

January 1, 2006

MEMORANDUM FOR THE COUNSEL TO THE PRESIDENT

FROM: Kyle Sampson

SUBJECT: U.S. Attorney Appointments

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.

United States Attorneys are appointed to a four-year term of office and thereafter may not deliver until a successor is appointed. The U.S. Code provides:

(a) The President shall appoint, by and with the advice and consent of the Senate, a United States attorney for each judicial district.

(b) Each United States attorney shall be appointed for a term of four years. On the expiration of his term, a United States attorney shall continue to perform the duties of his office until his successor is appointed and qualifies.

(c) Each United States attorney is subject to removal by the President.

28 U.S.C. § 541. 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 pre-occupied 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 and suitable replacements (i.e., take the advice of the home-state Senators, complete background investigations, and secure Senate confirmations).

There are many 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 may 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. First, after nomination the Senate must confirm the replacement.

None of the above obstacles are insurmountable. First, a limited number of U.S. Attorneys could be targeted for removal and replacement, managing the load to the system that would result from an attrition of a few. Second, the Department of Justice Executive Office for U.S. Attorneys (EOUSA) could work closely with the outgoing U.S. Attorneys to ensure a gentleman's agreement to leave government service voluntarily. This would allow targeted U.S. Attorneys to make arrangements to work in the private sector and to save face. Both in the Department of Justice community and in local legal communities. Third, this targeted U.S. Attorneys have left to be complicated publicly then mentioned 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 is decided, nominated the Attorney General can appoint the nominee to serve as interim U.S. Attorney, 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:

Margaret MacHaren, U.S. Attorney for the Western District of Michigan

Term expires 1/27/2006

Replacement candidate: Rachel Brand

Home state Senator/political leaders: DeWine (R) and Stabenow (D); numerous

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

Term expires 1/9/2006

Replacement candidate: Tim Griffin

Home state Senator/political leaders: Byron (R) and Lincoln (D); Gov.

Huckabee (R)

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

Term expires 8/2/2006

Replacement candidates: Dan Clavin  
Home State Senators/political leaders: Feinstein (D) and Boxer (D), Parsley  
Commission  
Candidate: U.S. Attorney for the Southern District of California  
Term expires: 7/1/2004  
Replacement candidates: Jeff LeVine, Bob Riandt  
Home State Senators/political leaders: Feinstein (D) and Boxer (D), Parsley  
Commission

Use these folks base on my review of the evaluations of their offices' confidentiality  
by EO 13526 and my interviews with officials in the Office of the Attorney General, Office of  
the Deputy Attorney General, and the Criminal Division. If determinations made at  
end of the removal of these folks, they would immediately seek to remove and replace

Please let me know how you would like to proceed.

Others:

Tier 1

Charleton

Tier 2

Bogden

Tier 3

January 1, 2006

MEMORANDUM FOR THE COUNSEL TO THE PRESIDENT

FROM: Kyle Sampson

SUBJECT: U.S. Attorney Appointments

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Replacement candidates: Dan Laxton  
One state Senator, political leaders: Henshaw (D) and Boyer (D), Parke  
Commission

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

Replacement candidate: Jeff Taylor, Bill Thayer  
Political leaders: Henshaw (D) and Boyer (D), Parke  
Commission

These bills have been approved by the members of the U.S. House of Representatives  
and the Senate. The bills have been passed by the House of Representatives and the Senate  
and are now being sent to the President for his signature. The bills are intended to  
remove the federal government's authority to regulate interstate commerce.

How do you know how you would like to proceed?

Others:

Tier 1

Charleton

Tier 2

Bogden

Tier 3



## Sampson, Kyle

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**From:** Sampson, Kyle  
**Sent:** Monday, January 09, 2006 10:09 AM  
**To:** Harriet Miers (Harriet\_Miers@who.eop.gov)  
**Cc:** 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 indefinitely (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

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**From:** Sampson, Kyle  
**Sent:** Thursday, May 11, 2006 11:36 AM  
**To:** '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.

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**From:** Sampson, Kyle  
**Sent:** Friday, April 14, 2006 9:31 AM  
**To:** '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:

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**From:** Sampson, Kyle  
**Sent:** Friday, April 14, 2006 9:30 AM  
**To:** 'Dabney\_Friedrich@who.eop.gov'  
**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.