall of 2006 Karl Rove told Gonzales that he was concerned about voter fraud in three cities, none of which were in Nevada. Gonzales asked Sampson to inquire about Rove's concerns. Sampson in turn asked Matthew Friedrich, then Counselor to the Attorney General, to follow up on Rove's information. Friedrich consulted with Criminal Division Chief of Staff Benton Campbell, who in turn consulted with Craig Donsanto, the Criminal Division's expert on voter fraud issues, to obtain information responsive to Friedrich's request. Donsanto mentioned to Campbell a list of jurisdictions with alleged voter fraud problems; one of them was Nevada. This information is reflected in Friedrich's handwritten notes of his subsequent conversation with Campbell. Friedrich said he passed on the information he received from Campbell to Sampson, but Sampson said he did not recall ever hearing back from Friedrich. No one in the Department ever cited voter fraud as a reason for Bogden's removal. Bogden told us that after media stories about these documents were published, he consulted with his election law coordinator in the USAO and confirmed that his office has never had any serious voter fraud issues during his tenure. We found no evidence to support any speculation that Bogden's removal was related to any voter fraud issue.

that she was aware of "one case involving use of the Patriot Act that had gotten a little messy a few years ago."

Goodling was apparently referring to a criminal case in 2003 in which the FBI in Nevada had used a provision of the Patriot Act to obtain financial information about a strip-club owner and elected officials who may have received bribes from the club owner. The matter generated media coverage and congressional criticism for using a Patriot Act provision in a criminal matter involving the strip club. At the time, Goodling worked in the Department's Office of Public Affairs, and her e-mails show that she was involved in responding to the media coverage.

Bogden explained to us that FBI investigators had used a provision of the Patriot Act to obtain financial information in order to gather evidence necessary for grand jury subpoenas for certain accounts and financial institutions. Bogden said that the investigators had received approval to use the investigative technique "from the highest level of the FBI."

Bogden also said that he had been in constant contact with Department officials in Washington, and no one ever expressed any concern about this incident with him. In addition, he said that former Attorney General John Ashcroft and former Deputy Attorney General Comey had each visited Nevada twice, and Attorney General Gonzales had visited Nevada once while Bogden was U.S. Attorney, and none of them had ever raised the issue with him.

We also conducted an extensive search of Department e-mails regarding this issue, including e-mails to and from senior Department officials in the Office of the Attorney General, Office of the Deputy Attorney General, and Criminal Division. We found no criticism by them of the FBI and the USAO's use of the Patriot Act provision in this case, other than complaints that the FBI had disclosed use of the Patriot Act to the press.

In addition, we found that Goodling did not include any mention of the Patriot Act matter in her handwritten notes memorializing the Department's justifications for the U.S. Attorney removals. Sampson told us that he did not recall Goodling mentioning a Patriot Act issue and did not recall any criticism of Bogden related to the Patriot Act. No Department official other than Goodling cited use of the Patriot Act as a reason for Bogden's removal in public or closed congressional testimony.

D. McNulty's Qualms About Removing Bogden

Goodling testified before the House Judiciary Committee that at the November 27, 2006, meeting to finalize the plan to remove several U.S. Attorneys, McNulty said, "the one person I have a question about is Mr. Bogden. Did he do something wrong, or is it just a general sense that we could

do better?" According to Goodling, Sampson responded that "it was a general kind of sense that we could do better."

EOUSA Director Battle stated that immediately after the November 27 meeting, McNulty asked him if he knew why Bogden was going to be removed. Battle said he told McNulty that he was not aware of any problems with Bogden.

McNulty continued to be concerned about Bogden's removal. On December 5, 2006, 2 days before the plan to remove the U.S. Attorneys was to be executed, McNulty sent an e-mail to Sampson stating:

> I'm still a little skittish about Bogden. He has been with DOJ since 1990 and, at age 50, has never had a job outside government . . . . I'll admit [I] have not looked at his district's performance. Sorry to be raising this again/now; it was just on my mind last night and this morning.

After McNulty sent this e-mail, he met with Sampson to discuss his concerns about removing Bogden. Elston or Mercer may also have been present at the meeting. Sampson testified that "his best guess" was that the meeting lasted "about 90 seconds." When asked what occurred during those 90 seconds Sampson stated:

> My recollection is that Mr. McNulty and those other people came into my office, and I said, "I got your e-mail." And he said, "I'm just concerned about Bogden" – you know, essentially what he says in the e-mail, about that he's 50, hasn't had a job in [the] private sector, and what about his family. And I think Mike Elston or Bill Mercer said, "He's a bachelor. He's single." And Mr. McNulty said, "Okay. Never mind," and then got up and left my office.

