

**Sampson, Kyle**

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**From:** Sampson, Kyle  
**Sent:** Tuesday, January 30, 2007 4:06 PM  
**To:** Hertling, Richard; Goodling, Monica; Elston, Michael (ODAG)  
**Subject:** Re: Response to Pryor Letter

Thx, Rich.

-----Original Message-----  
**From:** Hertling, Richard  
**To:** Sampson, Kyle; Goodling, Monica; Elston, Michael (ODAG)  
**Sent:** Tue Jan 30 15:45:45 2007  
**Subject:** FW: Response to Pryor Letter

I tweaked this by adding "Mr." before Griffin in a few locations. Now that Mike has signed off on it, this is ready to go as soon as I get Monica's list.

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**From:** Sampson, Kyle  
**Sent:** Tuesday, January 30, 2007 11:31 AM  
**To:** Elston, Michael (ODAG); Hertling, Richard  
**Cc:** Goodling, Monica  
**Subject:** Response to Pryor Letter  
**Importance:** High

Mike/Richard, the attached letter incorporates DOJ edits and WH edits (and has been "cleared" by WH). I think that we need to get it up today, well in advance of Paul's hearing next week -- if (God forbid) Pryor shows up at the hearing as a witness and alleges that he wasn't consulted, we discriminated against the FAUSA, we have a conspiracy to keep Tim in office, etc., etc., then we'll want to have this letter to wave around.

Mike, given Paul's equities, I think you should review and clear. Once cleared, we should get it up ASAP.

Richard/Monica, the letter refers to the fact sheet, so Monica will need to provide the most up-to-date fact sheet to go with the letter as an enclosure.

Thanks! <<Pryor Letter re Griffin.doc>>

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January 30, 2007

The Honorable Mark Pryor  
United States Senate  
257 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senator Pryor:

This is in response to your letter to the Attorney General dated January 11, 2007, regarding the Attorney General's appointment of J. Timothy Griffin to serve as interim United States Attorney for the Eastern District of Arkansas.

As the Attorney General informed you in his telephone conversations with you on December 13, 2006, and December 15, 2006, Mr. Griffin was chosen for appointment to serve as interim United States Attorney because of his excellent qualifications. To be clear, Mr. Griffin was not chosen because the First Assistant United States Attorney was on maternity leave and therefore was not able to serve as your letter states. As you know, Mr. Griffin has federal prosecution experience both in the Eastern District of Arkansas and in the Criminal Division in Washington, D.C. During his service in the Eastern District of Arkansas, Mr. Griffin established that district's successful Project Safe Neighborhoods initiative to reduce firearms-related violence. In addition, Griffin has served for more than a decade in the U.S. Army Reserve, Judge Advocate General's Corps, where he has prosecuted more than 40 criminal cases, including cases of national significance. Griffin's military experience includes recent service in Iraq, for which he was awarded the Combat Action Badge and the Army Commendation Medal. Importantly, Griffin is a "real Arkansan" with genuine ties to the community. For these qualifications, Griffin was selected to serve as interim United States Attorney.

As the Attorney General also has stated to you, the Administration is committed to having a Senate-confirmed United States Attorney for all 94 federal districts. At no time has the Administration sought to avoid the Senate confirmation process by appointing an interim United States Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination and confirmation of a new United States Attorney. Not once.

The Eastern District of Arkansas is not different. As the Attorney General stated to you again two weeks ago, in a telephone conversation on January 17, 2007, the Administration is committed to having a Senate-confirmed United States Attorney in that

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district too. That is why the Administration has consulted with you and Senator Lincoln for several months now regarding possible candidates for nomination, including Mr. Griffin. That is why the Attorney General has sought your views as to whether, if nominated, you would support Mr. Griffin's confirmation. The Administration awaits your decision.

If you decide that you would support Mr. Griffin's confirmation, then the President's senior advisors (after taking into account Senator Lincoln's views) likely would recommend that the President nominate him. With your support, Mr. Griffin almost certainly would be confirmed and appointed. We are convinced that, given his strong record as a federal prosecutor and as a military prosecutor, Mr. Griffin would serve ably as a Senate-confirmed United States Attorney. If, in contrast, you decide that for whatever reason you will not support Mr. Griffin's confirmation, then the Administration looks forward to considering any alternative candidates for nomination that you might put forward. In any event, your views (and the views of Senator Lincoln) will be given substantial weight in determining what recommendation to make to the President regarding who is nominated.

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. Contrary to your letter, nothing in the text or history of the statute even suggests that the Attorney General should articulate a national security or law enforcement need for making an interim appointment. Because the Administration is committed to having a Senate-confirmed United States Attorney for all 94 federal districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

Enclosed 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, every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or – as with the Eastern District of Arkansas – the Administration is working,

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in consultation with home-State Senators, to select a candidate for nomination. Such nominations are, of course, subject to Senate confirmation.

Sincerely,

Richard A. Hertling  
Acting Assistant Attorney General

cc: The Honorable Blanche L. Lincoln

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