

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, D.C. 20510

Dear Senator Reid:

This is in response to your letter to the Attorney General dated February 8, 2007. An identical response has been sent to the other signatories of that letter.

The full quotation of the Attorney General's testimony at the Judiciary Committee hearing on January 18, 2007 (not the selective quote cited in your letter), more fairly represents his views about the appropriate reasons for asking a U.S. Attorney to resign. In full, the Attorney General stated: "I think I would never, ever make a change in a United States attorney for political reasons or *if it would in any way jeopardize an ongoing serious investigation. I just would not do it*" (emphasis added).

The Deputy Attorney General, at the hearing held on February 6, 2007, further stated the Department's view that asking U.S. Attorney Bud Cummins to resign so that Special Assistant U.S. Attorney Tim Griffin might have the opportunity to serve as U.S. Attorney is not, in the Department's view, an inappropriate "political reason." This is so, the Deputy Attorney General testified because, *inter alia*, Mr. Griffin is very well-qualified and has "a strong enough resume" to serve as U.S. Attorney, and Mr. Cummins "may have already been thinking about leaving at some point anyway." Indeed, at the time Mr. Griffin was appointed interim U.S. Attorney in December 2006 he had far more federal prosecution experience (in the Criminal Division and in the U.S. Attorney's office) than Mr. Cummins did at the time he was confirmed as U.S. Attorney in December 2001. In addition, Mr. Griffin has substantial military prosecution experience that Mr. Cummins does not have. And it was well-known, as early as December 2004, that Mr. Cummins intended to leave the office and seek employment in the private sector. See "The Insider Dec. 30," *Ark. Times* (Dec. 30, 2004) ("Cummins, 45, said that, with four children to put through college someday, he'll likely begin exploring career options. It wouldn't be 'shocking,' he said, for there to be a change in his office before the end of Bush's second term.").

In addition, the Department does not consider the replacement of one Republican U.S. Attorney by another well-qualified person with extensive experience as a prosecutor and strong ties to the district to be a change made for "political reasons." U.S. Attorneys serve at the pleasure of the President; that has always been the rule, and U.S. Attorneys accept their appointment with that understanding. U.S. Attorneys leave office all the time for a wide variety of reasons. As noted in the case of Mr. Cummins, he had previously

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indicated publicly that he did not expect to remain in office through the President's second term. It was only natural and appropriate that the Department would seek a successor in anticipation of the potential vacancy. When the Department found an able and experienced successor, it moved forward with his interim appointment.

In answer to your specific questions:

- The decision to appoint Tim Griffin to be interim U.S. Attorney in the Eastern District of Arkansas was made on or about December 15, 2006, after the second of the Attorney General's telephone conversations with Senator Pryor.
- The Department of Justice is not aware of anyone lobbying, either inside or outside of the Administration, for Mr. Griffin's appointment. In the spring of 2006, following regular procedures, the Office of the Counsel to the President inquired of the Office of the Attorney General as to whether Mr. Griffin (who then was on active military duty in Iraq) might be considered for appointment as U.S. Attorney upon his return.
- As the Deputy Attorney General testified, Mr. Cummins's continued service as U.S. Attorney was not considered at the same time as the other U.S. Attorneys that the Deputy Attorney General acknowledged were asked to resign for reasons related to their performance. As the Deputy Attorney General testified, the request that Mr. Cummins resign was "related to the opportunity to provide a fresh start with a new person in that position."
- The Department is not aware of Karl Rove playing any role in the decision to appoint Mr. Griffin.

In conclusion, the Department wholeheartedly agrees with the principle you set forth in your letter that "[o]nce appointed, U.S. Attorneys, perhaps more than any other public servants, must be above politics and beyond reproach; they must be seen to enforce the rule of law without fear or favor." That many U.S. Attorneys, appointed by Presidents of both parties, have had political experience prior to their appointment does not undermine that principle.

We appreciate the opportunity to respond to your inquiry.

Sincerely,

Richard A. Hertling
Acting Assistant Attorney General

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