January 1, 2006

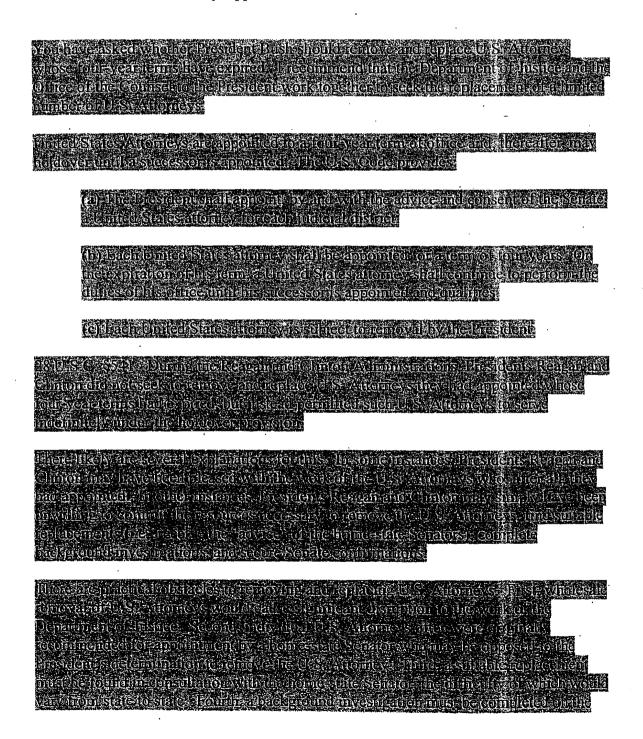
MEMORANDUM FOR THE COUNSEL TO THE PRESIDENT

FROM:

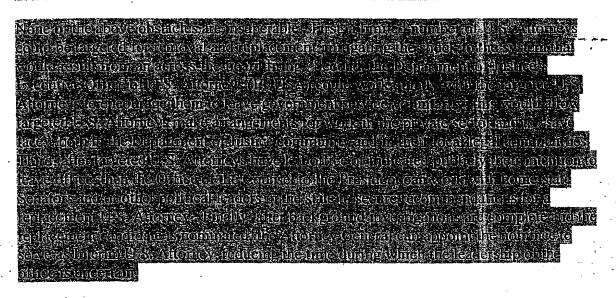
Kyle Sampson

SUBJECT:

U.S. Attorney Appointments

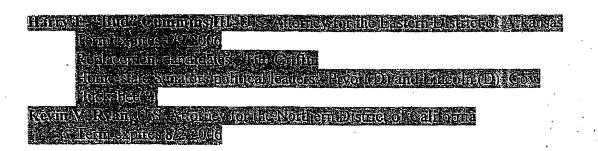






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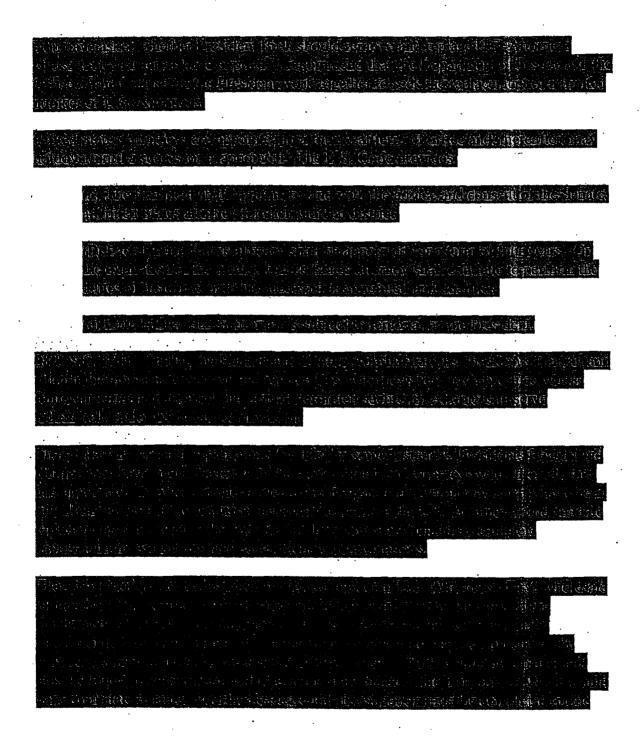
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MEMORANDUM FOR THE COUNSEL TO THE PRESIDENT

FROM: Kyle

Kyle Sampson

SUBJECT: U.S. Attorney Appointments



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Sampson, Kyle

From:

Sampson, Kyle

Sent:

Monday, January 09, 2006 10:09 AM

To: Cc: Harriet Miers (Harriet_Miers@who.eop.gov)
Bill Kelley (william_k._kelley@who.eop.gov)

Subject:

U.S. Attorney Appointments - PLEASE TREAT THIS AS CONFIDENTIAL

PLEASE TREAT THIS AS CONFIDENTIAL

Harriet, you have asked whether President Bush should remove and replace U.S. Attorneys whose four-year terms have expired. I recommend that the Department of Justice and the Office of the Counsel to the President work together to seek the replacement of a limited number of U.S. Attorneys.

The U.S. Code provides that each United States Attorney "shall be appointed for a term of four years . . . [and] shall continue to perform the duties of his office until his successor is appointed and qualifies." 28 U.S.C. § 541(b). Accordingly, once confirmed by the Senate and appointed, U.S. Attorneys serve for four years and then holdover indefinately (at the pleasure of the President, of course). In recent memory, during the Reagan and Clinton Administrations, Presidents Reagan and Clinton did not seek to remove and replace U.S. Attorneys they had appointed whose four-year terms had expired, but instead permitted such U.S. Attorneys to serve indefinitely under the holdover provision.