Elston denied that he ever told McNulty that Bogden was single, and stated that he never knew Bogden's marital status. Mercer, who was the Principal Associate Deputy Attorney General at the time, also denied telling McNulty at this meeting that Bogden was single.[135]

According to McNulty, he told Sampson that he was "worried about [Bogden's] wife and kids. I was worried it might have an impact on his family . . . ." McNulty said that Sampson told him that Bogden "didn't have a family,

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[135] Mercer said he recalled a conversation he had with McNulty and Sampson that occurred later in 2006 or in early 2007 when they were discussing Bogden's request for an extension of his departure date. Mercer told us that during that conversation he told Sampson and McNulty that he did not think that Bogden had children.

he was single." McNulty said he then replied "I guess I don't have any objection to going forward."

E. Bogden's Removal and Gonzales's Concerns

According to Bogden, Battle called him on December 7, 2006, told him that he served at the pleasure of the President, and told him to resign by January 31, 2007. Bogden said he asked why he was being asked to resign and Battle responded that "they just want to move the office in another direction." Bogden said he received no other information from Battle.

Bogden subsequently called Mercer to obtain more information about why he was asked to resign. Bogden said that Mercer told him that there was a window of opportunity for the Administration to build up the résumés of candidates for judgeships and political offices. Mercer later testified to congressional staff that he did not recall making such a statement to Bogden.

Bogden then called McNulty. Bogden said he asked McNulty if he was fired because of his performance or the performance of his office. According to Bogden, McNulty told him that performance "didn't enter into the equation."

Bogden said that he spoke with Gonzales three times after he was asked to resign. During each conversation, Gonzales asked Bogden whether he could help him obtain a new position, and each time Bogden asked Gonzales to reinstate him as the U.S. Attorney. Gonzales refused. Gonzales testified to Congress that he did not speak with any of the other fired U.S. Attorneys after they were asked to resign. Gonzales stated that the reason he called Bogden to offer his assistance in finding new employment was that he believed Bogden was "the closest call." Gonzales told us that he did not know why Bogden was asked to step down.

III. Analysis

As with the removals of several other U.S. Attorneys, we were unable to identify the person responsible for placing Bogden on the removal list. Goodling stated that in January 2006 she recommended to Sampson that Bogden be removed. However, Goodling's testimony is inconsistent with her January 2006 contemporaneous handwritten note stating "Quiet, not sure about" Bogden. Goodling also stated that she did not believe her recommendation was the reason Bogden was removed. This is consistent with the fact that after Goodling's recommendation, Bogden did not appear on the January 2006 removal list or the next list Sampson sent in April 2006. Rather, Bogden was first placed on the list in September 2006, shortly after Sampson received complaints from the head of the Obscenity Prosecution Task Force about both Bogden and Charlton, who was also placed on the list for the first time.

No other Department leader told us that they recommended that Bogden be placed on the removal list, and we found no documents or evidence showing who made the ultimate decision. Sampson acknowledged that he must have physically placed Bogden's name on the list, but denied that he had made the decision to do so and said that he did not remember who made the recommendation.

We found no support for one of the reasons the Department proffered for why Bogden was place on the list – the Patriot Act incident mentioned by Goodling. The use by Bogden's office and the Nevada FBI of a provision of the Patriot Act to obtain evidence in a criminal case occurred in 2003, several years before his removal. Goodling did not include any mention of the Patriot Act matter in her handwritten notes memorializing the Department's justifications for the U.S. Attorney removals. In addition, Sampson told us that he did not recall Goodling mentioning this issue and did not recall any criticism of Bogden related to his use of the Patriot Act. No Department official other than Goodling cited the Patriot Act matter as a reason for Bogden's removal in public or closed congressional testimony, and we found no evidence that it contributed to Bogden's removal.

It appears that some Department officials believed that voter fraud was an issue in Nevada. However, no one complained about Bogden's handling of any allegations of voter fraud, and we found no evidence to support any speculation that Bogden's removal was related to any voter fraud issues.