There likely are several explanations for this: In some instances, Presidents Reagan and Clinton may have been pleased with the work of the U.S. Attorneys who, after all, they had appointed. In other instances, Presidents Reagan and Clinton may simply have been unwilling to commit the resources necessary to remove the U.S. Attorneys, find suitable replacements (i.e., receive the "advice" of the home-state Senators), complete background investigations, and secure Senate confirmations.

There are practical obstacles to removing and replacing U.S. Attorneys. First, wholesale removal of U.S. Attorneys would cause significant disruption to the work of the Department of Justice. Second, individual U.S. Attorneys often were originally recommended for appointment by a home-state Senator who may be opposed to the President's determination to remove the U.S. Attorney. Third, a suitable replacement must be found in consultation with the home-state Senator, the difficulty of which would vary from state to state. Fourth, a background investigation must be completed on the replacement — a task often complicated if the outgoing U.S. Attorney remains in office. Fifth, after nomination, the Senate must confirm the replacement.

None of the above obstacles are insuperable. First, a limited number of U.S. Attorneys could be targeted for removal and replacement, mitigating the shock to the system that would result from an across-the-board firing. Second, the Department of Justice's Executive Office of U.S. Attorneys (EOUSA) could work quietly with targeted U.S. Attorneys to encourage them to leave government service voluntarily; this would allow targeted U.S. Attorneys to make arrangements for work in the private sector and "save face" regarding the reason for leaving office, both in the Department of Justice community and in their local legal communities. Third, after targeted U.S. Attorneys have left office or indicated publicly their intention to leave office, then the Office of the Counsel to the President can work with home-state Senators and/or other political leaders in the state to secure recommendations for a replacement U.S. Attorney. Finally, after background investigations are complete and the replacement candidate is nominated, the Attorney General can appoint the nominee to serve as Interim U.S. Attorney pending confirmation, thereby reducing the time during which the leadership of the office is uncertain.

If a decision is made to remove and replace a limited number of U.S. Attorneys, then the following might be considered for removal and replacement:

3. Margaret M Chiara, U.S. Attorney for the Western District of Michigan Term expired 11/2/2005

Replacement candidates: Rachel Brand?

Home-state Senators/political leaders: Levin (D) and Stabenow (D); numerous GOP congressmen

5. Harry E. "Bud" Cummins III, U.S. Attorney for the Eastern District of Arkansas

Term expires 1/9/2006 (today!)

Replacement candidates: Tim Griffin?

Home-state Senators/political leaders: Pryor (D) and Lincoln (D); Gov. Huckabee(?)

6. Kevin V. Ryan, U.S. Attorney for the Northern District of California

Term expires 8/2/2006

Replacement candidates: Dan Levin?

Home-state Senators/political leaders: Feinstein (D) and Boxer (D); Parsky Commission

7. Carol C. Lam, U.S. Attorney for the Southern District of California

Term expires 11/18/2006

Replacement candidates: Jeff Taylor, Deb Rhodes

Home-state Senators/political leaders: Feinstein (D) and Boxer (D); Parsky Commission

I list these folks based on my review of the evaluations of their offices conducted by EOUSA and my interviews with officials in the Office of the Attorney General, Office of the Deputy Attorney General, and the Criminal Division. If a determination is made to seek the removal of these folks, then we should similarly seek to remove and replace

Please let me know how you would like to proceed. The first steps, I think, would be (1) to agree on the target list of U.S. Attorneys and (2) ask EOUSA to begin quietly calling them to ascertain their intentions for continued service/indicating to them that they might want to consider looking for other employment.

Tracking:

Recipient

Read

Harriet Miers (Harriet_Miers@who.eop.gov)
Bill Kelley (william k. kelley@who.eop.gov)

Sampson, Kyle

Read: 1/9/2006 10:09 AM

Sampson, Kyle

From:

Sampson, Kyle

Sent: To: Thursday, May 11, 2006 11:36 AM William K. Kelley@who.eop.gov

Subject:

FW: Removal and Replacement of U.S. Attorneys Whose 4-year Terms Have Expired

Sensitivity:

Confidential

Per your inquiry yesterday after JSC, this is the e-mail I sent to Dabney last month at Harriet's request. Please call me at your convenience to discuss the following:

- Rachel Brand for W.D. Mich.;
- Tim Griffin for E.D. Ark.; and
- The real problem we have right now with Carol Lam that leads me to conclude that we should have someone ready to be nominated on 11/18, the day her 4-year term expires.

From:

Sampson, Kyle

Sent: To: Friday, April 14, 2006 9:31 AM 'Dabney_Friedrich@who.eop.gov'

Subject

RE: Removal and Replacement of U.S. Attorneys Whose 4-year Terms Have Expired

Sensitivity:

Confidential

Also, I would note that two others on my original list already have left office. They are:

From:

Sampson, Kyle

Sent:

Friday, April 14, 2006 9:30 AM 'Dabney_Friedrich@who.eop.gov'

To: Subject:

Removal and Replacement of U.S. Attorneys Whose 4-year Terms Have Expired

Sensitivity:

Confidential

Dabney, DOJ recommends that the White House consider removing and replacing the following U.S. Attorneys upon the expiration of their 4-year terms:

Margaret M. Chiara, W.D. Mich., term expired 11/2/2005:

Harry E. "Bud" Cummins III, E.D. Ark., term expired 1/9/2006; and

Carol C. Lam, S.D. Cal., term expires 11/18/2006.

We also should similarly seek to remove and replace:

Call me if you have any questions. If you pushed me, I'd have 3-5 additional names that the White House might want to consider.