Rather, we believe that the primary reason for Bogden's inclusion on the removal list was the complaints by Ward, the head of the Department's Obscenity Prosecution Task Force, about Bogden's decision not to assign a Nevada prosecutor to a Task Force case. The evidence shows that in August 2006 Ward, who knew Sampson's brother and who frequently spoke directly with Sampson about Task Force matters, complained about Bogden to Sampson. Sampson stated that he was aware of Ward's complaints, although he said he did not recall whether those complaints played a role in the decision to remove Bogden. We found Sampson's lack of recall particularly suspect, given his role in the removal process.

It does not appear that any Department official other than Sampson knew that Bogden was placed on the September 2006 removal list because he refused to assign an attorney to assist the Department's Obscenity Prosecution Task Force. Rather, it appears that, at most, some of those involved thought Bogden was being removed because he was a "mediocre" U.S. Attorney and the Department "could do better." Attorney General Gonzales and Deputy Attorney General McNulty were apparently never informed as to the real reason for placing Bogden's name on the list of U.S. Attorneys to be removed.

We are troubled that neither Sampson nor any other Department official involved in the removal process ever asked Bogden for his explanation about Ward's complaint. No one asked about Bogden's rationale for declining to assign a prosecutor to the obscenity case, his competing resource needs for other priority issues, his view of the strength of the case, or his alternative offer to provide assistance to the Task Force with office space, grand jury time, secretarial support, and prosecution advice.

As another reason for Bogden's removal, Department officials testified and told us that Bogden was considered to be a mediocre U.S. Attorney, and he lacked energy and leadership. However, no one involved in the removals said that Bogden was placed on the list because he was "mediocre." Based on our investigation, we found that this argument was raised late in the process, after Bogden was already on the list. According to Goodling's congressional testimony, when McNulty asked at the November 27 meeting why Bogden was on the list, Sampson said there was a "sense we can do better." Similarly, Elston told us that although he did not recommend that Bogden be removed, he did not object to Bogden being on the list because there was a "general sense" that his office lacked leadership and energy. Sampson also told congressional investigators that he could not recall why Bogden was placed on the list "except that there was a general view that he was mediocre, and he stayed on the list."

However, we found that no one involved in the removal process ever objectively assessed any concerns about Bogden's performance. No one examined any statistical measures of his office's work compared to other USAOs, or inquired about the assessment of local law enforcement officials about him. No one involved in the removals reviewed the EARS report about Bogden's office.

We also found no evidence that Department officials ever raised concerns about Bogden's performance with him before he was removed.[136] No one involved in the removal process even contacted the Department officials who would likely be most knowledgeable about Bogden's performance, such as EOUSA Director Battle or Associate Deputy Attorney General Margolis, before placing Bogden on the list.

Battle said that Bogden was the person who "surprised me the most" when he learned he was to be removed. Margolis said that Bogden was an average U.S. Attorney, and that he did not know anything about Bogden that would have caused him to recommend Bogden's removal.

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[136] Also, according to Bogden, when he asked McNulty if he was fired because of his performance or the performance of his office, McNulty replied that performance "didn't enter into the equation."

We also found it noteworthy that Sampson admitted that other U.S. Attorneys who were also considered "mediocre" were not removed. Sampson acknowledged to us that there may have been U.S. Attorneys whose performance was worse than Bogden's but who were not removed because they had the right political connections. We are troubled that a Department of Justice official would make such a statement indicating that the standard by which he assessed whether U.S. Attorneys should be removed was not mediocrity, but rather mediocrity without political support.

In addition, we are concerned about the reasoning for why Bogden remained on the list when McNulty had qualms about it, just before the removal plan was to be implemented. McNulty was troubled by Bogden's inclusion on the list and asked to meet with Sampson 2 days before the removal plan was implemented. According to McNulty, he told Sampson that he was worried about the impact of Bogden's removal on his wife and kids. When Sampson told McNulty that Bogden was single, McNulty dropped his objection. The fact that Bogden was not married or did not have children was irrelevant to his performance as U.S. Attorney or to an objective, reasonable assessment of his performance. We question whether Bogden's marital or family status was an appropriate basis on which to decide whether he should or should not be removed as U.S. Attorney.

Finally, we find it remarkable that Attorney General Gonzales and Deputy Attorney General McNulty stated that they did not know why Bogden was being removed. In our view, the fact that the Attorney General and Deputy Attorney General were apparently in the dark as to the reasons why Bogden was placed on the removal list demonstrates the flawed nature of their oversight of the U.S. Attorney removal process.